

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1510 OF 2024

Saurabhkumar S. Patel and Anr.

.. Petitioners

Versus

Baburay Pundalik Salunke and Anr.

.. Respondents

.....

- Ms. Nisha Shah i./by Mr. Kalpesh Joshi, Advocate for Petitioners.
- Ms. Swati Sawant a/w. Ms. Nikita Mandaniyan, Advocate for Respondent No.1.
- Ms. Shaila Taware, Advocate for Respondent No.2.

.....

CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 07, 2024

P.C.:

1. Heard Ms. Shah, learned Advocate for Petitioners, Ms. Sawant, learned Advocate for Respondent No.1 and Ms. Taware, learned Advocate for Respondent No.2.

2. I have perused the impugned order dated 02.12.2023. Admittedly there is an order dated 03.06.2019 under Section 14 of the Insolvency and Bankruptcy Code, 2016 against Defendant No.1. An application was filed by Plaintiff below Exhibit-53 seeking order of moratorium in the suit against Defendant No.1 only.

3. Suit transaction between Plaintiff and Defendant No.1 is of the year 2002 and subsequent transaction of the suit property between Defendant No.1 and Defendant Nos.2 and 3 is of the year 2006. Defendant Nos.2 and 3 claim to be *bonafide* purchasers of suit

property without notice of the alleged claim of Plaintiff. An Application incidentally below Exhibit-53 has been heard by the learned Trial Court and has been allowed with a direction that entire suit proceedings be stayed till the CB(IB) proceedings are determined by National Company Law Tribunal. This order has affected the Defendant Nos.2 and 3 who are the Petitioners before me. According to the Defendant No.1 an earnest amount of Rs.5,00,000/- was paid by the Plaintiff in respect of the suit flat, but further installments were not paid resultantly leading to forfeiture of the earnest amount by Defendant No.1.

4. Ms. Taware, learned Advocate for Defendant No.1 would submit that according to the ledger account of Defendant No.1, no amount whatsoever is due and payable to the Plaintiff from Defendant No.1. The account has now been taken charge of by the Resolution Professional. In the facts of the present case as referred and alluded to hereinabove, *prima facie*, I am of the opinion that suit filed by the Plaintiff is itself not maintainable. However, Ms. Sawant learned Advocate appearing for the Plaintiff who is Respondent No.1 in the present Petition would refute the same.

5. Respondents are therefore directed to file appropriate Affidavit-in-Reply. Affidavit-in-Reply to be filed within a period of two weeks from today. Rejoinder, if any, be filed within a week thereafter.

It is clarified that this Writ Petition shall be disposed of at the stage of admission itself on the next adjourned date.

6. Stand over to 21st February, 2024.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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HANUMANT
SAWANT

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by HARSHADA
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