

Sharayu Khot.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 2140 OF 2021

IN

WRIT PETITION NO. 3131 OF 2019

Anil Balkisanji Bhangdia

...Applicant /
Intervenor

In the matter between

M/s. Birla Steel Corner & Ors.

...Petitioners

Versus

Janaseva Sahakari Bank Ltd. & Ors.

...Respondents

Mr. Sachin Punde a/w Mr. N.R. Parashar for the
Applicant/Intervenor.

Mr. Vijay V. Chandavale with Mr. Vishal Tambe for the original
Petitioner Nos. 1 and 3 in WP.

Mr. Ashutosh S. Kale, for the Respondent No. 1.

Mrs. M.S. Bane AGP for the State – Respondent Nos. 2 to 4.

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CORAM : R.D. DHANUKA &
R.I. CHAGLA, JJ.

DATE : 8 March 2023

ORDER :

1. By this Interim Application, the Applicant who was not party to the Writ Petition No. 3131 of 2019 seeks intervention in the Writ Petition and seeks modification of the order dated 12th March 2019 passed by this Court in Writ Petition, thereby accepting the Affidavit/Undertaking of one Manik Ramchandra Birla that physical possession of the subject matter will be handed over to Respondent Bank.

2. It is the case of the Applicant that the Applicant and the Petitioner No. 2 Manik Ramchandra Birla had entered a Purchase Deed duly registered in respect of the property in question. The Petitioner No. 2 has filed Special Civil Suit bearing No. 73 of 2016 before the learned Civil Judge Senior Division, Satara (“*C.J.S.D., Satara*”) praying for injunction and declaration and cancellation of the Sale Deed dated 30th July 2013.

3. The Interim Application filed by the Petitioner No. 2 in the said Suit is still pending since last seven years. The said Suit is also pending. Meanwhile certain action under the Securitization Act has been taken against the Petitioners by the Respondent No. 1 Bank.

The Applicant was admittedly not made a party to the Writ Petition. The Petitioners however, tendered an Affidavit before this Court dated 12th March 2019 in the Writ Petition No. 3131 of 2019 impugning the Securitization action initiated by the Bank.

4. This Court accordingly, accepted the said Affidavit/Undertaking of the Petitioner No. 2 that physical possession of the properties listed at Sr.Nos. 2, 3, 5 and 6 to the Schedule of the Affidavit/Undertaking shall be handed over to the Respondent Bank. The properties at Sr.No. 6 was the property which was the subject matter of the said Sale Deed and also the subject matter of the Civil Suit filed by the Petitioners before C.J.S.D., Satara. No notice was given to the Applicant in the Civil Application before making such statement by the Petitioners. The statement of Affidavit/Undertaking was submitted by the Petitioners stating that the physical possession of the said property of the Sale Deed is handed over to the Bank.

5. It is the case of the Applicant that the Applicant is in possession of the said properties under the Sale Deed dated 30th July 2013. The Applicant came to know about the properties after filing such Affidavit/Undertaking in respect of these properties. The

Petitioners filed this Interim Application for various reliefs. In this Interim Application, by an order dated 9th September 2021 passed by the Division Bench of this Court, this Court observed that the Application filed by the Applicant raises various serious allegations against the Writ Petitioners, if proved, which resulted in severe consequences, including prosecution under Section 340 of Criminal Procedure Code, 1973. This Court accordingly, thought fit that opportunity shall be granted to the Petitioners to deal with the Application by filing the Affidavit.

6. Learned Counsel appearing for the Petitioners opposed this Application on the ground that the transactions between the Applicant and the Petitioners was not a sale transaction for this sale property, but was a money lending transactions. It is submitted that the action in the provisions of the Securitization Act was initiated by the Bank also in respect of the said property claimed by the Applicants. It is submitted that to settle the dispute with Bank, the Petitioners have agreed to include the said property at Sr.No. 6 of the Affidavit/Undertaking and to handover the physical possession thereafter to the Bank.

7. When this Court raised serious questions as to whether the Applicant was impleaded as party to the Writ Petition filed by his client before physical possession of the said properties was handed over to the Bank to settle the dues of his client payable to the Bank. Learned Counsel agreed that no such notice was given to the Applicant or his Advocate.

8. Learned Counsel appearing for the Applicant on the other hand, invited our attention to the two orders passed by this Court in Anticipatory Bail Application applied by the Petitioner No. 2 and rejected by this Court by making an observation that the Applicant therein is in habit of cheating the people and companies in matters pertaining to sale and purchase of lands and also is a habitual cheater. Two Judges of this Court have refused to grant Anticipatory Bail to the Petitioner No. 2.

9. It is submitted by the learned Counsel for the Respondent No. 1 Bank that Respondent No. 1 has no claim in respect of the properties described in Sr.No.6 of the Affidavit/Undertaking filed by the Petitioner before this Court in Writ Petition No. 3131 of 2019. The learned Counsel appearing for the

Bank submitted that the dues payable to the Bank are fully settled and they have no any claim whatsoever in nature in property described in Sr.No. 6 in the Schedule of Affidavit/Undertaking filed by the Petitioners. He further stated that the Bank does not propose to take possession of the said property from any of the parties to the Writ Petition.

10. Learned Counsel appearing for the Respondent No. 1 Bank has also brought our attention to the say filed by the Bank in the Special Civil Suit No. 73 of 2016 filed by the Petitioners against the Applicant before the C.J.S.D., Satara dated 30th November 2022 stating that the matter is already settled between the Bank and the Petitioners herein and thus, the Bank is not interested in holding or attaching any property described at Sr.No. 6 and does not intend to have any claim against the said property. Statement made by the learned Counsel for the Bank across the bar and also in the said Affidavit dated 30th November 2022 are accepted.

11. In our view, attempt made by the Petitioners before this Court by making such statement thereby jeopardize the interest of the Applicant's claim in the said property claimed under

the Sale Deed dated 30th July 2013 and which is admittedly, the subject matter of the Suit filed by the Petitioners is additional attempt to commit fraud upon this Court. The Petitioners obtained such orders from this Court by suppressing the fact that the Applicant has claimed interest in the Suit by virtue of the Sale Deed dated 30th July 2013 in respect of which the Suit for injunction, declaration and for cancellation of the Sale Deed filed by the Petitioners is still pending before the C.J.S.D., Satara and so far as no reliefs are granted by the Civil Court in favour of the Petitioners. We accordingly, pass the following order :-

- (i) The acceptance of undertaking tendered by the Petitioners before this Court on 12th March 2019 for handing over physical possession of the properties listed at Sr.No. 6 in the Schedule of Affidavit/Undertaking to the Respondent Bank is recalled.
- (ii) We also accept the statement made by the Respondent Bank that they have no claim whatsoever in any nature in respect of the properties at Sr.No. 6.

(iii) It is made clear that the parties are at liberty to pursue the Civil Court Suit in respect of the said properties.

(iv) The Applicant would be at liberty to file criminal proceedings against the Respondent for committing alleged fraud by giving an Undertaking before this Court so as to jeopardize the interest of the Applicant in the said property.

(v) Interim Application is allowed in the aforesaid terms.

(vi) No order as to costs.

(vii) Parties to the matter shall act on an authenticated copy of this order.

[R.I. CHAGLA J.]

[R.D. DHANUKA, J.]