Uday S. Jagtap

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 19701 OF 2022
IN
FIRST APPEAL NO. 979 OF 2017

Jolly Constructions .. Applicant

In the Matter Between
Stephan Bernard Construction Co. .. Appellant (Orig. Defendant)

Vs.
Jolly Constructions .. Respondent (Orig. Plaintiff)

.....

Mr. Pradip R. Kadam for the applicant in IA 19701/2022
Mr. Ajay Talreja i/b Mr. Jawahar Prajapati for the appellant in FA and for the respondent in IA

.....

CORAM : PRITHVIRAJ K. CHAVAN, J.

DATED : 10th APRIL, 2023

P.C.

1. Perused the application and the reply.

2. Heard learned Counsel for the applicant and the respondent.

3. The applicant is the original plaintiff – respondent. He has prayed for vacating the stay granted by this Court by an order dated 12th September 2017 namely on the ground that the appellant –

original defendant has committed contempt of this Court by selling Flat No.301 which is the subject matter of the attachment and the warrant of sale of the said attached property was issued. It is submitted by the learned Counsel for the applicant that at the time of praying for stay to the judgment and decree of the trial Court, the defendant – appellant had submitted that his two flats worth Rs.5 Crores are attached and that he had deposited Rs.29,91,000/- during the pendency of the suit. It is contended that the statement of the defendant depositing Rs.29,91,000/- was misleading as he had deposited only Rs.28,50,000/- and the balance amount was interest for delay in depositing the said amount.

4. This Court by an order dated 12th September 2017 granted stay to the decree upon the defendant depositing further amount of Rs.5,00,000/- till 10th October, 2017 and the matter was adjourned to 7th November 2017 for admission.

5. It is the contention of the applicant that defendant – appellant has knowingly and intentionally to defeat the decree has sold the said flat which was already attached and that such conduct of the defendant – appellant is amounting to playing fraud on the Court.

6. In the reply, the appellant categorically admitted that in the year 2021, he along with the co-applicant had availed property loan for an amount of Rs.60,00,000/- which was duly disbursed on 28th September 2021 by the Federal Bank Ltd. through its branch at Mumbai – Sakinaka, against the security of Flat No.301, 3rd Floor, in the building known as Sidhi Heights, Plot No.2, RCS-1, Sector-8, Survey No.41, CTS No.41, Village Charkop, Sindhu CHSL, Kandivali (W), Mumbai. Paragraph 4 to 7 of the reply read thus :-

> *"4. With reference to Para No.9 and 10, I state that in the year 2012, I alongwith other co-applicants, had availed property power loan for an amount of Rs.60,00,000/- which was duly disbursed on 28/09/2021 by the Federal Bank Limited, through its branch at Mumbai-Sakinaka, against the security of Flat No.301, 3rd floor in the building known as Sidhi Heights, Plot No.2, RCS-1, Sector-8, Survey No.41, CTS No.41, Village Charkop, Sindhu CHSL, Kandivali-W, Mumbai – 400 067.*
>
> *5. Further I state that I was heavily indebted since 2013 because of which the loan amount together with interest amounting to Rs.60,21,021/- could not be repaid, within time, due to which the Federal Bank Limited (Loan Collection & Recovery Department/Mumbai Division) issued a Notice dated 29/05/2021 u/s 13(2) of SARFAESI Act, 2002, thereby calling upon me to repay the said loan amount alongwith interest. Hereto annexed and marked as Exhibit-'A' is the copy of the said Notice dated*

> *29/05/2021 bearing No. BBYO/BBYREG/BBYT/123/ 2021-2022.*
>
> *6. I state that after the receipt of the said Notice dated 29/05/2021, I had no other option but to repay the loan by selling the mortgaged premises being Flat No.301, 3rd floor in the building known as Sidhi Heights, Plot No.2, RCS-1, Sector, Survey No.41, CTS No.41, Village Charkop, Sindhu CHSL, Kandivali-W, Mumbai – 400 067.*
>
> *7. Thus, with the sole intention to repay the loan alongwith interest to the Federal Bank Limited, I had to helplessly sell the said property vide Sale Agreement dated 05/09/2022 and immediately, on the very next date, with the sale proceeds, I had repaid the entire loan, for which the Federal Bank Limited (Loan Collection & Recovery Department/Mumbai Division) issued a Notice dated 06/09/2022 acknowledging the Closure of the outstanding liabilities of Property Power Loan Account:16197600000091 with full and final settlement. Hereto annexed and marked as Exhibit-'B' is the copy of the said Notice dated 06/09/2022 bearing No. BBYO/BBYREG/BBYT/309/2022-2023."*

7. In view of clear admission in the reply, the stay granted by this Court stands vacated.

8. Interim Application is disposed of.

9. List the appeal on **27th June, 2023** under the caption "For Admission".

(PRITHVIRAJ K. CHAVAN, J.)