IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1877 OF 2022
WITH CA/9947/2022 IN WP/1877/2022

SHREETUBE MANUFACTURING COMPANY PVT LTD THROUGH ITS DIRECTOR SHRINIWAS LAXMINARAYAN RATHI
VERSUS
CENTRAL BANK OF INDIA AND OTHERS
...
Advocate for Petitioner : Mr. P.G. Godhamgaonkar

CORAM : NITIN W. SAMBRE AND
S.G. CHAPALGAONKAR, JJ.

DATE : 20th MARCH 2023

P.C.:-

1, Based on the time barred agreement of sale dated October 13, 2011 entered into between the petitioner and respondent No.2, the petitioner has come out with following prayers :-

> "(A) By an appropriate writ, order or direction, it be declared that the fraudulent transaction dealt by fraud by the Central Bank of India is against public interest and void-ab-initio as public funds are made for advancing loan, initiating recovery proceeding and sale of property in favour of respondent nos. 6 and 7 being a fraud and in consequence void-ab-initio.
>
> (B) The respondent No.3 be directed to execute the sale deed pursuant to the agreement of sale in favour of the petitioner in terms of the agreement and the consideration of the transaction be appropriated towards the legal outstanding on the subject property.

(C) Pending hearing and final disposal of this petition the respondents be restrained from creating any additional charge on the property or third party interest by issue of appropriate injunction.

(D). Ad-interim injunction in terms of prayer clause “C” be granted.

(E). Any other relief to meet justice to the petitioner be awarded.

(F). The petitioner be awarded costs from respondent no.1 to 3 and it be quantified at an amount deemed proper by this Hon’ble Court.”

2. According to the counsel for petitioner, the respondent No.2 since has failed to honour repayment of loan to one Purnavadi Nagri Sahakari Bank, proceedings were taken out under Section 101 of the Maharashtra Cooperative Societies Act, which are taken before this Court by the said respondent No.2 in W.P. No. 5521 of 2011.

3. Respondent No.2 accordingly entered into agreement of sale of the property in question and has received an amount of Rs. 10 Lakhs from the petitioner towards earnest money. Counsel for petitioner, therefore, urged that in spite of aforesaid pendency of the proceeding, against the very same property, the respondent No.1 at Mumbai granted loan, attached the same in the matter of failure of repayment of the said loan amount and as such, the respondents in a concocted manner have practiced fraud on the petitioner.

4. In the aforesaid background, Mr. Godhamgaonkar, learned counsel for the petitioner, by relying on the judgment of the Apex Court in the matter of ***Dwarkadas Marfatia & Sons vs Board Of Trustees Of The Port Of Bombay reported in AIR 1989 SC 1642***, urged that the public authorities like respondent No.1 are required to conduct themselves in the interest of public and with more responsibility which they have failed to.

5. He would substantiate aforesaid contentions by further alleging that respondent No.1, in spite of having six branches in the city of Aurangabad, where the disputed property is situated, has chosen to advance a loan from the Bombay branch so as to support the illegality committed by the respondent No.2, thereby perpetuating the fraud being practiced by the respondent No.2 alongwith officials of respondent No.1.

6. Mr. Godhamgaonkar, would further urge that in the matter of fraud being practiced, the writ court armed with ample jurisdiction to look into the same and the writ court is not powerless and in such an eventuality can grant relief to prevent fraud. To substantiate his contention, he would rely upon the judgment of ***Express Newspapers Pvt. Ltd. And others vs. Union of India reported in AIR 1986 SC 872***.. Thus, his contentions are that the fact of such fraud being practiced by the respondent can be inferred from the very pleadings and the material placed on record. The Court cannot relegate the petitioner to the jurisdiction of civil court, particularly when, the proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act are pending against the respondent no.2 initiated by

the respondent No.1 and the pendency of such proceedings before the Debt Recovery Tribunal, will not operate as an embargo on the right of the petitioner in taking out proceeding before this Court.

7. We have appreciated the aforesaid submissions.

8. The fact remains that the property, which is subject matter of agreement of sale dated 3rd October, 2011 is not only owned by the respondent No.2 alone, but the other co-owner of the said property one Prakash Shivnarayan Tambi is not party before this Court.

9. Be that as it may, what appears is the agreement dated 3.10.2011 which the petitioner has entered into with one of the co-owner i.e. respondent No.2, after said agreement was entered into, it was open for the petitioner to move before the competent civil court, seeking specific performance of contract based on the said agreement of sale, which we are informed that is not taken recourse to, by the petitioner.

10. Apart from the above, the petitioner has approached the Debt Recovery Tribunal, Aurangabad, after the respondent No.1 has initiated recovery proceeding vide Securitisation Application No. 31 of 2017, in which respondent No.2 is impleaded as one of the respondents to the aid application. Before the DRT, the petitioner has sought relief of similar nature, as he claims that there is a vested right created in favour of the petitioner by the aforesaid agreement of sale. The DRT has rejected the prayer of the petitioner, vide order dated March 8, 2018, which we are informed, to be subject matter of challenge before the Debt Recovery Appellate Tribunal and the petitioner has withdrawn the said proceeding on March 13, 2023.

11. In the backdrop of the agreement of sale entered into between the petitioner and respondent No.2, which is an unregistered document dated October 3, 2021 and the pleadings of the petitioner before the Debt Recovery Tribunal, Aurangabad in Securitisation Application No. 31 of 2017; what can be inferred is that the respondent No.2 is not only owner of the property in question, however, there are other co-owners and there is no contract of the other co-owners with the petitioner to purchase the property.

12. Apart from above, we do not see any convincing reasons on record, particularly, from the conduct of the petitioner, to infer that there was any concluded contract in favour of the petitioner in relation to the suit property. To prima facie infer that in spite of there being concluded contract in favour of the petitioner, the respondent No.2 in connivance with his other partners/Directors has practiced fraud.

13. In law, the remedy which the petitioner can only invoke is that of moving against respondent No.2 in his independent capacity, seeking damages/specific performance etc, in accordance with law. Rather, record produced before us, depicts that there was no previty of contract between the petitioner and other co-owners particularly, but for the respondent No.2; even after we accept the status of the agreement of sale referred to by the petitioner, as an undisputed document for the sake of writing this order.

14. In the aforesaid background, not only the petitioner lacks

locus in the matter, but the petitioner also misused the remedy of writ jurisdiction thereby trying to stall the recovery proceedings initiated by a public body in accordance with law, against the respondent No.2.

15. As such, the petition stands dismissed with cost of Rs. 10,000/- (Rupees ten thousand only) to be deposited with the Legal Services Authority, Sub-Committee, Aurangabad within a period of four weeks from today.

[S.G. CHAPALGAONKAR]
JUDGE

[NITIN W. SAMBRE]
JUDGE

grt/-