
(2013) 11 BOM CK 0084

In the Bombay High Court

Case No : Writ Petition No. 8224 of 2011

Shakuntala Shamsing Mali and Another

APPELLANT

Vs

Housing Development Finance Corporation Ltd. and Others

RESPONDENT

Date of Decision : 27-11-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47

Citation : (2014) 2 ALLMR 163 : (2014) 3 BomCR 132 : (2014) 2 MhLj 974

Hon'ble Judges : Ravindra V. Ghuge, J

Bench : Single Bench

Advocate : U.S. Patil, for the Appellant; S.V. Adwant, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Ravindra V. Ghuge, J.—Heard learned advocates for the respective parties. None appeared for respondent Nos. 2, 3 and 4 though served. Contention of the petitioner is that the petitioners had borrowed loan of an amount of Rs. 23,000/- from respondent No. 1/Bank. An amount of Rs. 11,447/- was repaid to the said Bank. Balance amount of Rs. 11,526/- stood in the loan account of the petitioners.

2. Respondent No. 4, on 10/06/1988 purchased suit property of petitioner no. 1 for an amount of Rs. 1,93,000/- out of which an amount of Rs. 1,80,000/- was to be paid and Rs. 13,000/- were earmarked to be paid to respondent No. 1 bank as against existing loan amount of the petitioners.

3. Respondent/Bank initiated Spl. C.S. No. 301/1996 before the learned Civil Judge, S.D. Nashik for recovery of the amount of Rs. 33,540/-. The petitioners, though served, did not participate in the said proceedings. Eventually, the learned Court decreed the suit of the respondent No. 1/Bank on 19/03/1997 in the absence of the petitioners.

4. Respondent No. 1 Bank, thereafter filed Spl. Dkt. No. 11/1998 in the Court of

Civil Judge, S.D. Jalgaon seeking execution of the decree dated 19/03/1997.

5. In the meanwhile, the petitioners filed a Misc. Civil Application No. 102/1998 seeking "setting aside" of the ex-parte decree. According to the petitioners, the said application has been rejected and the ex-parte decree dated 19/03/1997 has been left untouched. He prays to be excused for having not been able to produce a copy of the order of rejection of his Misc. Application No. 102/1998. However, he fairly states that as a consequence thereof and in view of the petitioners having not initiated any further proceedings with reference to the ex-parte decree, the said decree has attained finality.

6. The petitioners submit that an application u/s. 47 of the Civil Procedure Code, 1908 has been filed before the Executing Court. It is further stated that since his application Exh. 19 is pending on the file of the Executing Court, the impugned order of attachment could not have been and ought not to have been passed. He placed his reliance on the case of Sarojini Nunes Vs. Smt. Lennet Godinho and others, 2008 (5) All MR 176. According to him, the view taken by the learned Single Judge of this Court in the said matter squarely applies to this case. He further states that an application for objections filed in the execution proceedings needs to be heard and decided before the Executing Court proceeds with the matter and therefore as per his submissions until his application Exh. 19 is not decided, the execution proceedings could not have progressed at all. According to him, the learned Lower Court ought to have first decided his application Exh. 19 without which the Court should not have proceeded further. Therefore, the impugned order is rendered unsustainable and deserves to be quashed and set aside.

7. He further states that he has been granted ad interim protection by this Court vide its order dated 20/10/2011 subject to the petitioners' depositing Rs. 10,000/-. According to him, the said amount is deposited in this Court.

8. Adv. Mr. S.V. Adwant for the contesting respondent No. 1 draws my attention to the fact that the execution proceeding Spl. Dkt. No. 11/1998 was initiated way back on 21/02/1998. According to him, the petitioner has merely resorted to a formality by submitting an application Exh. 19 raising objections and has thereafter not resorted to any diligent steps to have the said application decided. He further states that if the submissions of the petitioners are accepted, it would mean that any litigant would file objections u/s. 47 of the C.P.C. and thereafter leave the application pending so as to stall the progress of the execution proceedings.

9. According to Adv. Mr. Adwant, if this modus operandi is approved by any pronouncement of the Court, it would amount to litigant's taking disadvantage of the same as is found in this case.

10. He is in agreement with the learned Advocate for the petitioners so far as the transfer of Spl. Dkt. No. 11/1998 to the Civil Judge, J.D. Chalisgaon, Dist. Jalgaon and it being re-numbered as R.D. No. 24/2001.

11. He further submits that despite the said Darkhast having been transferred and it being received on 30/03/2001 in the Court of Civil Judge, J.D. Chalisgaon, as is evident from page no. 15 of the paper book, the petitioners have thereafter not initiated any step to have Exh. 19 decided. According to him, the conduct of the petitioners clearly indicates that they are negligent, in as much as, have deliberately kept Exh. 19 pending to stall the execution proceedings. In the original proceedings, also the petitioners were negligent and even in these proceedings, Exh. 19 is pending for a period of almost 11 years. The impugned order of attachment is dated 07/10/2011. He clarifies that the order of attachment was also passed earlier on 04/07/1998 as can be seen from page no. 15 of the paper book.

12. In the light of the above, though I am in respectful agreement with a view taken by the learned Single Judge of this Court in the Sarojini's case (supra), the same can be of no avail to the petitioners in the light of their conduct and negligence on their part.

13. In this view of the matter, writ petition stands dismissed with no order as to costs.

14. An amount of Rs. 10,000/- has been deposited by the petitioners in this Court. At this juncture, Adv. Mr. Adwant submits that if the said amount is paid to respondent No. 1, that would be adjusted against the outstanding dues, which is the subject matter of the execution proceedings. Learned Advocate for the petitioners fairly concedes to the same and agrees that this amount be adjusted towards the outstanding loan amount. As such, the said amount of Rs. 10,000/- be paid to respondent No. 1 forthwith. This aspect be brought to the notice of the Executing Court by respondent No. 1 within 15 days from the date of receiving the amount of Rs. 10,000/-.