

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3456 OF 2022
ALONG WITH
WRIT PETITION NO. 3457 OF 2022
ALONG WITH
WRIT PETITION NO. 3458 OF 2022
ALONG WITH
WRIT PETITION NO. 3459 OF 2022
ALONG WITH
WRIT PETITION NO. 3460 OF 2022
ALONG WITH
WRIT PETITION NO. 3461 OF 2022

Raosaheb s/o Pundlikrao Bhavar

PETITIONER

VERSUS

The Divisional Joint Registrar and Others

RESPONDENTS

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Mr. S.B. Deshpande i/b. Shreyas S. Deshpande Advocate for the petitioner.

Mr. S.N. Kendre, AGP for respondent – State.

Ms. Maya R. Jamdhade, Advocate for Respondent No. 3.

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[CORAM : NITIN B. SURYAWANSHI, J.]

RESERVED ON: 6th APRIL, 2022.

PRONOUNCED ON: 6th JUNE, 2022.

JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard with the consent of parties.

2. Since all these petitions raise similar question of fact and law, they were heard together and are being decided by this common judgment. For convenience, facts of Writ Petition No. 3456/2022 are taken up for adjudication.

3. The Petitioner allegedly purchased land admeasuring 40R in Gut No. 417/1, situated at village Nivdunga, Tal. Jafrabad, District Jalna (hereinafter referred to as 'suit property') by way of registered sale deed No. 2084/2018 for consideration of Rs. 1,50,000/-. Pursuant to the said transaction his name was mutated in 7/12 extract as owner and possessor vide Mutation Entry No. 3080. According to the petitioner, Respondent No. 3 was interfering in the peaceful possession of the petitioner over the suit property. Hence, the petitioner filed Regular Civil Suit No. 147/2018 before learned Civil Judge, Junior Division, Jafrabad for grant of permanent injunction. The suit is pending and is at the stage of hearing. In the said suit application Exhibit-5 filed by the petitioner was dismissed by the trial Court. However, same is allowed by the District Court vide order dated 18.06.2019 passed in Miscellaneous Civil Appeal No. 24/2019.

4. Writ Petition No. 2878/2019 filed by Respondent No. 3 in this Court, challenging the order passed in Miscellaneous Civil Appeal No. 24/2019 came to be dismissed as withdrawn by order dated 28.02.2019.

5. The Respondent No. 3 filed complaint to Respondent No. 2 on 21.08.2018 under section 18 of the Maharashtra Money Lending (Regulation) Act, 2014 (for short 'said Act') alleging that the petitioner is indulging in illegal money lending business. According to the petitioner said complaint was inquired by Assistant Registrar, Co-operative Societies, who submitted a report to Respondent No. 2 stating that though Respondent No. 3 was repeatedly called upon to submit evidence and documents in respect of money lending transaction of the petitioner, he failed to do so. The Respondent No. 2, therefore, closed the complaint filed by Respondent No. 3 holding that it appears that the Respondent No. 3 is not interested in prosecuting the complaint.

6. The Respondent No. 3, thereafter, filed application before the Respondent No. 2 on 11.02.2019 seeking a declaration that

registered sale deed No. 2084/2018 of the suit land is a money lending transaction and the suit land be declared to be owned and possessed by Respondent No. 3. The said application was numbered as Money Lending Case No. 09/2019 and was entertained by Respondent No. 2.

7. The petitioner resisted the said application by filing a detail say and sought for dismissal of said application. Some interim orders of issuance of directions to the Tahsildar to ascertain the possession of the suit land by Respondent No. 2 passed in the said proceedings, those were challenged by the petitioner by filing Writ Petition No. 7680/2020 (Writ Petitions No. 7678/2020, 7679/2020, 7681/2020, 7441/2020 and 7442/2020 were filed against the other respondents in the connected matters challenging the interim orders, wherein interim orders restraining the petitioner from creating any third party interest during the pendency of the proceedings before Respondent No. 2 were questioned). Those petitions were allowed and the interim orders passed by Respondent No. 2 were quashed and set aside.

8. The petitioner thereafter filed application under Section 10 of Code of Civil Procedure, 1908 (for short 'CPC') before Respondent No. 2 seeking stay of the proceedings in view of filing of Regular Civil Suit No. 147/2018 which was prior point of time and involved same cause of action which is between the same parties. The said application is rejected by the impugned order (Exhibit-L) passed by Respondent No. 2 on 14.06.2019. Being aggrieved, the petitioner preferred appeal bearing Appeal No. 19/2021 before Respondent No. 1 challenging the order passed by Respondent No. 2. The appeal came to be dismissed. The petitioner is therefore aggrieved by orders passed by Respondents No. 1 and 2.

9. Heard the learned advocate for Petitioners, learned advocate for Respondent No. 3 and learned Assistant Government Pleader for Respondents-State.

10. The learned advocate for the petitioners strenuously submits that before issuance of notice in the proceedings before Respondent No. 2, he has to ascertain and he must have reason to believe that there is substance in the allegations made by Respondent

No. 3. The respondent No. 2 has to exercise the powers with all the circumspection. There is no material on record before Respondent No. 2 to issue notice to the petitioner. No inspection under Section 16 of the said Act was conducted in the present matter. Section 17 of the said Act is not applicable in the present case. The second respondent has routinely issued notice which reflects non application of mind on his part. There is non compliance of the rules under Maharashtra Money Lending (Regulation) Rules, 2014 (for short 'Rules of 2014') on the part of second respondent. According to him, Rule 17(4)(5) and (6), prima facie opinion has to be formed by second respondent before admission of the proceedings under the said Act. The Respondent No. 2 has to conduct preliminary inquiry which is clear from the conjoint reading of Rule 17(5) and (6). Further submission is that the civil suit filed by the petitioner is in prior point of time and the issue of title and possession should be left to be decided by the civil Court. Issues are already framed by the civil Court. Since the parties are same in both the proceedings, so also, the subject matter of both the proceedings are same and therefore, it is desirable to stay these proceedings under article 226 of the Constitution of India.

11. The learned Assistant Government Pleader by relying on the affidavit in reply filed on behalf of Respondents No. 1 and 2 submits that the appeal filed by the petitioner before Respondent No. 1 was not maintainable. The subject matter of money lending proceedings under the said Act and the subject matter of pending suit before the civil Court are different. Merely because civil suit is pending, the proceedings filed under section 18 of the said Act cannot be stayed. He therefore submits that there is no merit in the petitions and the petitions may be dismissed.

12. The learned advocate Ms. Maya Jamdhade for Respondent No. 3 supported the impugned orders. According to her, writ petitions are not maintainable as no final order under section 18 of the said Act is passed in the proceedings. She would submit that stage of 'reason to believe' is yet to come as no final order is passed by respondent No. 2. She also submitted that under section 18(4), the appeal filed before Respondent No. 1 by the petitioner was not maintainable and the same is rightly rejected by the Respondent No. 1. By relying on the affidavit in reply filed by Respondent No. 3 she submitted that in the proceedings filed by Respondent No. 3, Respondent No. 2 directed the

Assistant Registrar Co-operative Societies, to conduct an inquiry in all these petition. Inquiry was conducted and report was submitted on 11.03.2019, wherein Assistant Registrar has prima facie observed that from the sale deeds the lands which were purchased by the petitioner were returned by him to the original owners in some cases, therefore, the possibility of these transactions being money lending transactions cannot be ruled out. She, therefore, submitted that these petitions are liable to be dismissed. In support of her contentions she relied on National Institute of Mental Health & Neuro Sciences vs. C. Parameshwara (2005) 2 SCC 256 and Pande Petroleum and Ors. vs. The State of Maharashtra and Ors. (Manu/MH/4130/2021).

13. Before entering into merits of the rival submissions, it would be appropriate to reproduce the relevant provisions.

Section 18:

“18. Return of immovable property acquired in course of money-lending

(1) If, on the basis of facts disclosed, during verification under section 16 or inspection under section 17 or by an application form a debtor or otherwise, the District Registrar has reason to believe that any immovable property, which has come in possession of the money-lender by way of sale, mortgage, lease, exchange or

otherwise, within a period of [fifteen years] from the date of verification or the inspection or the date of receipt of application from debtor, in the nature of the property offered by the debtor to the money-lender as a security for loan advanced by the money-lender in course of money-lending, the District Registrar may, himself or through an inquiry officer, to be appointed for the purpose, in the manner prescribed, hold further inquiry into the nature of the transaction.

(2) If upon holding the inquiry as per sub-section (1), the District Registrar is satisfied that the immovable property came in possession of the money-lender as a security for loan advanced by the money-lender during the course of money-lending, the District Registrar may, notwithstanding anything contained in any other law for the time being in force, after recording the reasons, declare the instrument or conveyance as invalid any may order restoration of possession of the property to the debtor who has executed the instrument or conveyance as a security or to his heir or successor, as the case may be.

(3) Before passing an order or giving decision as per sub-section (2), the District Registrar shall give an opportunity to the person concerned to state his objections, if any, within fifteen days from the date of receipt of notice by him and may also give personal hearing, if he so desires.

(4) Any person aggrieved by the order or decision of the District Registrar under sub-section (2) may, within one month from the date of order or decision, appeal to the Divisional Registrar:

Provided that,-----

(5) -----

(6) -----”

Rule 17 of Rules of 2014:***“17. Procedure for the Return of Immovable property acquired or usurped in course of money-lending***

(1) The proceeding for return of the immovable property and restoration of possession, shall commence by an application for cancellation and declaration of any instrument or conveyance as invalid, on the ground that, an instrument or conveyance entered into between the applicant and the opponent is a security for the loan advanced by the opponent to applicant in the course of money lending, to be presented to the District Registrar of money lender of concerned District in which immovable property is situated. Such Application shall be either verified or shall be supported with an affidavit.

(2) -----

(3)-----

(4) On receipt of such application the District Registrar shall examine the application and enter or cause it to be entered in the register kept for that purpose in Form No. 5.

(5) The District Registrar may enquire the said application himself or through an officer appointed by him for that purpose to ascertain the nature of the transaction mentioned in the application.

(6) On admission of the application the District Registrar shall fix a convenient day and place for inquiry or trial of the application and shall issue a notice to the opponent. The opponent shall be entitled to file his reply to the application and the District Registrar shall give him an opportunity to file reply to the application. However, in no case an adjournment for more than one month would be granted to file reply and the documents on which the opponent relies.”

14. Section 18 provides '*by an application from a debtor or otherwise, the District Registrar has reason to believe that any immovable property is n the nature of the property offered by the debtor to the money-lender as a security for loan advanced by the money-lender in course of money-lending, the District Registrar may, himself or through an inquiry officer, to be appointed for the purpose, in the manner prescribed, hold further inquiry into the nature of the transaction.*'

Rule 17 lays down the procedure to be followed by the District Registrar on receipt of the application from the debtor. Sub Rule (5) of Rule 17 provides that '*the District Registrar may enquire the said application himself or through an officer appointed by him for that purpose to ascertain the nature of the transaction mentioned in the application.*'

Sub Rule (6) of Rule 17 provides that '*on admission of the application the District Registrar shall fix a convenient day and place for inquiry or trial of the application and shall issue a notice to the opponent. The opponent shall be entitled to file his reply to the application and the District Registrar shall give him an opportunity to*

file reply to the application.'

Sub Rule (3) of Rule 17 provides that 'the District Registrar shall not reject any such application on any trivial grounds.'

On plain reading of these relevant provisions applicable to the facts of present case and which are relied upon by the learned advocate for the petitioner, it is clear that these provisions do not in any manner contemplate recording of reasons by the District Registrar before issuance of notice to the opponent.

15. Strong reliance is placed by the learned advocate for the petitioner on words used in Section 18 'reason to believe'. The Hon'ble Apex Court had occasioned to interpret the said words in *Dr Pratap Singh and Another vs. Director of Enforcement, Foreign Exchange Regulation Act and Others* (1985) 3 SCC 72. It is held that "*the expression 'reason to believe' is not synonymous with subjective satisfaction of the Officer. The belief must be held in good faith; it cannot merely be a pretence. In the same case, it was held that it is open to the court to examine the question whether the reasons for the belief have a rational connection or a relevant bearing to the formation*

of the belief and are not extraneous or irrelevant to the purpose of the section. To this limited extent the action of the Income Tax Officer in starting proceedings under Section 34 is open to challenge in a court of law.”

16. Coming to the facts of the present case it appears from the record that Respondent No. 2 found substance in the averments made in the applications filed by Respondent No. 3 and hence, he entertained the applications and issued notices. On going through the application there appears sufficient material on record for Respondent No. 2 to form a belief that there is substance in the allegations made in the application and, therefore, Respondent No. 2 had reason to believe that the transaction between the petitioner and Respondent No. 3 prima facie appears to be out of money lending transaction. Therefore, belief formed by Respondent No. 2 prima facie appears to be based on reasonable ground i.e. on the basis of application filed by Respondent No. 3. In this view of the matter, the Petitioner's contention that there was no material before Respondent No. 2 for entertaining the application is unacceptable.

17. There is no merit in the argument of the learned advocate for the petitioner that since civil suit filed by him is prior in point of time, which pertains to the suit land and it is between the same parties, subject matter in the suit is the same and therefore, subsequent proceedings filed under the said Act, pending before Respondent No. 2 is liable to be stayed. Admittedly, civil suit filed by the petitioner is for perpetual injunction. On the other hand in the proceedings filed by Respondent No. 3, under Section 18 of the said Act, the sale deed between him and the petitioner of the suit land is challenged and a relief is sought that said sale transaction be declared null and void and hit by the provisions of the said Act. Therefore, the matter in issue in the suit pending before the Civil Court and before Respondent No. 2 are different.

In National Institute of Mental Health & Neuro Sciences

(supra) the Hon'ble Apex Court held:

“8. The object underlying section 10 is to prevent Courts of concurrent jurisdiction from simultaneously trying two parallel suits in respect of the same matter in issue. The object underlying section 10 is to avoid two parallel trials on the same issue by two Courts and to avoid recording of conflicting findings on issues which are directly and substantially in issue in

previously instituted suit. The language of section 10 suggests that it is referable to a suit instituted in the civil Court and it cannot apply to proceedings of other nature instituted under any other statute. The object of section 10 is to prevent Courts of concurrent jurisdiction from simultaneously trying two parallel suits between the same parties in respect of the same matter in issue. The fundamental test to attract section 10 is, whether on final decision being reached in the previous suit, such decision would operate as res judicata in the subsequent suit. Section 10 applies only in cases where the whole of the subject matter in both the suits is identical. The key words in section 10 are “the matter in issue is directly and substantially in issue” in the previous instituted suit. The words “directly and substantially in issue” are used in contradistinction of the words “incidentally or collaterally in issue”. Therefore, section 10 would apply only if there is identity of the matter in issue in both the suits, meaning thereby, that the whole of subject matter in both the proceedings is identical.

9. -----

10. As stated above, section 10, CPC is referable to a suit instituted in a civil Court. The proceedings before the Labour Court cannot be equated with the proceedings before the Civil Court. They are not the Courts of concurrent jurisdiction. In the circumstances, section 10, CPC has no application to the facts of this case.”

18. Applying above ratio to the facts of the case in hand it is clear that the civil Court as well as Respondent No. 2 do not have

concurrent jurisdiction and therefore, the application filed by the petitioner under section 10, seeking stay to the proceedings before Respondent No. 2 was not maintainable and Respondent No. 2 is justified in rejecting the said application. The challenge raised by the petitioner to the impugned order passed by Respondent No. 2 therefore, must fail.

19. There is no substance in the contention of the petitioner that since earlier application filed by the petitioner is rejected, the respondent No. 2 should not have entertained the subsequent applications under Section 18 of the said Act. Admittedly, earlier application filed by the Petitioner was not decided on merits and therefore, principle of *res judicata* cannot be made applicable in the facts of the present case to say that subsequent applications filed by the petitioner under Section 18 of the said Act is not maintainable.

20. In fact the appeal filed by the petitioner challenging the order passed by respondent No. 2 thereby refusing to stay the proceedings before him under the provisions of Section 10 of CPC was not maintainable. The appellate remedy is provided under Section

18(4) of the said Act only against the final order passed by the District Registrar. Since the order passed by respondent No 2, rejecting the application filed by the petitioner under Section 10 of CPC, seeking stay to the proceedings before him, in view of pendency of civil suit filed by the petitioner at earlier point of time was an interlocutory order and not a final order, the appeal filed by the petitioner against the rejection of his appeal by respondent No. 1 was not maintainable. Therefore, there is no substance in the challenge raised by the petitioner to the appellate order passed by respondent No. 1.

21 . For the aforestated reasons, there is no merit in the challenge raised by the petitioner in the present petitions. No case is made by the petitioner to exercise extra ordinary writ jurisdiction. The petitions being devoid of merit are dismissed. Rule discharged.

[NITIN B. SURYAWANSHI]
JUDGE