HARSHADA H. SAWANT
(P.A.)

# IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

## CIVIL REVISION APPLICATION NO.704 OF 2023

Bharati Sahakari Bank Ltd. .. Applicant
**Versus**
Canara Bank and Ors. .. Respondents

…………………

- Mr. Drupad Sopan Patil, Advocate for Applicant.
- Mr. D. B. Sawangikar, Advocate for Respondents.

…………………

**CORAM : MILIND N. JADHAV, J.**
**DATE : FEBRUARY 28, 2024**

**P.C.:**

**1.** Heard Mr. Patil, learned Advocate for Applicant and Mr. Sawangikar, learned Advocate for Respondents.

**2.** Parties have reconciled their differences and disputes and settled the same which is subject matter of Regular Civil Suit No.68 of 2023 by filing Minutes of Order dated 28.02.2024. The said Minutes of order are taken on record and marked "**X**" for identification. The Minutes of Order are signed by authorised representative of Applicant and Respondent No.1, who are both Banks and their respective Advocates. The said Minutes of Orders are running into 7 pages which are scanned and reproduced below for immediate reference:-

Sr.No.2

"X" MNJadhav 28/2/2024 Tendered in court

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CIVIL REVISION APPLICATION NO. 704 OF 2023

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Versus

Canara Bank AndOrs ...Respondents

- Mr. Drupad Patil a/w. Mr. Dheeraj Patil for Applicant
- Mr. D. B. Sawangikar for Respondent No.1
- Mr. Sanjeevkumar Mane, Authorized Officer of Applicant
- Mr. Adityakumar Santosh Sapkale, Authorized Officer of Respondent No.1

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**CORAM : MILIND N. JADHAV J**

**DATE : FEBRUARY 28, 2024**

**MINUTES OF ORDER**

1. Applicant Bank is Original Defendant No.1, whereas Respondent No.1 is Original Plaintiff in Regular Civil Suit No. 68 of 2023 filed in the Court of Civil Judge

2

Senior Division, Gadhinglaj, Kolhapur for declaration and injunction. In the said suit, Applicant Bank had filed an Application below Exhibit – 17 under Order VII Rule11 of Code of Civil Procedure,1908. Vide order dated 06.07.2023, the Ld. Judge of Trial Court was pleased to reject said Application. Being aggrieved by the said order, Applicant Bank has filed present Civil Revision Application.

2. Respondent No.1 (Plaintiff in the Regular Civil Suit No, 68/ 2023) has filed above referred suit for declaration and injuction in respect of Deed of Mortgage dated 21.02.2014 and Supplementary Deed of Mortgage dated 21.05.2015 executed by Mr. Kashinath Ramgonda Kanade, in respect of land bearing Gat No. 462/1 admeasuring 0 H. 28 R. situated Kaulage Tal. Gadhinglaj, Dist. Kolhapur, as security for refund of loan amounts disbursed by Respondent No.1 (Plaintiff in the Regular Civil Suit No 68 of 2023) to the Respondent No.2, the Borrower. Said property is hereinafter referred as **"Suit Property"**.

3. The Respondent No. 2, the Borrower, Shri Kashinath Ramgonda Kanade has availed certain Credit facilities from the Respondent No. 1, Canara Bank and has executed Deed of Mortgage dated 21.02.2014 and Supplementary Deed of Mortgage dated

(3)

21.05.2015 in respect of the Suit Property being land bearing Gat No. 462/1 admeasuring 0 H. 28 R. situated Kaulage Tal. Gadhinglaj, Dist. Kolhapur in favour of the Respondent No. 1.

4. Vide Order dated 18.03.2023 Ld. Judge of Trial Court (in the matter of Regular Civil Suit No, 68/ 2023) has granted ad-interim relief in favour of Respondent No.1 (Plaintiff), thereby restraining the Applicant Bank from taking possession of Suit Property and to maintain status quo.

5. Applicant Bank has also disbursed loan in favour Mr. Kashinath Ramgonda Kanade and Mrs. Shubhangi Kashinath Kanade. As security, borrowers have executed Deed of Mortgage dated 20.03.2017 in favour of Applicant Bank in respect of various properties including suit property. As on 28.3.2018, an amount of Rs. 2,29,61,676/- was due and payable to Applicant Bank. Since Borrowers have failed and neglected repayment, Applicant Bank has initiated an action under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 for recovery of its outstanding dues. It is submitted that vide order dated 10.3.2023, passed under Section 14 of said Act, the District Magistrate, Kolhapur has appointed commissioner to take physical possession of properties mortgaged by borrowers vide Deed of Mortgage dated 20.3.2017.

(4)

6. As on 21.02.2024,following amounts are due and payable by Borrowers to Respondent No.1 Plaintiff Bank

| Sr. No. | Account No | Amount Outstanding (Rs.) | Rate of Interest (as on 21.02.2024) |
|---|---|---|---|
| 1 | 2579261005181 | 25,17,500.00 | 12.00% |
| 2 | 257955000054 | 93,856.29 | 9.25% |
| 3 | 2579895002167 | 2,70,912.00 | 8.75% |
| 4. | Legal Charges | 2,33,000.00 | ------- |
| | **Total Amount** | **31,15,268.29** | ------- |

7. On instructions, the Advocate for the Respondent No.1 submits that Respondent No.1 i.e. Canara Bank (being First and Priority Charge holder) do not have any objection for taking physical possession and the sale of "Suit Property" by the Applicant i.e. Bharati Sahakari Bank Ltd, provided, the sale proceeds, received from Sale of Suit Property, are firstly utilized to clear the above mentioned dues of Respondent No. 1 Bank along with interest at the rate as mentioned above in para no. 6 from 21.02.2024 till realization, subject to be any adjustment to be made in the interest if the borrower repay any of the aforesaid amount.

(5)

8. On instructions, the Advocate for Applicant Bank submits that if the Applicant is permitted to sell the "Suit Property", then, the Applicant Bank is ready to utilize the sale proceeds of suit property, firstly to clear above mentioned outstanding dues of Canara Bank and to utilize the balance sale proceeds for the purpose of satisfaction of Applicant's claim as against the Borrowers.

9. Since, Respondent No.1 Canara Bank has given consent for Sale of suit property, the present Civil Revision Application is disposed in following terms;

   a. Respondent No.1 i.e. Canara Bank shall not raise any objection for taking physical possession and Sale of Suit Property by the Applicant Bank.

   b. Applicant Bank shall utilize the sale proceeds of suit property, firstly, to clear the outstanding dues of Respondent No.1 amounting to Rs. 31,15,268.29/- along with interest at the rate as mentioned above in para no. 6 from 21.02.2024 till realization, subject to be any adjustment to be made in the interest if the borrower repay any of the aforesaid amount.

   c. Thereafter, the balance sale proceeds will be utilized by the Applicant for the purpose of

6

satisfaction of Applicant's claim as against the Borrowers.

d. Without prior consent of Applicant Bank, the Respondent No.1 Bank shall not disburse any further additional loan in favour of Borrowers by creating any further charge or on the basis of existing charge on Suit Property.

e. In the event the Applicant did not sell the property and/ or the Respondent No.2/ Borrower/ Guarantor if settles his dues due and payable to the Applicant or makes full payment of his dues to the Applicant then the Applicant shall neither release nor handover the possession of the suit property to the Respondent No. 2 or its Agent/ Assignors/ Legal Heirs and the First and Prior charge ofthe Respondent No. 1 shall remain intact and continue to prevail over the **"Suit Property"** till the satisfaction of the entire dues of the Respondent No. 1 and the Respondent No.1 shall be at liberty to initiate measures under SARFAESI Act / any other Act as may be applicable, for recovery of its dues due and payable by the by the Respondent No.2 Borrower against the Respondent No. 2 and the **"Suit Property"**.

(7)

f. No order as to cost.

Advocate
For Applicant

Authorised Officer
Bharati Sahakari Bank Ltd., Pune
Authorised Representative of Applicant

Advocate
For Respondent No.1

Authorised Representative of Respondent No.1

**3.** In view of the above, the parties shall be bound with the rights and obligations as stated in the Minutes of Order above. Parties shall act on them. The rights and obligations mentioned therein are taken as undertaking given to the Court and both the parties shall abide by the same. Needless to state that the impugned order dated 18.03.2023 passed by the Trial Court in Regular Civil Suit No.68 of 2023 below Exhibit-5 is quashed and set aside. In view of the Minutes of Order and reconciliation between the parties, the Regular Civil Suit No.68 of 2023 is disposed by consent of parties. As a consequence and in view of the Minutes of Order, the present Civil Revision Application is also disposed. All parties are directed to act on an authenticated copy of this order including the borrower (Respondent

No. 2) who is not present before me. This order and Minutes of Order arrived at between the parties i.e. Applicant – Bank and Respondent No.1 – Bank shall equally bind the Respondent No.2 – Borrower strictly in accordance with law.

**4.** With the above directions, Civil Revision Application is disposed.

H. H. SAWANT

**[ MILIND N. JADHAV, J. ]**

HARSHADA HANUMANT SAWANT

Digitally signed by HARSHADA HANUMANT SAWANT
Date: 2024.02.29 13:33:13 +0530