IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

906 **WRIT PETITION NO.13094 OF 2022**

ASIR RASHID SHAIKH ALIAS MULNI AND OTHERS
VERSUS
MACHHINDRA PANDHARINATH KADAM AND OTHERS
...
Advocate for Petitioners : Mr. Abhijit S. More
...

CORAM : SANDEEP V. MARNE, J.

DATE : 21-12-2022

PER COURT :

. Petitioners have filed the present petition challenging the order dated 14.11.2022 passed by the District Judge-6, Ahmednagar rejecting application for ad interim relief in pending M.C.A. No.157 of 2022. In that appeal, petitioners have assailed the order dated 31.10.2022 passed by the trial Court rejecting application for temporary injunction at Exh.5.

2. Defendant no.1 executed a sale-deed in favour of defendant no.2 on 31.08.2012. The contents of the sale-deed clearly indicate that the same was in the nature of mortgage by way of conditional sale. However, it appears that defendant no.1 failed to repay the loan to defendant no.2 on account of which the sale became absolute. Defendant no.1 later initiated proceeding under the provisions of the Maharashtra Money Lending (Regulation) Act, 2014

(hereinafter referred to as the 'Act of 2014') for cancellation of the sale-deed. In the meantime, defendant no.2 has sold the suit property in favour of defendant no.3 (petitioner) vide sale-deeds executed on 05.06.2020. In the proceedings filed under the provisions of Act of 2014 the registrar passed order dated 30.03.2022 holding that the transaction was that of loan and that defendant no.1 is the money lender. The sale-deed executed in favour of defendant no.2 on 31.08.2022 has been declared void and the suit property is reconveyed in the name of defendant no.1. The order dated 30.03.2022 has accordingly disturbed the title of defendant no.3 (petitioner) in respect of the suit property. However his sale deed was not a subject matter of challenge in the proceedings before the Registrar (Money Lending).

3. The trial court has rejected the application for temporary injunction by order dated 31.10.2022. During pendency of that application, there was no ad interim relief in favour of petitioners. After rejection of temporary injunction, the trial Court granted order of status quo on 31.10.2022 upto 05.11.2022. The District Court has rejected the application for ad interim relief by order dated 14.11.2022.

4. Considering the fact that the nature of transaction between defendant nos.1 and 2 is that of mortgage by way of conditional sale as well as order passed by the Registrar (Money Lending) cancelling the said transaction between defendant nos.1 and 2, the District Court has rightly rejected the application for ad interim relief. The Misc. Civil Appeal No.157 of 2022 is still pending before the District Court. Under these circumstances, instead of disturbing the order dated 14.11.2022, the District Court can take up the M.C.A. No.157 of 2022 for expeditious hearing. Accordingly, the District Judge is requested to make an endeavour to decide M.C.A. No.157 of 2022 as early as possible, preferably by 31.03.2023. With the above observations, the writ petition is disposed of.

5. Needless to say that the District Judge shall not be influenced by any of the observations made in the present order while deciding Misc. Civil Appeal No.157 of 2022.

(SANDEEP V. MARNE, J.)

GGP