IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.819 OF 2019

Yes Bank, a Company incorporated
and registered under the
Companies Act, 1956 ... Petitioner

Versus

Nitesh Housing Developers
Private Limited & Ors. ... Respondents

Shri Y.V. Nadkarni, Advocate for the Petitioner.
Shri Shivan Desai, Advocate for Respondents No.1 & 2.
Shri H.D. Naik, Advocate for Respondent No.3.

Coram:- DAMA SESHADRI NAIDU, J.

Date:- 3rd March 2020

ORAL ORDER:

The first respondent is the developer and the third respondent the owner. In January 2010, they entered into a development agreement; that is, the developer has agreed to develop a residential project on the owner's land. Later, the developer borrowed about 200 crore rupees from HDFC Bank. For this borrowing, he mortgaged various properties by depositing the Title Deeds, among other things. In fact, the owner's Title Deeds, too, were deposited with the HDFC Bank. And it was said to be as permitted in the contract between the owner and the developer.

2. In October 2015, Yes Bank, the petitioner, took over the loan. It cleared the loan with HDFC Bank and got the entire loan or liability transferred to itself, including the securities.

3. In the meanwhile, there arose disputes between the owner and the developer; those disputes have led to the arbitration proceedings. The arbitrator, in due course, passed an interim order, directing the developer to return the Title Deeds to the owner, pending the arbitration proceedings. In fact, the learned arbitrator has noted in the order that those documents now lie with Yes Bank; but it is not a party to the arbitration proceedings.

4. Aggrieved, Yes Bank invoked Section 37 of the Arbitration and Conciliation Act, 1996 ("the Arbitration Act") and appealed before the District Court. In that appeal, it has also applied for leave to appeal. Yet, through the impugned order, dated 30.04.2019, the District Court dismissed the Yes Bank's application for leave to file the appeal. So Yes Bank has filed this Writ petition.

5. Heard the learned counsel of all the parties concerned.

6. Earlier, on 18/12/2019, this Court noted that the impugned order, as the very District Court noted, does not affect Yes Bank's rights. At any rate, then the Bank's counsel persisted with his plea that there were gratuitous remarks by the District Court against the Bank as if it had colluded with the developer. According to him, once the District Court has held that the Arbitrator's interim direction does not affect the Bank, it ought not to have travelled beyond that and observed something prejudicial to the Bank's interest.

7. In response, the developer's counsel has incidentally submitted that on an earlier occasion, the developer approached Yes Bank with an offer to pay 40 crores rupees and have the owner's Title Deeds released. In that backdrop, the learned counsel for both the Bank and the developer have taken time to ascertain whether the owner is still ready with that offer and whether the Bank is willing to accept that offer.

8. After a couple of adjournments, now the developer's counsel informs me that the proposal no longer exists.

9. Under these circumstances, I may have to revisit the impugned order and examine the Yes Bank's contention about the prejudice the order may cause to its interest.

10. In para 7 of the impugned order, the District Court has clearly observed that "there is no direction or any order against applicant/Yes Bank". In para 12 it has further observed, "Yes Bank was nowhere in the picture during the pendency of the application under Section 17 of the Arbitration and Conciliation Act". In the same breath, it has also observed in para 13 that "the order dated 24.10.2018 is only directing developers/respondents no.1 & 2 to return the original documents to the owner/respondent no.3 and not to the applicant/Yes Bank." Accordingly, it has concluded in para 15 that "Yes Bank cannot be considered as aggrieved party vide the order dated 21.12.2018".

11. To the extent quoted above, the District Court's order is

unassailable. But later from para 18 onwards in the order, the District Court, as rightly contended by the Bank's counsel, gratuitously entered an extraneous arena. That is, it has dealt in detail about the alleged collusion between the Yes Bank and the developer.

12. I reckon, the District Court, in the first place, refused to grant the leave to the Yes Bank on the premise that the Arbitrator's order, be it an interim direction, does not affect the Bank. Then, the District Court could have stopped at that. The alleged collusion between the Bank and the developer was not an issue at all. In fact, the developer's counsel as well as the Bank's counsel insists that the agreement between the developer and the owner did allow the developer to secure a loan on the owner's property. That apart, the Bank's counsel argues that it was HDFC that granted the loan, and that was with the owner's knowledge. Pending that loan, the owner never objected to it, either. According to him, Yes Bank only had the debt transferred to it along with the securities; the loan with Yes Bank was a preexisting one, not a fresh one.

13. After all is said and done, I reckon the District Court's observations about the alleged collusion between the Yes Bank and the developer have no relevance to the issue before it: Should the Bank be given leave to assail an Arbitrator's order? The leave was sought in an appeal under Section 37 of the Arbitration Act, and that was by a third party who has apprehended that the order is likely to affect its interest.

14. To repeat, having declared that the order does not affect Yes Bank, the District Court ought not to have travelled beyond that.

15. At any rate, the owner's counsel has insisted that the owner did not know about the transaction between Yes Bank and the developer, though he knew about the transaction between the HDFC and the developer.

I, therefore, set aside all the remarks from the impugned order—from para 18 onwards—concerning Yes Bank. The rest of the order remains intact. The Writ petition is, accordingly, disposed of.

DAMA SESHADRI NAIDU, J.

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