

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 8693 OF 2025
IN
WRIT PETITION NO.3272 OF 2025

Eastman Garments Pvt. Ltd. ... Applicant

In the matter between

Tourism Finance Corporation of ... Petitioner
India Ltd.

V/s.

Tourism Finance Corporation Of ... Respondents
India Limited And Ors.

Mr. R.V. Pai, Senior Advocate with Siddhi Bhosale and Akshay Pai, for the applicant in IA/8693/2025.

Mr. Surel Shah, Senior Advocate with Sagar Kasar, Chaitali Bhogle and Rishabh Tiwari, for the respondent no. 1.

Mr. Naushad Engineer with Siddharth Samatraj, Vinod Kothari and Kshitij Parek I.by M/s. Apex Law Partner, for petitioner.

Mr. Amol Wagh, for the respondent nos. 2 and. 3.

Mr. Hamid Mulla, AGP, for the State/respondent Nos. 6 and 7.

Mr. Vishal Tambat, for the respondent no. 4 in WP/3272/2025

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CORAM : N.J. JAMADAR, J.

DATE : 16TH OCTOBER 2025.

PC:

1. Heard the learned counsel for the applicant and the learned counsel for the respondents.
2. The applicant is an auction purchaser. The applicant, inter alia, seeks to direction to the Petitioners to add the Applicant and Talegaon MIDC, Police Station, as party-Respondents in the instant petition, which assails an order passed by the learned District Judge on 24th January 2025 in Miscellaneous Civil Appeal No. 47 of 2024, whereby the order passed by the Civil Judge rejecting the application for temporary injunction in Regular Civil Suit No. 305 of 2023 was set aside and the appeal came to be partly allowed, restraining the respondents/defendant nos. 1 to 5 in the said suit from creating third party interest in the suit property without due process of law to the extent of the share of the appellant/Respondent No.1 in the Petition, in the suit property, till the final disposal of the suit.
3. The petitioner in Writ Petition No. 3272 of 2025, had advanced financial assistance to Aishwarya Regency LLP. Defendant nos. 2 and 3 were the guarantors. Security interest was created in the property which is the subject matter of the Regular Civil Suit No. 305 of 2023. As the defendant nos. 2 and 3 committed default in the repayment, the security interest was enforced, and the defendant no. 5

initiated steps under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. Symbolic possession was taken on 15th March 2023. In view of hindrances, the Petitioner could take possession of the suit premises on 7th November 2023. Steps to sell the subject property were initiated.

4. The applicant has purchased the subject property in the public auction held on 28th January 2025. The applicant seeks impleadment in this petition on the premise that, the applicant has acquired interest in the subject matter of the suit property.

5. The respondent no. 1 has filed an affidavit opposing the prayer for intervention and impleadment of the applicant.

6. Mr. Shah, the learned Senior Advocate for the respondent no. 1 submitted that, since the applicant has purchased the subject property in an auction held on 28th January 2025, in teeth of the impugned order passed by the learned District Judge restraining the petitioner/defendant no. 5 from creating third party interest in the suit property till the final disposal of the suit, the transaction is void. A party who claims to purchased the suit property in the teeth of an injunction order is not entitled to be heard in the instant petition. In fact, the

petition itself deserves to be dismissed for the flagrant violation of the injunction granted by the learned District Judge, submitted Mr. Shah.

7. To lend support to this submission, Mr. Shah placed reliance on the judgment of the Supreme Court in the case of ***‘Balwantbhai Somabhai Bhandari Vs Hiralal Somabhai Contractor (deceased) represented by Lrs and Ors.’¹***.

8. In opposition to this, Mr. Pai, the learned Senior Advocate for the applicant, would urge that, the applicant’s interest was created in the subject matter of the suit before the petition came to be filed. In any event, the sale cannot be said to be in violation of an injunction order, as the learned District Judge had restrained the defendants from creating third party interest in the suit property without following due process of law. Mr. Pai would urge, indeed due process of law was followed.

9. The question as to whether the transaction in question is void on the account of having been executed after the impugned order was passed by the District Judge, would be a matter for determination . A host of factors may be required to be examined to determine the legality and validity of the said transaction. Yet, the fact remains that

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there is a devolution of interest during the pendency of the proceedings within the contemplation of the Order XXII Rule 10 of the Civil Procedure Code, 1908. Whether that devolution of interest is legal and valid, would be a matter for adjudication.

10. Keeping open all the issues, the applicant deserves to be heard in this petition.

11. The petitioner shall amend the petition and add the applicant as party respondent to the petition.

12. Necessary amendment be carried out within a period of two weeks.

13. The Application be listed for hearing on the other prayers in the Application on 10th November 2025.

(N.J. JAMADAR, J)