

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11760 OF 2019

Sahakar Mitra Shri Chandrakant Hari
Bade Sir, Ubad Co-Op. Credit Society
Ltd. Varangaon, Tq. Bhusawal
Dist. Jalgaon
Through its Special Recovery Officer
Umakant Kacharu Patil

.... Petitioner

Versus

Shalik Vithoba More
and others

.... Respondents

.....

Mr. Vinod P. Patil, Advocate for the Petitioner
Mr. S.B. Bhosale, Advocate for Respondent No.1

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 05th JUNE, 2023

ORDER :

1. The petitioner is aggrieved by the order passed by learned 2nd Joint Civil Judge, Senior Division, Bhusawal, below Exhibit-18 in Special Civil Suit No. 91 of 2018.

2. The respondent No.1/plaintiff filed Suit for declaration for setting aside the sale deed dated 17/08/2010 and for injunction against the petitioner and respondent Nos. 2 and 3 being defendants. The petitioner/defendant No.3 filed application Exhibit-18 under Order VII Rule 11 of the Code of Civil Procedure, contending that the suit is hit by the

provisions of Sections 107 and 163 of the Maharashtra Co-Operative Societies Act. Point of limitation is also raised in the application. The Trial Court rejected the application. Hence, the present petition.

3. Heard the learned advocate for the petitioner and the learned advocate for the respondent No.1. Perused the writ petition memo, annexures thereto and the impugned order.

4. It appears from the record that respondent No.1 earlier approached the High Court by filing Writ Petition No.8257 of 2010, challenging recovery proceedings initiated against him by the petitioner. It further appears that the petitioner has continued willful disobedience of the orders passed by the Court from time to time, because of which, respondent No.1 constrained to file the Suit. Criminal prosecution is also lodged by respondent No.1 against the petitioner, which is pending before the Trial Court. The Suit is also pending in the same Court. It is, therefore, clear that the petitioner has knowledge about the earlier Court proceedings, and hence the technical objection raised by the petitioner that there is non-compliance of Sections 164 and 107 of the Maharashtra Co-operative Societies Act, cannot be entertained at this stage.

5. The Trial Court is justified in holding that the Co-operative Society cannot be permitted to take shelter of Section 164 of the Maharashtra Co-operative Societies Act, and the same provision is available to the *bonafide* litigation. It is further rightly held by the trial Court that the point of limitation is a mixed question of law and fact, and it will have to be decided after the evidence is led. No fault is found with the order passed by the Trial Court. There is no illegality or perversity in the order passed by the Trial Court. No case is made out by the petitioner to exercise extraordinary writ jurisdiction.

6. The objection as to the bar of Sections 163 and 107 of the Maharashtra Co-operative Societies Act, and in respect of limitation, shall be adjudicated by the Trial Court at the time of final adjudication of the matter.

7. With these directions, the writ petition is disposed of.

[NITIN B. SURYAWANSHI]
JUDGE

S.P. Rane