

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 59 OF 2024

Trimurti Nagari Sahakari Pathsanstha

.. Applicant

Versus

~~Laxmibai Parshuram Mule~~

(since deceased) through

Suvarna Saheblal Daruwala & Ors.

.. Respondents

-
- Mr. Dheeraj D. Patil for Applicant

.....

CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 22, 2024

P. C.:

1. Not on board. Mentioned. Taken on board.
2. Perused the praecipe dated 22.02.2024. Heard Mr. Patil, learned Advocate for Applicant.
3. This Civil Revision Application (**CRA**) takes exception to the order passed on 09.10.2023 by the learned Trial Court in Application below Exh. 68 seeking rejection of plaint under O. VII, R. 11 of the CPC.
4. Mr. Patil has drawn my attention to the reliefs prayed for in the suit plaint which is at page No. 77 of the CRA and after perusing those reliefs, it is seen that the principal relief is prayer clause (b) which essentially challenges the recovery certificate issued by the bank pursuant to taking steps for recovery under the Maharashtra Co-

operative Societies Act, 1960 (for short **“the said Act”**). In so far as prayer clause (a) is concerned, Plaintiffs seeks cancellation of mortgage deed and such a prayer can only be a consequential prayer to prayer clause (b). Mr. Patil would urge that there is an express bar under the provisions of the said Act for institution of such suit in the Civil Court. He would submit that in that regard, Application below Exh. 68 was filed and issue was framed but learned Trial Court has gone into the merits of the case by returning a finding that the transaction between the parties has been executed and done irregularly through the mortgage deed and without due consideration to the express bar contained in Section 163 of the said Act held that at least the relief of injunction and cancellation can be granted by the Civil Court alone and has therefore rejected the Application.

5. An arguable case is made out by Mr. Patil for issuance of notice and stay of any further proceedings in RCS No. 272 of 2012. It is therefore directed that the learned Trial Court shall not proceed with further hearing in RCS No. 272 of 2012 until present CRA is decided.

6. Issue notice to the Respondents made returnable on 13.03.2024. Humdast permitted. In addition to Court's notice, Applicant is directed to serve copy of the CRA along with copy of this order on the Respondents and inform them about the next date of hearing by

any permissible mode of service and file appropriate affidavit of service with tangible proof thereof on or before the next date.

7. After receiving the notice, Respondents to file affidavit-in-reply on or before the next date, if so desired with an advance copy to the Advocate for Applicant.

8. Respondents are directed to remain present either themselves or through their Advocate on the next adjourned date. It is made clear that if Respondents remain absent despite service on the next adjourned date, this CRA shall be heard and disposed of at the stage of admission in the absence of the Respondents.

9. Stand over to **13th March, 2024.**

Amberkar

[MILIND N. JADHAV, J.]

RAVINDRA
MOHAN
AMBERKAR

Digitally signed
by RAVINDRA
MOHAN
AMBERKAR
Date: 2024.02.22
15:07:54 +0530