

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12770 OF 2022

1. Kusum w/o. Pandurang Solanke
 2. Mahadeo s/o Pandurang Solanke
 3. Susma w/o Ravindra Chaudhar
 4. Seems w/o Prakash Hattote & Others
- PETITIONERS

VERSUS

1. Shri Shivaparvati Sakhar Karkhana Ltd,
Through its representatives Badre Alam
Litija Husen
 2. Pandurang Kondiram Solanke
 3. Panjab National Bank, Miod Corporate Branch
 4. Andra Bank having its Head Office at Opera
House
 5. Panjab and Sind Bank, Mumbai.
 6. Dr. nandkumar Tasgaonkar
 7. Vandana w/o Nandkumar Tasgaonkar
 8. M/s. Tasgaonkar Sugar Mill Ltd.,
- RESPONDENTS

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Mr. C.V. Thombre, Advocate for the petitioners.
Mr. Sanket Kulkarni, Advocate for respondent No. 1.
Mr. A.N. Irpatgire h/f. Mr. A.A. Mishra, Advocate for respondent
No. 3.
Mr. P.R. Katneshwarkar h/f. Mr. S.G. Kawade, Advocate for
respondent No. 6.
Mr. S.S. Thombre, Advocate for the intervenor.

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[CORAM : NITIN B. SURYAWANSHI, J.]

RESERVED ON: 9th JUNE, 2023
PRONOUNCED ON: 11th JULY, 2023

ORDER :

1. This petition filed under Article 227 of the
Constitution of India challenges the order passed by learned Civil

Judge, Senior Division, Majalgaon, Beed, below Exhibit-5 in Special Civil Suit No. 11/2017, and the order passed by learned District Judge, Majalgaon, Beed in Miscellaneous Civil Appeal No. 7/2020.

2. Petitioner No. 1/Plaintiff is the wife of Respondent No. 2/Defendant No. 2. Petitioner No. 2/plaintiff No. 2 is the son and Petitioner Nos. 3 and 4 are the daughters of respondent No. 2/defendant No. 2. Respondent No. 1/Defendant No. 1 is Shri. Shivapravati Sakhar Karkhana Limited (for short 'Respondent No. 1-sugar factory'). Respondents/Defendants No. 3 to 5 are the banks from whom respondents No. 6 to 8 have availed loan by mortgaging respondent No. 1-sugar factory and its properties.

M/s. Venkateshwara Industrial Services Pvt. Ltd. a private limited company, has filed Civil Application No. 6076/2023 for intervention claiming that, it has participated in the auction sale of Respondent No. 1 -sugar factory and being the highest bidder has deposited 25% of the bid amount. However, in view of stay granted by this Court, auction sale cannot be finalized. In the application, prayer to vacate the interim relief is also made.

3. Defendant No. 2 was working as Sugarcane Supply

Officer in Majalgaon Sahkari Sakhar Karkhana Ltd., Sunder Nagar, Taluka- Dharur, District- Beed. He established defendant No. 1, private sugar factory. He executed registered gift deed on 20.10.2012, thereby gifting landed property owned by him, total admeasuring 6 Hectare 12 Are, situated at village Mungi, Taluka- Dharur, District- Beed, in favour of defendant No. 1. Respondents No. 3 to 5 advanced loan to respondent No. 1-sugar factory and towards security of said loan, defendants No. 1, 2, 6 and 8 executed various security documents in favour of defendants No. 3 to 5 banks, including the mortgage deed in respect of the suit property.

4. Petitioners filed suit for declaration and injunction that registered gift deed dated 20.10.2012, executed by defendant No. 2 in favour of defendant No. 1 be declared null and void and not binding upon the rights of the plaintiffs. Along with the suit application Exhibit-5 is filed for temporary injunction.

5. It is the case of the petitioners that property gifted by defendant No. 2 to defendant No. 1 is joint hindu family property and all the petitioners have right in the said property. Apart from the gifted property defendant No. 1 has property

admeasuring 39 Acres. Sugar factory is erected on some part of the property and some machineries of defendant No. 1 are installed in the suit land. The petitioners therefore claimed that defendants No. 1 and 2 be restrained from transferring, selling or creating any third party interest in the suit properties.

6. Defendants appeared and resisted the suit by filing written statement and say. The Trial Court rejected the application Exhibit-5. The Appellate Court confirmed the said order in Miscellaneous Civil Appeal No. 7/2020. Hence, the present petition.

7. Heard the learned advocate for the petitioners, learned advocates for respondents and learned and learned advocate for the intervenor. Perused the memo of writ petition, annexures thereto, impugned orders and reply affidavit filed by respondent No. 3.

8. It is a matter of record that since the loan account of respondent No. 1- sugar factory became NPA, notices under the Act of 2002 were issued to respondent No. 1-sugar factory on 05.05.2015. Since, respondent No. 1-sugar factory failed to repay the loan, respondent No. 3-bank filed Original Application

No. 30/2017 before Debt Recovery Tribunal, Mumbai, under the provisions of Act of 2002, which is allowed by order dated 28.11.2022. Thereafter, further process of auction sale is initiated and the property of respondent No. 1-sugar factory is put for public auction for recovery of loan.

9. It prima facie appears that, so as to stall the proceeding of recovery initiated by respondents No. 3 to 5-banks, suit is instituted by the petitioners in collusion with respondents No. 1, 2, 6 and 8. There is bar to Civil Court's jurisdiction for challenging action under section 34 of the Act of 2002. Section 13 of the Act of 2002 has overriding effect. Till date, the petitioners are unsuccessful in obtaining the order of stay to the judgment and order passed in Original Application No. 30/2017.

10. There appears substance in the contention of the learned advocate for the respondents that by misleading this Court, petitioners have secured ad-interim order of status quo in respect of property which forms subject matter of the gift deed. The petitioners relied upon the order of status quo passed by Principal Seat of this Court in Arbitration Petition No. 879/2018, on 03.10.2020. A Copy of arbitration petition is placed on record

and on perusal of the same it is clear that said arbitration petition is filed by respondent No. 8, against defendants No. 1 and 2, invoking arbitration clause no. 22 of MOU dated 11.08.2010 between them. This proceeding, prima facie, does not appear to have any bearing on the civil suit.

11. Admittedly, pursuant to the auction sale notice issued by respondent No. 3, sale was scheduled on 21.03.2023 and the intervenor is found to be the highest bidder and its bid is accepted and it has deposited 25% of the bid amount. According to the intervenor, the immovable property of respondent No. 1- sugar factory has remained idle for more than 10 years and for commencing the factory operations for ensuing crushing season, minimum 7 months period is required to complete the overhauling, installation of machineries and paint work.

12. The Trial Court by assigning elaborate reasons has rightly rejected the prayer for temporary injunction of the petitioners holding that *'it seems that plaintiffs, defendant No. 1, 2, 6 to 8 in collusion with each other had after though have filed present suit to delay the proceeding initiated by defendant No. 3 to 5 Banks for recovery of the public money'. 'Defendant No 3 to 5 Banks have every right to recover their debts. As such the*

balance of convenience tilts in favour of the defendants. Therefore I hold that plaintiffs have failed to establish balance of convenience in their favour.' `Defendant No. 3 to 5 Banks would not be able to recover the debt amount if temporary injunction is granted in favour of the plaintiffs. I find that great hardship would be caused to the defendants compare to plaintiffs.'

13. The Appellate Court has confirmed the findings recorded by the Trial Court by a well reasoned order. The petitioners have failed to prove prima facie case and balance of convenience in their favour. No irreparable loss would be caused to the petitioners if interim injunction is not granted. Both the Courts have recorded concurrent finding of facts which, in the peculiar facts of the present case and for the aforestated reasons are not liable to be interfered with, in extra ordinary writ jurisdiction. The writ petition being devoid of merit is dismissed. No costs.

14. Defendants No. 3 to 5 are entitled to finalize the auction sale.

15. At this stage, learned advocate for the petitioners prays for continuation of ad-interim relief. For the reasons stated

in the order and since ad-interim relief was obtained by making incorrect statement, said prayer is rejected.

[NITIN B. SURYAWANSHI, J.]