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46-WP-5265-2024

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

46 WRIT PETITION NO. 5265 OF 2024

Abhay Ramlal Lalwani

VERSUS

The State Of Maharashtra Through Its Principal Secretary And Others

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Mr. Akshay D. Kulkarni, Advocate for the Petitioner

Mr. R. K. Ingole, AGP for Respondent-State.

Mr. A. A. Yadkikar Advocate for Respondent No.7.

CORAM : KISHORE C. SANT, J.

DATE : 16th DECEMBER 2024

PC :-

1. Heard the parties.
2. None appears for respondent No.6, in spite of service of notice.
3. A limited issue involved in this petition is about the applicability of an order passed by the Hon'ble Apex Court in Miscellaneous Application Nos.21 of 2022 and 665 of 2021 in Suo Motu Writ Petition (C) No. 3 of 2020.
4. The petitioner a debtor under Maharashtra Money Lending (Regulation) Act, 2014, has come to this Court challenging the order

passed by the learned District Registrar of Money Lending and District Deputy Registrar, Co-operative Society, Ahmednagar holding that the proceedings filed by the present petitioner is barred by limitation. The said order is confirmed by the Divisional Joint Registrar, Co-operative Societies, Nashik dated 12th December 2023.

5. The case of the petitioner in short is that, his father deceased Ramlal Lalwani executed a document on 8th December 2005 in favour of Respondent No.6. Though the document is titled as sale-deed in fact it was towards security for money lending transaction. It was the security for the loan obtained by father of the petitioner. Though the amount with interest was repaid, still Respondent No.6 has refused to execute reconveyance. The petitioner therefore, approached the Registrar under the said Act. The learned Registrar on merits held that the transaction was towards security for money lending transaction. However, still held that the application was not within limitation as the same was filed on 9th February 2021 after a period of 15 years.

6. The petitioner approached next Appellate Authority i.e. the Divisional Joint Registrar, Co-operative Societies, Nashik Division, Nashik. The said authority also confirmed the findings and held that filing of the application was beyond a period of limitation. The petitioner is thus, before this Court.

7. The learned Advocate for the petitioner vehemently argued that it was specifically pointed out to the authorities that the Hon'ble Apex Court in the Suo Motu Writ Petition (C) No.3 of 2020 has excluded the period while computing the period of limitation in cases where the limitation expired during the said period. The excluded period is from 15th March 2020 till 28th February 2022 and has extended the limitation in all the cases by 90 days from 1st March 2022. In spite of pointing it out, the learned Registrar failed to appreciate this fact and has recorded a perverse finding that the said order is not applicable to the proceedings under the said Act. The said finding is confirmed by the Appellate Authority. He thus submits that the proceedings be filed within limitation.

8. The learned Advocate appearing for Respondent No.7 to whom the property was mortgaged by respondent No.6 and in respect of which the proceeding is already commenced before the DRT, vehemently opposes the petition. It is submitted that in fact the petitioner and respondent No.6 are in collusion, the respondent No.6 deliberately has not contested the proceedings seriously and had allowed the authorities to record the findings. However, in the alternative, he submits that if the proceedings is remanded opportunity of hearing be given even to respondent No.7 as by now Respondent No.7 has acquired interest in the said property. He further opposes the prayers D and E which are in respect of the proceedings before the DRT. He thus submits that if respondent No.7 is given an opportunity to contest the proceedings before the learned Registrar, Respondent No.7 would be in a position to demonstrate its interest and contest the matter.

9. The learned AGP opposes the petition. It is submitted that already the authority has recorded findings against Respondent No.6 and no interference is required.

10. After hearing the parties, this Court finds that the learned authorities have failed to appropriate the purport of the order passed by the Hon'ble Apex Court in Suo Motu Writ Petition (C) No.3 of 2020. Since it is shown that the Respondent No.7 has now acquired the interest in view of subsequent transactions after the sale deed but before initiation of the proceedings. This Court finds that respondent No.7, in such circumstances, needs to get an opportunity. The proceeding is therefore remanded to the first authority i.e. the District Deputy Registrar, Co-Operative Societies, and the District Registrar of Money Lending, Ahmednagar.

11. Needless to say that Respondent No.7 shall be added as a party and shall have right to contest the said proceedings.

12. This Court has not gone into merits of the matter neither this Court has considered the prayers as regards the proceedings before the DRT are concerned, as those are not pressed by the petitioner.

13. With this, writ petition stands disposed off with directions to the authorities to decide Section 18(1) application within three months from

today and in any case before 31st March 2025.

14. The authorities not to go beyond the record already produced so far as Respondent No.6 is concerned.

15. Respondent No.7 can produce the document in its possession.

[KISHORE C. SANT, J.]