

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.1426 OF 2022

**M/S ASHAPURA AGRO OIL PVT. LTD. THROUGH AUTHORIZED
PERSON SHRI DESMOND TIMMINS**

VERSUS

MR. JAYANTILAL KESHAVJI CHHEDA AND OTHERS

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Advocate for Petitioner : Mr. Rahul A. Tambe

Advocate for Respondent No.5 : Mr. S.R. Vakil

Advocate for Respondent Nos.1 to 4 : Mr. A.C. Darandale

...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 08th AUGUST, 2023

PER COURT :

1. Leave granted to correct the prayer clause. Correction to be carried out during the course of the day.

2. This petition is directed against order dated 07/01/2022, passed by learned Joint Civil Judge, Senior Division, Newasa, below Exhibit-21 in Special Darkhast No.05/2017, thereby partly allowing intervention application filed by respondent No.5 and setting aside the order of appointment of Court Receiver, passed below Exhibit-13.

3. Petitioner filed Special Civil Suit No.10/2016 against respondent Nos.1 to 4 for recovery of amount and appointment of Court Receiver. Consent terms were executed between the parties and consent decree on the basis of said consent terms, was passed

by the Trial Court on 14/10/2016. Petitioner then filed Execution Application No.05/2017, on 24/04/2017. Vide order dated 09/05/2017, passed below Exhibit-13, the executing Court appointed Court Receiver and directed him to take possession of the property by furnishing security of Rs.50 Lakhs. This Court, by order dated 14/06/2019 in Writ Petition No.14352/2017, modified the condition of Rs.50 Lakhs to Rs.15 Lakhs.

4. Respondent No.5 filed application Exhibit-21 for intervention on 14/01/2019, seeking discharge of the Court Receiver and possession of the properties, on the ground that, he is secured creditor under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the Securitisation Act'). This Application was opposed by the petitioner and respondent Nos.1 to 4. Executing Court has allowed the application. Hence, the present petition.

5. Heard learned advocate for petitioner, learned advocate for respondent Nos.1 to 4 and learned advocate for respondent No.5. Perused the writ petition memo, annexures thereto, the impugned order and citation relied upon by learned advocate for petitioner.

6. It is a matter of record that respondent No.5 is secured creditor and respondent No.1 has mortgaged the properties in

execution petition by registered mortgage deed dated 20/03/2012, notice under Section 13(2) of the Securitisation Act was issued by respondent No.5 to respondent Nos.1 to 4/original borrowers on 18/11/2015. 5th respondent took symbolic possession of the properties in execution petition under Section 13(4) of the Securitisation Act, on 26/02/2016 and it was published in the local news paper on 01/03/2016. On 30/11/2017, the District Magistrate passed order under Section 14, thereby allowing respondent No.5 to take physical possession of the properties in execution petition.

7. Admittedly, Special Civil Suit No.10/2016, is filed on 26/07/2016 and compromise decree is passed therein on 14/10/2016. Thereafter, execution proceeding is filed on 25/04/2017.

8. As per the application Exhibit-21 filed by respondent No.5, claim of the petitioner filed in similar facts before the Debt Recovery Tribunal in Securitisation Application No.151/2017, is rejected by the Tribunal with liberty to approach authorised officer seeking surplus amount, if any.

9. Section 26(E) of the Securitisation Act, reads thus:-

"Priority to secured creditors- Notwithstanding anything contained in any other law for the time being in force, after the registration of security interest, the debts due to any secured creditor shall be paid in priority over all other debts and all revenues, taxes, cesses and other

rates payable to the Central Government or State Government or local authority."

10. Legal position is, therefore, clear that as per Section 26(E) of the Securitisation Act, secured creditor has priority over all the other debts. The executing Court has passed well reasoned order and in the facts of the present case, is justified in setting aside appointment of Court Receiver, in respect of properties in execution petition.

11. It appears that petitioner and respondent Nos.1 to 4 have obtained collusive decree in the suitb so as to create obstruction in recovery proceedings initiated by respondent No.5.

12. Learned advocate for petitioner has vehemently argued that said intervention application is not maintainable in terms of Section 47 and Order 21 of the Code of Civil Procedure, as the property is yet to be auctioned. In support of this submission, he has relied on ***Niyamat Ali Molla Vs. Sonargon Housing Co-operative Society Ltd. and Others, 2007 (13) SCC 421***, wherein it is held that,

"27. So far as the application for impleadment of the applicants are concerned, they being not parties to the suit are not bound by the decree. They would, thus, be entitled to take recourse to such remedies which are available to them in law including filing of an application under Order 21 Rules 97 and 99 of the Code of Civil Procedure, if any occasion arises therefor. As and when the said applicants take recourse to law, the same has to be determined in accordance with law."

13. In the case in hand, since respondent No.5 has already taken symbolic possession of the property in execution proceedings and has secured order from the District Magistrate for physical possession and taking into consideration the fact that Court Receiver has yet not taken possession, the objection raised by the petitioner is unacceptable.

14. For the aforestated reasons, executing Court has not committed any jurisdictional error or error of law while passing the impugned order. There is no illegality or perversity in the order impugned in present petition. Writ petition being devoid of merit, is dismissed.

15. At this stage, learned advocate for petitioner seeks continuation of protection granted earlier. For the reasons stated in this order, the prayer is rejected.

(NITIN B. SURYAWANSHI, J.)