IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

903 WRIT PETITION NO. 6121 OF 2024

PRASAD BHALCHANDRA VAIDYA
VERSUS
DEPARTMENT OF FINANCIAL SERVICES, THR ADDITIONAL SOLICITOR GENERAL, BOMBAY HIGH COURT AURANGABAD
….
Mr P. B. Vaidya, Petitioner – Party in person
Mr A. G. Talhar, DSGI for Respondent Nos.1 & 4
Mr M. G. Deokate, Advocate for Respondent No.3

CORAM : RAVINDRA V. GHUGE
AND
Y. G. KHOBRAGADE, JJ.

DATE : 2nd July, 2024

PER COURT:

1. On 26/06/2024, we had passed the following order :-

"1. The Petitioner has already filed a proceeding before the learned Debt Recovery Tribunal at Chhatrapati Sambhajinagar. We are informed that the Presiding Officer has demitted office and the proceeding initiated by the Petitioner bearing Securitization Application No.116/2024, is now being heard by the In-charge Tribunal at Pune.

2. The Petitioner, who is a practicing Advocate and appearing in person, has made the following categoric statements :-

(a) The property at issue in the proceeding before the Tribunal, has never been mortgaged to any Bank ;

(b) The Petitioner has come with a rare case, wherein loan has been advanced by Respondent No.3/Bank to the brother of the Petitioner, namely, Prasanna, without any mortgage of property.

(c) The Petitioner is neither a guarantor nor a borrower and has not taken any loan.

(d) The Petitioner has inherited his father's property bearing Survey No. 191, C.T.S. No.3896, MH No.R-8/1711, situated at Ramnagar, Latur, Dist. Latur, admeasuring 2100 sq.ft.

(e) Though there is a mortgage deed placed on record at Page No.54, indicating that the deceased father of the Petitioner has taken loan from Respondent/Bank, no such loan was ever sanctioned by the Bank and no loan amount was disbursed to the deceased father of the Petitioner. As such, the same house property which is owned by the deceased father of the Petitioner is shown as the mortgaged property, though no loan has been taken.

3. The Petitioner is presently in possession of the said house property and after the demise of his father in 2007, neither any suit for partition and separate possession has been filed, nor has there been any change in the mutation entry.

4. Since the proceedings initiated by the Petitioner are pending before the Tribunal, the learned Advocate for the Respondent/Bank states that a written statement would be filed, on or before 05/07/2024 and a soft copy of the *same shall be supplied to the present Petitioner on his Email address. The Petitioner furnishes his email as "prasad@onlinerti@gmail.com". The Petitioner clarifies that the Email Id mentioned in the title clause of the petition paper book as "prasadbvaidya@rediffmail.com", is presently not functional on desktops and laptops and, therefore, the Petitioner is not accessing any mails on the said Email Id.*

5. We could have disposed off this Writ Petition today itself, but for the fact that the Petitioner has made a categoric statement that, though the mortgage deed is available at Page No.54 of the Petition paper book, showing his father as a borrower, no loan amount was extended to his father and there is no such loan account with the State Bank of India. He has also stated that his brother Prasanna has taken loan from the same Bank, but no property is mortgaged. Therefore, we have called upon the learned Advocate for the Respondent/Bank to take instructions and address us, on 02/07/2024.

6. By consent of the parties, this matter would appear under the caption of 'dictating order', on 02/07/2024."

2. The learned Advocate appearing on behalf of the Respondent/Bank has placed on record an Email communication, received by him from the Respondent/State Bank of India, Ausa Road, Latur. Since the learned Advocate Shri. Deokate did not have sufficient time to prepare an affidavit-in-reply, the Email

message has been received from the Authorized Officer of the Bank i.e. Branch Manager, dated 02/07/2024. The printout copy of the said communication is marked as ‘X’ for identification. A copy has been served upon the Petitioner in person.

3. The Respondent/Bank has averred in it’s communication ‘X’ as under :-

“REFERENCE: WP No. 6121 of 2024 (Prasad B. Vaidya V/s First Appellate Authority & Registrar DRT, Aurangabad & Ors)

Pursuant to order dated 26/06/2024 passed by this Hon'ble High Court, the respondent no. 3-The Authorised Officer, State Bank of India is submitting its clarification to the categorical statements made before this Hon'ble High Court as follows:

In respect of clause 2(a) of the order it is humbly submitted that the statement about the property at issue in the proceeding before the Tribunal has never been mortgage to any Bank is false, incorrect and bogus in view of the fact that the same property has been mortgaged by the father of the petitioner in favour of the respondent no. 3 State Bank of Hyderabad which has been merged into State Bank of India vide notification no. G.S.R. 157(E) dated 01/04/2017 issued Government of India. Copy of registered mortgage deed bearing day book no. LTR-5155-2010 dated 01/10/2010 (Page no. 53) is produced on record by the petitioner.

In respect of clause no. 2(b) of the order it is humbly submitted that the statement made by the petitioner is incorrect in view of the fact that the erstwhile State Bank of Hyderabad has sanctioned home loan vide Arrangement Letter dated 15/11/2010 (Page no. 72) to the brother of the petitioner, namely, Prasanna B. Vaidya and his father, *namely, Bhalchandra A. Vaidya which bears signature of both the borrower and mortgagor.*

In respect of clause no. 2(c) of the order it is humbly, submitted that the statement made by the petitioner is correct.

In respect of clause no. 2(d) of the order it is humbly submitted that the statement made by the petitioner is denied for want knowledge.

In respect of clause no. 2(e) of the order it is humbly submitted that the statement made by the petitioner is incorrect, false and bogus in view of the fact that the respondent no. 3 has disbursed the loan amount to the brother of the petitioner, namely, Prasanna B. Vaidya and accordingly, loan account no. 62169016291 was opened in his name as brother of the petitioner has availed the loan amount from the respondent no. 3.

Hence this clarification on behalf of the respondent no. 3.

Date: 02/07/2024 *RESPONDENT NO. 3*

Place: Aurangabad *Sd/-*

The Authorised Officer
State Bank of India
Branch Manager
V. B. Patil
S.S. No. P-9914
P.F. No.-4499824"

4. The Petitioner in person has addressed us by drawing our attention to a communication dated 28/12/2023, addressed by the said Bank to his biological brother Mr Prasanna Bhalchandra Vaidya. He refers to paragraph No.2 with regard to the mortgage, which is mentioned in Schedule 'B'. He has then turned over to Page No.25 of the Petition paper book and has read out Clause 3

below Schedule ‘C’, which indicates the date of mortgage as 24/09/2010. He has then turned to Page No.26, more specifically Para II (Equitable Mortgage of Immovable Property) and points out that the name of his biological brother is mentioned to show that the house property which is presently inherited by the present Petitioner and in which he is residing, is shown as the mortgaged property.

5. He has also pointed out Clause 6 from Page No.74, which indicates the contents of the mortgage deed dated 15/11/2010, wherein the name of the borrower of the loan sanctioned as against house property, is Bhalchandra Abaji Vaidya, is the late father of the Petitioner in person.

6. The learned Advocate for the Bank submits that the affidavit-in-reply/written statement of the Bank in the pending proceedings under Section 17 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) Act, before the Debt Recovery Tribunal, Nagpur will be served upon the Petitioner on his Email address mentioned in the order dated 26/06/2024, by 2:00 p.m

tomorrow. He further submits that the learned Tribunal has now preponed the matter to 05/07/2024 at Nagpur for a hearing in the matter.

7. Since there are several disputed questions before us, inasmuch as, that a proceeding initiated by the Petitioner in person is also pending before the Tribunal, **that this Writ Petition is disposed off.** We would appreciate if the Tribunal permits the litigating parties to address on the application for interim relief filed by the Petitioner in person. It would be in the interest of justice that, such application is decided by the Tribunal on it's own merits, on or before 20/07/2024. All the contentions of the litigating parties are kept open. It is clarified that, we have not delved upon any of the rival contentions since we find that there are disputed questions/issues are left open to be considered in accordance with the jurisdiction of the Tribunal under the provisions of the SARFAESI Act.

(Y. G. KHOBRAGADE, J.) **(RAVINDRA V. GHUGE, J.)**

sjk