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

Writ Petition (WP) No. 5727 of 2022

Ulhas S/o Keshav Joshi and another

Versus

Authorised Officer and Chief Manager, Bank of India, Dist. Amravati and others

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

Shri A.S.Dhore, Advocate for the petitioners.
Shri A.T.Purohit, Advocate for the respondent nos. 1 and 2.
Shri Dheeraj Joshi, Advocate for the respondent no.3
Shri H.D.Dubey, AGP for the respondent nos. 4 and 5.

CORAM : ANIL S. KILOR, J.
DATED : 31st MARCH, 2023.

Heard.

Order and judgment dated 29th August, 2022 passed by the District Judge-3, Akola in Misc. Civil Appeal No. 14 of 2021 reversing the order below exhibit 5 passed by the Civil Judge (Senior Division), Akola in Regular Civil Suit No. 216 of 2020 injuncting the respondent bank or their agents, servants, relatives, representatives of any other persons claiming through them from acting and using on fabricated document deed of mortgage dated 29th December, 2012 by any mode or manner till the decision of the suit.

2. The brief facts of the present case are as under:

The petitioners instituted a suit for declaration and permanent injunction in view of the action initiated by the respondent nos. 1 and 2 on the ground that the petitioners created by security in executing deed of mortgage dated 29th December, 2012 and the guarantee deed dated 27th December, 2012.

3. It is the case of the plaintiffs/petitioners that they have not executed any document, mortgage or guarantee deed. The learned trial Court after considering the respective case of the parties allowed the application Exhibit 5 preferred by the petitioners for grant of injunction under Order 39 Rule 1 and 2 and thereby temporary injunction was granted in favour of the plaintiff and restrained the defendants, or their agents, servants, relatives, representatives of any other persons claiming through them from acting and using on fabricated document deed of mortgage dated 29th December, 2012 by any mode or manner till the decision of the suit. The defendants were also directed not to create any third party interest in the suit property

and not to disturb the possession of the plaintiffs over the suit property till the decision of main suit.

4. I have heard the learned counsel for the respective parties.

5. Shri Dhore, learned counsel for the petitioners submits that he has never signed any mortgage deed and therefore taking the advantage of such mortgage deed, the bank cannot disturb the possession of the petitioners. It is submitted that the bank possesses the title deed is different than the title deed which the petitioners have. He, therefore, submits that it can be said that there were no equitable mortgage in this case.

6. He further submits that the respondent-bank without initiating any action against the borrower to recover the amount, started to harass the petitioners by initiating the proceeding and thereby trying to take possession of the suit property. He, therefore, submits that without any authority and without any valid mortgage in favour of the bank, the bank cannot take possession of the suit property.

7. On the other hand, learned counsel Shri Purohit submits that, the suit property which was mortgage with the bank, is plot no.74 out of field survey no.28, Mouza Malkapur, Tq. and District Akola. It is

submitted that mortgage deed was executed on 29th December, 2012 and since the title deed was submitted by the petitioners, there is no need to have signature of the mortgagor on the mortgage deed. For this purpose he has placed reliance of the judgment of the Hon'ble Supreme Court in the case of ***State of Haryana and others Vs. Narvir Singh and another***[1].

8. He would argue that deed of guarantee was executed on 27th December, 2012 which was signed by the petitioners and in the said document the petitioners have admitted that they are the guarantors.

9. Shri Purohit, learned counsel for the respondent-bank has further pointed out that in a proceeding filed by the Bank of India for recovery of Rs.6,20,13,399/- against the petitioners and borrower, before the Debt Recovery Tribunal, Nagpur vide O.A.No. 62 of 2015, the learned Tribunal vide judgment dated 31st May, 2016, held the petitioners liable for payment of Rs.6,20,13,399 along with interest @ 14.20%. It is pointed out on the basis of said judgment, the recovery certificate was issued.

10. In reply, Shri Dhore, learned counsel for the petitioners submits that application for recall of the said judgment is pending before the Tribunal.

1 2014(1) SCC 105

11. Shri Purohit, learned counsel for the respondent bank further points out that earlier petitioners have approached to this Court making a complaint that the respondent bank cannot be permitted to take action against the borrower or principal debtor for realization of the loan amount. It is pointed out that in the said writ petition the petitioners admitted that they are guarantors and they also admitted their liability. The limited grievance which was raised in the said writ petition was that the bank should proceed first against the borrower or principle debtor.

12. He, therefore, submits that considering the ample evidence available on record, the order passed by the District Judge-Akola setting aside the order granting injunction in favour of the petitioners, is just and proper and needs no interference.

13. In the light of rival contentions of the parties, I have perused the record and the impugned order.

14. The Hon'ble Supreme Court of India in the case of *State of Haryana and others Vs. Narvir Singh and another* (supra) has held that debtor deposits with creditor title deeds of the property in a notified town for the purpose of security, it becomes a mortgage by

deposit of title deeds. No instrument is required to be drawn for mortgage by deposit of title deeds. Delivery of documents of title to immovable property in a notified town with the intent to create a security thereon is sufficient.

15. In the present case there is a document namely a mortgage deed. The name of the petitioners in the mortgage deed is shown as guarantors and the name of the borrower is shown as M/s Gomati Milk & Food Pvt. Ltd. The mortgage was against the term loan of Rs.7,50,00,000/- and cash credit of Rs.50,00,000/-. In the column relating to equitable mortgage by deposits of title deed of immovable property, the suit property is mentioned as property no.2.

16. Thus, it is evident that, the petitioners submitted the original title deed to the bank and same is lying with the bank since 2012.

17. Shri Dhore, learned counsel for the petitioners disputed the genuineness of this title deed with the bank. However, in this writ petition, this Court cannot go into the disputed question of fact. Nevertheless, *prima facie,* from the judgment of the Debt Recovery Tribunal dated 31st May, 2016, the recovery certificate issued in pursuance of the said

judgment it is evident that the suit property was mortgaged by the petitioner.

18. From the order passed in writ petition No. 6517 of 2016, filed by the petitioners, it is evident that it was never the case of the petitioner that they are not the guarantors but the limited grievance was that before taking action against the borrower or the principal debtor, the bank has initiated action against the guarantors. It is thus, sufficient to show that prima facie there was equitable mortgage created against the suit property.

19. Moreover, the criminal application No. 508 of 2016 filed by the petitioners for quashing of the First Information Report and the pleadings made in the said application also supports the case of the bank.

20. The relevant paras of the said application are as follows:

> "For the said loan, the applicants namely Ulhas Joshi and Alok Joshi and one Tulshidas Shobrajmal Lulla are the guarantors and the applicants who are father and son have mortgage their property – Hotel Saikrupa at Gorakshan Road, Akola and the another guarantor has mortgage his property.
>
> It is submitted that the applicants are only guarantors of the Gomati Milk and Food Pvt Ltd and have mortgage their property.
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> It is also pertinent to point out here that the applicants have only stood guarantor and for the said purpose they have mortgage their property. It

> is thus submitted that the applicants who are guarantors, have been falsely implicated in the crime and are being harassed and humiliated, by lodging a false complaint against them.
> It is submitted that the applicant no.2 who is son of the applicant no.1 was arrested by the respondent / Police Station on 4/6/2016, in pursuance of the said crime registered by the respondent-Police Station.
> The said son of the applicant who was guarantor along with the applicant has been granted regular bail by the learned Judicial Magistrate First Class, Amravati mainly on the ground that he is guarantor to the loan disbursed to the Gomati Milk & Food Pvt. Ltd., and thus, he is not main accused in the crime and no purpose will be suffered by keeping him behind bar.
> The documents submitted by the applicants in the capacity of guarantors are not false, forged or fraudulent and they have rightly mortgage their property as guarantor."

21. In the circumstances, *prima facie*, I am satisfied that the suit property was mortgage with the respondent bank. Hence, I do not find any error committed by the Appellate Court in reversing the order granting injunction against the respondent bank as regards the suit property. Accordingly, the writ petition is dismissed.

[ANIL S. KILOR, J.]