2024:BHC-AUG:14663

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 7590 OF 2023

Hdfc Bank Ltd Through Its Authorised Officer
Rupesh Sadanand Waghe
VERSUS
M/s Challani Ginning And Pressing Factory Through Its Partner And Others

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Mr. P. R. Katneshwarkar h/f Mr. S. S. Shinde, Advocates for the Petitioner
Mr. P. F. Patni, Advocate for Respondent No. 1
Mr. B. B. Kulkarni, Advocate for Respondent No. 4

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CORAM : R.M. JOSHI, J
DATE : JULY 16, 2024

PER COURT :

1. At the outset, learned Counsel for Respondent No. 4 i.e., Amarnath Matadin Sharma makes statement that he has already intimated to Respondent No. 4 about the withdrawal of his appearance and similarly it was informed that he would be withdrawing his appearance in Writ Petition No. 7242/2023 also.

2. Respondent No. 4/Amarnath Matadin Sharma is served with notice of this Court in Writ Petition No. 7242/2023. Hence, treated to be served in this Petition also. Petition to proceed in his absence.

3. This Petition takes exception to order dated 23.06.2023 passed below Exh. 158 by Civil Judge, Senior Division, in Special Darkhast No. 32/2017 whereby the application filed by the Petitioner/HDFC Bank to join as party to the said proceeding was rejected.

4. The facts which led to the filing of the present Petition can be narrated in brief as under:

Respondent No. 3 applied for loan for purchase of suit property in July, 2017. On 10.10.2017 registered sale deed came to be executed in favour of Respondent No. 3. Pursuant thereof, loan was sanctioned by HDFC Bank to the extent of Rs. 3 crore and the said amount is disbursed to the borrower on 30.11.2017. On 05.07.2017 a mortgage is created in respect of the suit property by deposit of memorandum of title deeds. The deposit of title deed is got registered on 28.01.2021. On 23.01.2022 the loan amount of Respondent No. 3 came to be declared as non performing assets. Thereafter a notice was issued to the borrower i.e., Respondent No. 3 and proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of

Security Interest Act, 2002 (for short '**Act of 2002**') were initiated on 06.09.2022. Respondent No. 3 went under Corporate Insolvency Resolution Process (CIRP) and hence, NCLT, Mumbai admitted the proceedings on 31.03.2023 under the Insolvency and Bankruptcy Code, 2016 (for short '**Act of 2016**') and CIRP was initiated as per provisions of the code. According to Petitioner, in view of this, all proceedings including execution proceeding stood stayed during the period of moratorium. It is further contention of the Petitioner that legal branch of the Bank had noticed proclamation of auction sale of suit property scheduled on 06.06.2023. After collecting documents, Petitioner filed objection petition before the Execution Court and notices issued thereon. The action sale was postponed by interim order passed on 05.06.2023. Finally, the said objection is rejected. Hence, this Petition.

5. Learned Counsel for the Petitioner submits that IDBI Bank had granted loan to one Mr. Jadhav in the year 2013. Thereafter, they executed agreement to sale dated 30.07.2013 in favour of Respondent No. 1. This Respondent filed suit for specific performance of

contract bearing Special C. S. No. 201/20113, which came to be partly decreed and an order of return of earnest money was passed. This Respondent for execution of said decree filed Special Darkhast No. 32/2017. It is his further submission that in the intervening period, there was sale deed executed by Mr. Jadhav in favour of Respondent No. 4/Vienna Multiventures Pvt. Ltd and on the basis of said sale deed loan was sanctioned to Vienna, which was disbursed too. It is his contention that a mortgage was also registered in favour of HDFC. It is thus his submission that when the very same property is auctioned for recovery of money, HDFC Bank is necessary party to execution proceeding and hence, learned Execution Court ought to have allowed the said application. It is also sought to be argued that having regard to the provisions of Act of 2016 and more particularly after order passed of CIRP, no proceedings including execution proceedings cannot be allowed to be continued.

6. Learned Counsel for Respondent No. 1 opposed the said contention by submitting that sale deed executed in favour of Vienna has already been set aside

by the competent Court, as such, Vienna does not remain to be owner of the said property, consequently question of application of restrictions under the Act of 2016 does not arise. He further submits that in any case the said sale deed was executed after the order of attachment was passed by the Execution Court on 21.09.2017 and as such, it does not bind this Respondent. It is his submission that since Vienna is not owner of the suit property, application is rightly rejected.

7. At the outset, this Court wishes to deal with second part of the argument which is sought to be canvassed that the proceedings of Execution cannot be continued in view of provisions of Act of 2016. In this regard, perusal of the Petition shows that Petition is restricted only to the order passed by the learned Execution Court rejecting application filed by the Petitioner for joining itself as party to the Special Darkhast No. 32/2017 and no other issue is sought to be agitated. This Court, therefore, cannot enlarge the scope of the Petition beyond the pleadings and prayers. Hence, no observations are made in respect of the

submissions made with regard to continuation of execution proceedings. Needless to say that if any such issue is raised in any appropriate proceeding, it is open for the parties to agitate the same before the competent Court.

8. As far as impugned order is concerned, in order to succeed in joining as party to the execution proceeding, HDFC Bank is required to show any sustaining right or interest in the suit property which is likely to be affected by the auction of the same. Having regard to the fact that the sale deed which is subsequently being set aside was executed in favour of Vienna only after order of attachment being passed by the Execution Court and since admittedly the said sale deed is set aside in First Appeal No. 117/2022 by this Court, there is absolutely no material on record to indicate that Vienna is the owner of the property involved in the execution proceedings. Merely for the reason that HDFC Bank has lent money to Vienna and mortgage is executed by Vienna in favour of HDFC Bank, no right is created in its favour in respect of suit property. For want of any interest therein, question of

adding HDFC Bank as party to Execution proceeding does not arise.

9. Perusal of the impugned order indicates that all these contentions/objections raised were duly considered by the Execution Court while rejecting application filed HDFC Bank. In exercise of writ jurisdiction, this Court finds no reason or justification to cause any interference therein. In the result, Petition stands dismissed.

(R. M. JOSHI, J.)

10. After pronouncement of this order, learned Counsel for the Petitioner makes statement that in Writ Petition No. 7242/2023 order was passed by this Court directing not to finalise sale certificate though auction was permitted to be continued. It is his further specific submission that in view of order passed in the said Petition, no separate order was passed in the present Petition. He, therefore, submits that since the said order was in force since 30.06.2023, it may be continued for a period of four

weeks to enable Petitioner to challenge order passed by this Court before Hon'ble Supreme Court.

11. Learned Counsel for Respondent No. 1 opposes the said prayer by contending that Respondent No. 1 is the purchaser of the property in auction after depositing entire auction amount and extension of order would cause prejudice to him.

12. Order passed by this Court in Writ Petition No. 7242/2023 was in existence for period over a year now and in such circumstances, it would be unjust to refuse the request made by the learned Counsel for Petitioner.

13. In view of above, order dated 30.06.2023 passed in Writ Petition No. 7242/2023 stands extended for a period of four weeks from today.

(R. M. JOSHI, J.)

Malani