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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9019 OF 2015

Shabhapati Shivmurti Pandey & Anr. ..Petitioners.

V/s.

State of Maharashtra through Divisional
Joint Registrar Co-op. Societies & Ors.

..Respondents.

Mr.H.S.Pandey, the petitioner in person.

Mr.A.B.Kadam, AGP for respondent No.1.

Ms.Gauri Godse i/b.S.K.Legal Associates for respondent Nos.3 & 4.

CORAM: NITIN W.SAMBRE, J.

DATE : JULY 17, 2019

P.C.:-

Heard petitioner, party in person and learned counsel
for the respondents.

2. Respondent No.2, developer has obtained overdraft
facilities from the respondent/co-operative bank. Since default was
committed, the Co-operative Court passed an award against the
said respondent on April 16, 1993 in Case No.CC.III/135/1993 for
recovery of certain amount.

3. As amount was not paid, the Sub-Divisional Officer auctioned the property on January 6, 2002 against which the petitioners preferred a revision under section 154 of the Maharashtra Co-operative Societies Act, 1960 ('the Act' for short) before the Divisional Joint Registrar. The said revision came to be dismissed on June 16, 2015. As such, this petition.

4. Mr.Pandey, the party in person, a lawyer by profession, would assist this Court by inviting attention to the registered agreement of sale entered into between respondent No.2 and respondent No.5 in relation to the property of which the petitioners are in possession. According to him, the aforesaid property was purchased under the unregistered agreement of sale on August 16, 2008 and the petitioners are enjoying the possession of the said property.

5. While questioning attachment order and the order of dismissal of revision, Mr.Pandey would urge that the petitioners have brought to the notice of the said authority by specific pleadings and also supportive evidence that petitioners are the purchaser of the property without notice. The fact that the property was subjected to dispute before the Co-operative Court

and order of attachment was not brought by either respondent No.2 or respondent No.5 to the knowledge of the petitioners before the execution of Agreement of Sale.

6. He would urge that award was passed way back on April 16, 1993. Pursuant to Article 136 of the Indian Limitation Act, 1963 the award is not executed against the petitioners within 12 years of period of limitation.

7. The next limb of submission is, the petitioners who are in lawful possession of the property, cannot be evicted without following due process of law. According to him, civil dispute between the parties is pending in an appeal before this Court as the suit of the petitioner was dismissed. Drawing support from the judgment of the Apex Court in the matter of *Krishna Ram Mahale (Dead), by his LRs. V/s. Mrs.Shobha Venkat Rao*¹ and also other judgments, he would urge that the claim against the petitioners is hit by the Limitation Act. He would draw support from the judgment of this Court in the matter of [*Khushal s/o. Narayanrao Mundhe V/s. State of Maharashtra in Writ Petition No.1969 of 2006*] decided on March 14, 2007 and also other similar

1 (1989) 4 Supreme Court Cases 131

judgments so as to claim that he cannot be evicted without following due process of law.

8. As such, according to him, the order impugned passed by the revisional authority as also the order of attachment is liable to be quashed and set aside.

9. Learned counsel for the respondents and learned AGP supported the order impugned.

10. Considered rival submissions.

11. The fact remains that the petitioners has purchased the property in question under an alleged agreement of sale dated August 16, 2008, is an unregistered document. The petitioners have stated that in view of section 6 of the Specific Relief Act and Maharashtra Stamp Act, the petitioners have also taken recourse to payment of stamp duty on the said document.

12. As far as the aforesaid steps taken by the petitioners is concerned, in case the authority, pursuant to the request of the petitioners has accepted the payment of deficit stamp duty, evidential value of the said agreement can be looked into by the competent Civil Court as the appeal at the behest of the petitioners, which in my opinion, is continuation of the suit is

pending adjudication before this Court.

13. As far as the issue as regards, whether the petitioners is the purchaser of the property in question without notice viz. the fact of existence of award of Co-operative Court and attachment of property was not within the knowledge of the petitioners is concerned, same cannot be gone into either by the Recovery Officer, Joint Divisional Registrar or this Court in the present proceedings.

14. In the aforesaid backdrop, the contentions raised by the petitioners that they are lawful purchasers of the property cannot be appreciated as the said issue is pending adjudication in the appeal.

15. As regards the applicability of Article 136 of the Limitation Act in the case in hand is concerned, the fact remains that the petitioners have acquired the right in the property from respondent No.2 developer. The said transaction as is apparent is dated August 14, 2000. The award in question against respondent No.2 was passed by the Co-operative Court way back on April 16, 1993 and the attachment order pursuant to the provisions of section 156 of the Act and Rule 107 of the Maharashtra Co-

operative Societies Act, 1961 ('the Rules' for short), came to be passed on February 24, 1996. As such, there is no delay on the part of the respondent Co-operative Bank or the Recovery Officer in the proceeding against the property in question for recovery of its dues as recovery is initiated well within the time i.e. before 12 years.

16. Just because the petitioners stepped into the shoes of respondent No.5 on August 16, 2008 that by itself may not take away claim beyond the period of limitation. As such, the claim of the petitioners that the recovery is barred by limitation, is also rejected.

17. As far as the issue of eviction of the petitioners without following due process of law is concerned, record depicts that the respondent-Bank and the Recovery Officer have proceeded against the petitioners in accordance with the provisions of sections 156 of the Act and Rule 107 thereunder.

18. In that view of the matter, what can be disclosed is, the respondent-bank and the authorities herein, are proceeding for recovery in accordance with the procedure contemplated under the Act and the Rules framed thereunder.

19. The next submission of Mr.Pandey that the award passed by the Co-operative Court should have been sent to the Civil Court for execution pursuant to the provisions of Order 21 of the Code of Civil Procedure. So far as the aforesaid contention is concerned, this Court need not go into the said issue, particularly when law permits the Recovery Officer to proceed ahead with the attachment of the property in question pursuant to the provisions of section 156 of the Act read with 107 of the Rules.

20. Keeping the right of the petitioners intact to claim injunction in accordance with law in the appeal, if they so desire on the issue of eviction, in my opinion, there is no substance in the petition. The petition fails and is dismissed.

(NITIN W.SAM BRE, J.)