IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.117 OF 2022
WITH
CIVIL APPLICATION NO. 1177/2022 IN FA/117/2022

Vienna Multiventures Pvt. Ltd.
Through its Power of Attorney Holder
Mr. Mahesh Krishnan, ... **Appellant**
(Orig. objection petitioner

VERSUS

1. M/s Challani Ginning & Pressing Factory, Through its Partner Shri Jainendra Inderchand Challani (Orig. Decree Holder)

2. Narendra Vishwanath Jadhav (Orig. Judgment Debtor) ... **Respondents**

3. Yog Industries Limited Through its Managing Director- Narendra V. Jadhav

Mr. Atul P. Shejul, Advocate for the appellant
Mr. Pramod F. Patni, Advocate for respondent No.1
Mr. Ajeet D. Kasliwal, Advocate for respondent No.2

CORAM : C. V. BHADANG AND SANDIPKUMAR C. MORE, JJ.

DATE : 16 JUNE 2022

ORDER:

By this appeal, the appellant, who is an objector, is challenging the judgment and order dated 7 September 2021 passed by the Learned Civil Judge, Senior Division, Aurangabad (executing court) below Exh.87 in Special Darkhast No. 32 of 2017. By the impugned judgment, the executing court has rejected the objection raised by the appellant to the attachment of the subject property, which the appellant has purchased from the judgment debtor on 10 October 2017.

2. We have heard learned counsel for the parties. Perused record.

3. The first respondent had filed Special Suit No. 201/2013 against respondent Nos. 2 and 3 for specific performance of a contract of sale. The learned Civil Judge, Senior Division, by a judgment and order dated 24 July 2017, has decreed the suit, only to the extent of refund of consideration and a money decree of Rs.1.45 crores has been passed in favour of respondent no.1/original plaintiff with interest @ 8% per annum from the date of filing of the suit till realization of the entire amount.

4. Respondent No.1/plaintiff who is decree holder filed an execution case i.e. Spcial Darkhast No. 32 of 2017 for execution of the said money decree. The executing court, by an order dated 21

September 2017, directed attachment of the subject property. Subsequent to this, the appellant has purchased the property from the judgment debtor on 10 October 2017.

5. Learned counsel for the appellant has submitted that the appellant learnt that the property was mortgaged to IDBI Bank and therefore, did not carry out any further due diligence as the appellant believed that the title of the property was free from any encumbrances. In that view of the matter, the appellant purchased the property as a *bonafide* purchaser for value without notice. Except this, there was no other due diligence made. No other contention is raised on behalf of the appellant.

6. Learned counsel for the respondent- decree holder has submitted that it was not open for the appellant to have purchased the property from the judgment debtor particularly when it was already subject matter of attachment by an order of the executing Court. The learned counsel points out that subsequent to the passing of the impugned order, the subject property has been auctioned and has been purchased by the decree holder himself. He also points out that the appellant has filed an application taking

objection to the sale which is pending consideration before the executing Court. It is also pointed out that *lis pendens* notice was registered in respect of the pendency of the suit on 10 January 2016 which amounts to a notice of the pending suit to prospective purchasers and the public at large.

7. Learned counsel for the respondent/judgment debtor has supported the appellant. It is submitted that although the order of attachment was passed on 21 September 2017, the actual attachment was effected at the site on 13 October 2017 i.e subsequent to the purchase of the property by the appellant.

8. We have considered the rival submissions. We do not find any reason to interfere with the impugned order.

9. As noticed earlier, the money decree was already passed in favour of the respondent decree holder of which he is seeking execution. It was during the pendency of the execution case and after the passing of the order of attachment, that the property was purchased by the appellant on 10 October, 2017. The contention that the attachment was actually effected at the site on 13 October

2017 would not be decisive particularly when the notice of *lis pendens* was registered much prior thereto i.e. on 10 January 2016.

10. As noticed earlier, except saying that the appellant had learnt that the property was mortgaged to IDBI Bank, the appellant has not done any due diligence or the verification of the title of the said property before its purchase.

11. We have gone through the impugned order and we do not find any reason to interfere with the same. The appeal is accordingly dismissed with no order as to costs.

12. Pending civil application is disposed of.

SANDIPKUMAR C. MORE, J. **C. V. BHADANG, J.**

JPChavan