

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

Writ Petition (WP) No. 6605 of 2018

The Nagpur Mahila Sahkari Bank Limited through its Liquidator
Chaitanya Haribhau Nasare

Versus

Santosh S/o Devidas Verma

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri Vikrant S. Girankar, Advocate for the petitioner.

**CORAM : ANIL S. KILOR, J.
DATED : 7th AUGUST, 2023.**

Heard.

2. The order below Exhibit 17 dated 6th September, 2017 passed by the learned 5th Joint Civil Judge, Junior Division, Nagpur in Regular Civil Suit No. 1390 of 2015, rejecting the application preferred by the petitioner-Bank under Order VII Rule 10 and Rule 11(b) & (d) read with Section 9-A of the Code of Civil Procedure, is under challenge in this writ petition.

3. It is the case of the petitioner that the suit filed by the respondent for declaration and permanent injunction against the petitioner bank is not maintainable for the reason that the liquidator was

appointed on the petitioner-bank and before filing such suit no permission was sought, which is mandatory.

4. In the suit filed by the respondent, he is praying for declaration that the mortgage-deed executed by the vendor of the plaintiff and the exparte award obtained by the petitioner in Co-op. Case Nos. 561 of 2004 and 563 of 2004 dated 31st March, 2005, are not binding upon the plaintiff.

5. I have perused both the awards dated 31st March, 2005 passed in Co-op. Case Nos. 561 of 2004 and 563 of 2004 filed by the petitioner.

6. Undisputably, the vendor of the plaintiff/ the respondent was not a party to the said award.

7. Thus, it cannot be said that the said award was passed against the vendor of the plaintiff and therefore, if on any such ground the plaintiff is seeking declaration that the said award is not binding on him, and after observing by the trial Court that the relief sought by the plaintiff will not come in the way of winding up proceeding initiated, at the behest of the liquidator, the rejection of application under Order VII Rule 10 and Rule 11(b) & (d) read with Section 9-A of the Code of Civil Procedure, is just and proper. Hence, no interference is necessary. Accordingly, the writ petition is dismissed.

7. If the petitioner applies for permission to file written statement, the learned trial Court may consider the time exhausted in pursuing the present writ petition.

[ANIL S. KILOR, J.]

Digitally signed
by
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KUTTAN NAIR
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