

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION***

CRIMINAL APPEAL NO. 860 OF 2021

Dr. Laxman Madhukar Salwe & Anr. ...Appellants
Versus
The State of Maharashtra & Ors. ...Respondents

Mr. Vikas K. Singh a/w Ms. Sudha Gond for the Appellants

Mr. V. B. Konde-Deshmukh, A.P.P for the Respondent Nos. 1 & 2-
State

None for the Respondent No. 3

PI Mr. Raysing Patil from EOW, Unit-7, Mumbai, is present

CORAM : REVATI MOHITE DERE &
V. G. BISHT, JJ.
WEDNESDAY, 6th JULY 2022

P.C. :

1 Heard learned counsel for the parties.

2 By this appeal, the appellants seek the following
substantive reliefs:

“(a) That the impugned Judgment and Order dated 21/08/2021 passed by the Hon’ble Designated Court at Greater Bombay in Miscellaneous Application No. 505 of 2016 in Miscellaneous Application No. 248 of 2016 in MPID Special Case No. 7 of 2016, so far as rejection of prayer clause (c) is concerned, be quashed and set aside, and the said Miscellaneous Application No. 505 of 2016 be allowed in terms of prayer clause (c) as well;

(b) Consequently, the Hon’ble Competent Authority or the Investigating Officer or their respective deputy officers in MPID Special Case No. 7 of 2016 be directed to execute requisite documents for executing mortgage/sale deed in respect of the said premises or issue No Objection as desired by the Bank / Non Banking Financial Institutions for the purposes of disbursement of loan amount in favour of the Appellants.”

3 The appellants are bonafide purchasers of a commercial property being Unit Nos. 202 and 203, admeasuring carpet area about 1031 and 1166 square feet respectively on the second floor in Futureadey Trade Tower, alongwith two covered car parking space constructed on property bearing Survey No. 36/15/1, Survey No. 36/15/2, Survey No. 36/16/1, bearing corresponding C.T.S. No. 5818, situated at Village Pimpri Waghere, Morwadi, Taluka Haveli, District Pune, within the limits of Pimpri Chinchwad Municipal Corporation and within the limits of Sub-Registrar, Haveli, Pune, (hereinafter

referred to as “the said premises”, for the sake of brevity). The said premises was purchased by the appellants, pursuant to an Agreement for Sale dated 24th November 2015, which was registered on 26th November 2015.

4 The said property in question was attached by the Competent Authority in connection with C.R. No. 83/2015 registered with the Economic Offences Wing (‘EOW’), Unit-III, Mumbai (C.B., C.I.D.), for the alleged offences punishable under Sections 409, 420, 406, 188, 120-B of the Indian Penal Code and Section 3, 4 and 6 of the Prize Chits and Money Circulation Schemes (Banning) Act and Section 3 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act.

5 Pursuant to the attachment of the said premises, the appellants filed an application i.e. Miscellaneous Application No. 248 of 2016 before the learned Special Judge, MPID Court, Mumbai,

seeking cancellation/modification of the order of attachment dated 9th May 2016 and Notification dated 28th June 2016, by which the said premises was attached. The learned Special Judge, vide order dated 9th February 2021 partly allowed the said application. The operative part of the said order reads thus :

“1. Application is partly allowed.

2. The office premises bearing no. 202 and 203 in Futureadey Trade Tower at C.T.S.No. 5818, Survey No. 36/15/1, Survey No. 36/15/2 and Survey No.36/16/1 situated at Pimpri Wagher, Morwadi, Taluka Haveli, District – Pune stand released from attachment made under Notification dated 28.6.2016 subject to condition that applicants deposit the balance consideration of Rs. 1,55,12,425/- with EOW in four weeks from today, failing which, the applicants shall be liable to pay simple interest at the rate of 9% p.a. from date of order till realization.

3. The applicants shall bear all the taxes/expenses/duties relating to the property described above in clause (2).”

Whilst partly allowing the said application, the learned Judge in Paras 13 to 15 has observed as under :

13. The present application is pending since almost five years. The applicants, who purchased the property about one year prior to registration of FIR against its Vendor, cannot be asked to wait indefinitely for decision on

present application. The sale of more than 3,300 immovable properties is likely to take a long time. Hence, the first condition of S.8 is not satisfied. As regards the second condition, there is definitely a reasonable cause to believe that the accused transferred the properties otherwise than in good faith and for consideration. However, as stated above, the first condition is not satisfied and hence S.8 cannot be invoked against the applicants.

14. It is stated in the application that applicants came to know for the first time about attachment Notification on 13.6.2016, when it received the Show Cause Notice issued by EOW. Present MA was filed on 5.7.2016. In fact, the Survey numbers involved in this MA were attached vide Notification dtd. 28.6.2016 and not 23.3.2016 as alleged by the applicants. Thus, there is no delay on the part of applicants in approaching this Court. The prosecution and the Competent Authority have not objected during hearing to release the property in question. Their only objection is that whatever may be the balance consideration and arrears of taxes/maintenance expenses, the applicants must pay them. It is undisputed that applicants are running their clinic from the property in question. It is stated in the reply filed by IO that as per report received from Sub. Registrar, Haveli, Dist.-Pune the value of property in question is Rs. 1,35,03,768/- but the accused agreed to sell it to applicants at Rs.1,76,10,125/- i.e. 41 lakhs more than the market value. Thus, the applicants have paid higher value to the accused than the market value.

15. It is true that applicants did not deposit the balance consideration in this Court since last five years. However,

it cannot be ignored that no such objection was raised by prosecution or the accused at any stage. There was no order from this Court. They have registered agreement in their favour and possession was also given. In the facts and circumstances, I find that the applicants are not liable to pay interest on the balance consideration of Rs. 1,55,12,425/-. I deem it fit to direct the applicants to pay the said balance within four weeks from today, failing which, the applicants shall be liable to pay simple interest at the rate of 9% p.a. The applicants shall also be liable to bear the other taxes and expenses relating to the property in question.”

6 Thereafter, the appellants filed another application i.e. Miscellaneous Application No.505/2021 in Miscellaneous Application No. 248/2016. The relief sought by the appellants in the said application were (a) to extend time to deposit the balance amount of Rs. 1,55,12,425/- with EOW by a period of 8 weeks; (b) that the Court be pleased to waive off the condition of imposing simple interest at the rate of 9% per annum, from the date of the order i.e. 9th February 2021 till its realisation; (c) that the Court be pleased to direct the Competent Authority or to depute his officer or the Investigating Officer to execute necessary deeds and documents/ agreements relating to mortgage of the said premises and issue

requisite No Objection Certificate in favour of the bank or non banking financial institution or any entity recognised by the Reserve Bank of India for the purpose of granting loan facility to the appellants. The said application was partly allowed by the learned Judge by the order dated 21st August 2021. The operative part of the said order reads thus :

“1. The application is partly allowed.

2. Simple interest @ 9% p.a. from the date of order till realization in clause (2) of the operative order dtd.09.02.2021 in MA No. 248/2016 is waived off till 31.12.2021 only.

3. Prayer clause (c) of the application is rejected.”

7 Learned counsel for the appellants submits that the appellants could not obtain a loan and comply with the orders dated 9th February 2021 and 21st August 2021, for want of requisite documents/No Objection from the EOW.

8 Mr. Konde-Deshmukh, learned A.P.P, on instructions of PI Mr. Raysing Patil from EOW, Unit-7, Mumbai, who is present in

Court, makes a statement that the concerned Officer will issue No Objection Certificate, only for the purpose of obtaining a loan from the bank/non-banking financial institutions, as recognised by the Reserve Bank of India, so as to enable the appellants to avail of the loan facility. Statement accepted.

9 The appellants, on the last date i.e. on 29th June 2022, had tendered their undertaking. In the said undertaking, the appellants have stated that they will file a fresh application for grant of a loan with Banks, Non-banking Financial Corporations or any entity recognized by the Reserve Bank of India for granting loan facility to them, within 4 weeks from the date of receipt of this order, so as to comply with the orders passed by the MPID Court. The appellants have further undertaken to deposit the balance amount as directed by the trial Court as per orders dated 9th February 2021 and 21st August 2021. The appellants have also undertaken that as soon as the loan amount is sanctioned and disbursed, the balance amount shall be deposited by them in the account of the Investigating Officer, EOW

(SIT-SPPL), the details of which are annexed as Exhibit-A to their undertaking. The appellants have undertaken to co-operate and deposit the balance amount.

10 Considering the aforesaid, the Appeal is allowed.

11 The Investigating Officer or their respective deputies, to hand over the necessary No Objection Certificate to the appellants in respect of the said premises in question, so as to enable the appellants to obtain loan facility from any Bank/Non-banking Financial Institutions as recognised by the Reserve Bank of India, for the purpose of disbursement of the loan amount in favour of the appellant.

12 Since the appellants could not avail of the loan facility, for want of necessary documents from the EOW, we modify the order dated 21st August 2021 passed by the learned Additional Sessions

Judge below Miscellaneous Application No. 505 of 2021, to the extent that the appellants shall now deposit simple interest at the rate of 9% per annum from today i.e. 6th July 2022.

13 The No Objection shall be handed over by the concerned Officer to the appellants, within one week from the date of receipt of this order. The appellants shall, thereafter, deposit the money as per the order passed by this Court, forthwith, as soon as, the loan is sanctioned to them. The appellants shall abide by the undertaking given to this Court on 29th June 2022.

14 Appeal is disposed of on the aforesaid terms.

15 All concerned to act on the authenticated copy of this order.

V. G. BISHT, J.

REVATI MOHITE DERE, J.