



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 14534 OF 2023
IN
WRIT PETITION NO. 8678 OF 2023

Mr. Anilkumar Mishra ...Applicant

In the matter between:

SVC Co-operative Bank Ltd. and Anr. ...Petitioners

Versus

The State of Maharashtra and Ors. ...Respondents

Mr. A. Y. Sakhare i/b. Mr.R.S. Mirpuray, for Applicant.

Mr. Anilkumar Mishra, Applicant is present in Court.

Mr. Charles De Souza a/w. Mr. Vinay Deshpande a/w. Mr. Nikhil Rajani a/w. Mr. Rupak Sawangikar i/b. M/s. V. Deshpande & Co., for Petitioners.

CORAM : B. P. COLABAWALLA &
M.M. SATHAYE, JJ.

DATE : AUGUST 23, 2023

P. C.

1. When the above matter is called out, the following order is passed with the consent of the Applicant/Intervenor as well as Petitioner in the above writ petition.

2. The claim of the Petitioner against M/s. Mishra Associates of Rs. 10,79,53,131.74 due and payable as on 31.03.2020 as claimed in the 13(2) Notice dated 01.06.2020 wherein the Petitioner is a Partner/ Director/Guarantor/Mortgagor are secured by the following properties:

- a. Property being Office No. 508 admeasuring 72 sq. mt. and Office No. 509 admeasuring 72 sq. mt. on 5th floor, in the building known as San Mahu Complex constructed on plot bearing S. No. 156-A corresponding City Survey No. 5, Bund Garden Raod, Pune - 411 001 and within the limits of Pune Municipal Corporation and within the Sub Registration District of Haveli No. 11 belonging to Mr. Anilkumar Mishra; (This is also a security in MIPL Account)
- b. Property being office No. 510 admeasuring 73.39 sq. mt. and office No. 511 admeasuring 60.11 sq. mt. on 5th Floor in the building known as San Mahu Complex constructed on plot bearing S. No. 165-A, corresponding City Survey No. 5, Bund Garden Road, Pune - 411 001 and within the limits of Pune Municipal Corporation and within the Sub Registration District Haveli No. 11 belonging to Mrs. Priti

Anilkumar Mishra; (This is also a security in MIPL Account)

- c. Residential property viz. Flat No. B/4, admeasuring 907 sq. ft. on first floor, in the building “B” of Sunshine Tower situated at Final Plot No. 282 out of S. No. 369/A, A, B, C, and D Koregaon Park, Pune - 411 001 Tal. Haveli, Dist. Pune within the limits of Sub Registrar Haveli No. 1 owned by Mr. Anilkumar Mishra;
- d. All that piece and parcel of property being Office No. 14 and 15 admeasuring 30 sq. mt. in building Graphicon Arcade constructed on Plot Nos. 2 and 3 Final Plot 153, S. No. 38/38/1, 38/2, 39 and 40 at Sangamwadi T.P. Scheme, Tal. Haveli, Dist. Pune within the limits of Pune Municipal Corporation and within the limits of Sub Registrar Haveli Pune;
- e. Property being land and construction at Plot No. 19 admeasuring OOH 38 Aar bearing Gat No. 976 situated at Village Mulki, Mouje Wadki, Tal. Haveli, Gram Panchayat Wadki, Sub Registrar Haveli No. 3, Dist. Pune.

The Applicant/Intervenor shall be permitted to sell the property described in Clause 2(e) by private sale/negotiation after obtaining NOC of the Petitioner Bank and which shall not unreasonably withheld. If such sale takes place, the sale proceeds of such sale shall be deposited by the purchaser directly with the Petitioner Bank.

3. As and by way of indulgence to the Applicant/Intervenor from being dispossessed of the properties described in Clause 2(a) and (b) herein above, the Applicant/Intervenor agrees to this Hon'ble Court that:

- i. He will hand over peaceful and vacant possession of the properties described at Clauses 2(c) & 2(d) above, to the Petitioners within 10 days i.e. on or before 02.09.2023 by removing all the encumbrances, if created thereon.
- ii. He or anyone claiming under him in whatsoever capacity will not challenge any of the measures of the Petitioners in sale of the said assets described at Clauses 2(c) & 2(d)

above and the Petitioners shall be entitled to sell and dispose of the same by following due process under the provisions of SARFAESI Act, 2002 and the Rules framed thereunder.

- iii. The Applicant/Intervener has deposited with the Petitioners a sum of Rs. 25 Lakhs in discharge of the loan liability of M/s. Mishra Associates and he will deposit a further sum of Rs. 3 Crores with the Petitioners within a period of 45 days i.e. 07.10.2023.

4. In the event of default on the part of the Applicant/Intervener, in compliance of any of the aforesaid conditions including handing over possession of the assets as described in Clauses 2(c) and 2(d) herein above, and/or to pay the sum of Rs. 3 Crores on or before 07.10.2023, the indulgence granted under this order shall stand revoked automatically without any notice and the Petitioners will be entitled to take physical possession of the assets as described in Clauses 2(a), 2(b) and 2(e) herein above. Respondent No. 2 to this Petition is hereby ordered and directed to forthwith render necessary assistance to the Petitioners to take over forcible physical possession of the secured assets as described in Clause 2(a), 2(b) and 2(e) herein above with the

help of necessary police assistance within 10 days on the Petitioners approaching them for necessary assistance. The concerned police station within whose jurisdiction the said secured assets [set out in Clauses 2(a), 2(b) and 2(e)] are situated shall extend the necessary police protection as required to maintain law and order in the course of taking such forcible possession.

5. It is agreed and confirmed by the parties, that subject to the Applicant/Intervener complying with the conditions set out in this order, the indulgence/protection is granted to the Applicant/Intervener in relation to the properties set out in Clauses 2(a), 2(b) and 2(e) above, only for the period of 45 days from today i.e. up to 07.10.2023. By the said date, Applicant/Intervener shall be at liberty to exhaust the remedies available in law for his grievances and on exercising such remedies, the concerned Tribunal shall consider the case of the Applicant/Intervener on its own merit without getting influenced by the observations made in this order. It is made clear that the grievances, if any, can only be agitated in relation to the properties described in Clauses 2(a), 2(b) and 2(e) above and not in relation to the properties described in Clauses 2(c) and 2(d). We say this because as far as the properties described in clause 2(c) and 2(d) are concerned, the

Applicant/Intervener has specifically undertaken not to challenge any measures that the Petitioner takes for sale of the said properties.

6. We disposed of the above Interim Application as well as the above Writ Petition in terms of this order.

7. Considering that the first compliance required is to be done within a period of 10 days from today, we place the above Writ Petition on board for reporting compliance on 05.09.2023.

8. This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[M.M. SATHAYE, J.]

[B. P. COLABAWALLA, J.]