

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5929 OF 2023
WITH
INTERIM APPLICATION NO. 6429 OF 2024
IN
WRIT PETITION NO. 5929 OF 2023

Shivshankar K. Menon and Anr.

.. Petitioners

Versus

Visible Chits Pvt. Ltd. and Anr.

.. Respondents

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- Mr. Vivek Patil a/w. Devesh Sawant and Afsar Ansari i/by Vivek Patil and Associates for Petitioners.
 - Ms. Jeenal Upadhyay, Advocate for Respondent No.1.
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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 08, 2024.

P.C.:

- 1.** Heard Mr. Patil, learned Advocate for Petitioners and Ms. Upadhyay, learned Advocate for Respondent No.1.
- 2.** Over a period of time Writ Petition has been amended to maintain challenge to four orders passed by the Executing Court. The Decree Holder is the Respondent No.1 present before me.
- 3.** Petitioner No.1 is a Guarantor to the loan availed by one of the subscriber i.e. Petitioner No.2 to the Chit Fund who has maintained the challenge to these orders passed by the Executing Court.

4. I propose to deal with all four orders which are challenged, one by one in view of the facts in the present case:-

4.1. First order challenged is the order passed below Exhibit “65” in Regular Darkhast No.271 of 2019 filed by the Decree Holder for seeking grant of permission and leave of the Executing Court to participate in the sale and bid process. That Application of the Decree Holder stands rejected since the Decree Holder has not stated any reason whatsoever in the said Application and the decree pertains to transaction of Chit Funds.

4.2. While dismissing the Application, the learned Trial Court has referred to and relied upon Application filed below Exhibit “45” previously which was rejected by the Executing Court on 25.04.2022. That apart, there is a clear provision of law namely under Order XXI Rule 72 of the Code of Civil Procedure, 1908 (for short “**CPC**”) which has been referred to by the learned Executing Court while dismissing the Application. Under that provision, the Decree Holder cannot bid for or buy property without leave or permission of the Court and that leave has already been declined by the Executing Court not once, but twice. No interference therefore can be warranted with the order dated 02.02.2023, much less when a complete third party who is a Guarantor to the loan availed by the subscriber to the Chit Fund. If any right is amenable and available to the Writ Petitioner in law, the Writ

Petitioner is permitted to pursue that right and file appropriate proceedings, if so available in law to him/them in the appropriate forum.

5. In so far as challenge maintained to the order dated 02.02.2023 is concerned, that challenge is not maintainable at all and that challenge stands rejected.

6. The next challenge in the Petition is maintained to the order passed below Exhibit “33” dated 26.10.2021 which is at page No.35 of the Writ Petition. Application was filed below Exhibit “33” once again by the Decree Holder under Order XXI Rule 64 of the CPC contending that property of the Judgment Debtor as identified by the Decree Holder was required to be attached and sold in execution proceedings. In the say which was filed to resist the Application, Judgment Debtor brought to the notice of the Execution Court that he had taken loan from Aditya Birla Finance and two other Financial Institutions and he had to pay the said loan. The learned Executing Court directing the Nazir to sell the property for satisfaction of the decretal amount and thereafter proceed strictly under the provisions of Order XXI Rule 66, 67 and 68 of the CPC.

7. This is precisely the objection raised by the Writ Petitioner that in the event if the said property was mortgaged to any other Financial Institutions, they had to be called upon. The learned Trial

Court while passing the operative part of the order has clearly directed that the sale of the property has to be proceeded as per the provisions of Order XXI Rule 66, 67 and 68 of the CPC and in that view of the matter, the Writ Petitioner should not have objection to the order passed below Exhibit “65”. Hence the challenge to the order below Exhibit “33” dated 26.10.2021 is sustained by this Court.

8. The third order to which challenge is maintained is passed below Exhibit “29” which is at page No.54 of the Writ Petition. This Application was filed below Exhibit “29” by the Judgment Debtor for seeking stay to the attachment warrant and execution proceedings. Considering the fact that the Court was seized with execution of Arbitration award and the implementation of the Award in effect required attachment of the concerned property. In view of the fact that there was no stay whatsoever placed before the Executing Court to challenge the Arbitration Award by any proceedings or by any order, the learned Executing Court had no option, but to pass the order below Exhibit “29” rejecting the Application of the Judgment Debtor. The said order has been correctly passed and the Application below Exhibit “29” is filed to prolong and frustrate the decree passed in execution of the Award. Hence the order dated 17.03.2021 stands sustained.

9. I once again repeat and reiterate that the Petitioner is a Guarantor to the loan availed by one of the subscriber of the Chit Fund

and has no *locus standi* whatsoever to challenge the orders passed by the Executing Court in the manner in which they have been challenged.

10. There are two further orders passed which are below Exhibit “1” and Exhibit “60” and Exhibit “79”. The first common order is passed below Exhibit “1” and Exhibit “60” is with respect to the Bailiff’s Report giving the details of the third auction in respect of the attached property of the Judgment Debtors.

11. All that has been stated in the order is that the highest bid by the bidder has been accepted and a further direction has been given for calculation, computation and to pay the amounts to the Decree Holder and return the remaining amount back to the Judgment Debtors. Such an order certainly cannot be challenged.

12. If the Writ Petitioner has any grievance, the right of the Writ Petitioner is kept open to seek any orders with respect to any amount that may have been returned back to the Judgment Debtor in accordance with law.

13. The order passed below Exhibit “79” is in an Application filed by the Decree Holder for grant of permission for withdrawal of the decretal amounts. No challenge can be maintained to such an Application which has been comprehensively allowed by the learned Executing Court by giving detailed and cogent reasons. All checks and

balances have also been stated in the order dated 08.12.2023 and the said order is therefore sustained.

14. In view of the above, the right of the Writ Petitioners, if so available in law is expressly kept open to approach the appropriate forum / Court and file appropriate proceedings as available to him/them in law.

15. Needless to state that all contentions of all the parties including the Decree Holder are also expressly kept open to oppose any Application that may be made by the Judgment Debtors or Guarantor.

16. With the above directions, Writ Petition is dismissed.

17. In view of the dismissal of the Writ Petition, pending Interim Application No.6429 of 2024 is also dismissed.

[MILIND N. JADHAV, J.]

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