

(2002) 10 BOM CK 0039

In the Bombay High Court

Case No : Appeal from Order No. 44 of 2002

Suresh Malappa Shetty

APPELLANT

Vs

Special Recovery Officer and Others

RESPONDENT

Date of Decision : 23-10-2002

Acts Referred:

Easements Act, 1882 — Section 52

Transfer of Property Act, 1882 — Section 53

Citation : (2003) 2 ALLMR 254 : (2003) 4 BomCR 745 : (2003) 3 MhLj 248

Hon'ble Judges : V.C. Daga, J

Bench : Single Bench

Advocate : S.M. Oak, for the Appellant; Kishor V. Tember, for the Respondent

Judgement

V.C. Daga, J.—Heard finally by consent of parties at the stage of admission.

Perused record and documents.

Introduction :

2. The source of this appeal is the order dated 27th November 2001 passed by the Bombay City Civil Court at Mumbai dismissing the notice of motion moved by the appellant/original plaintiff seeking to restrain the respondents/original defendants by an order of injunction from interfering with the alleged lawful possession of the plaintiff over the suit flat i.e. flat No. 401, located on the fourth floor of building No. 5, Neelan Nagar, Mulund (E), Mumbai 400 081 (hereinafter referred to as the "suit flat").

FACTS :

3. The facts leading to the present appeal, in nut shell, are as under : The parties are referred to in their original capacity as they were before the City Civil Court. The defendant No. 3 is the owner of the suit flat. He had mortgaged this flat with defendant No. 2 i.e. Bharat Co-op. Bank (Mumbai) Ltd. ("the Bank" for short) by executing necessary loan documents including equitable mortgage dated 6th

September 1995. He failed to repay the amount of loan borrowed from the Bank. Consequently, the Bank filed suit in a Cooperative Court and obtained an order of attachment before judgment on 30th April 1998 which, ultimately, culminated in the final award dated 10th February 2000 with the order of attachment of the property. In the award, the defendant No. 3 was directed to pay the entire awarded amount in the sum of Rs. 57,31,158/- with simple interest thereon at the rate of 16.5% per annum from 1st January 2000 till repayment in full and final to the Bank and, in the event of default, the Bank was granted liberty to sell the attached property, namely, suit flat and was further permitted to adjust the sale proceeds towards their dues with further direction to refund the balance, if any, to defendant No. 3.

4. That after the aforesaid award, defendant No. 1, the Special Recovery Officer, appointed under the provisions of the Maharashtra Co-operative Societies Act, 1960 ("the Act" for short) took steps to execute the award on the motion made by the Bank. In execution of the award, he also took necessary steps to take possession of the suit flat by pasting notice on the outer portion of the suit flat on 10th August 2001. By this notice, the plaintiff being in possession of the suit flat was asked to deliver vacant possession thereof by 20th August 2001. Being aggrieved by this direction, the plaintiff filed suit being S.C. Suit No. 4392 of 2001 seeking decree of declaration and permanent injunction.

5. The reading of the plaint shows that the declaration sought is that, the defendants are not entitled to dispossess the plaintiff from the suit flat since he is in possession of the suit flat in his own rights and prayed for a decree of permanent injunction restraining defendant Nos. 1 and 2 from interfering with the lawful possession of the plaintiff over the suit flat. The plaintiff contends that he has an independent right to possess the suit flat since he had obtained possession under leave and licence agreement from defendant No. 3, on 1st June 1993 and is in possession thereof in his own rights. The plaintiff in the suit asserts that he has independent right, title and interest over the suit flat and that the order of the Cooperative Court is not binding on him. Consequently, the action to execute the award of the Co-operative Court and consequent direction directing delivery of possession is bad and illegal. In the plaint a further contention is that the possession over the suit flat constitutes an encumbrance on the property as envisaged under Rule 107 of the Maharashtra Co-operative Societies Rules, 1961 ("said Rules" for short), as such it ought to have been notified in the sale proclamation. The plaintiff further contends that the Bank has to follow proper procedure as contemplated under Rule 107 of the said Rules, as such he is entitled to a decree of permanent injunction. The plaintiff by a separate notice of motion prayed for interim relief in the nature of injunction under order 39 Rule 1 and 2 of the Code of Civil Procedure, 1908 ("C.P.C" for short) restraining defendant Nos. 1 and 2 from disturbing his possession over the suit flat.

6. On being noticed, defendant No. 2 -- Bank appeared and filed its affidavit in

reply to oppose notice of motion seeking interim injunction. In reply, it was contended that the leave and licence agreement is a false and fabricated document brought into existence with the mala fide intention to prevent the creditor Bank from taking over possession of the suit flat, as such it should not be relied upon. It was further urged that the said document had been anti-dated and got embossed on the stamp paper purchased in the name of one "Unique Land Developer" who had nothing to do with the transaction in question. According to defendant No. 2, the said document styled as "leave and licence agreement", not being the genuine document, has no legs to stand and should be ignored. It was further contended that sufficient and intrinsic evidence was available on record to show that the document was manufactured by the plaintiff in collusion with defendant No. 3 with mala fide intention to defraud the Bank so as to deprive it of its valuable security. Alternatively, it was contended that the alleged "leave and licence agreement", alleged to have been obtained by the plaintiff, did not create any legal right over the immovable property in favour of the plaintiff, assuming it to be a legal document. Consequently, it was urged that on plaintiff's own showing, he could not have any legal right, title and interest of whatsoever nature in the suit flat.

7. With the aforesaid rival contentions on record, the palties were heard by the learned Judge of the City Civil Court, who has pleased to dismiss the notice of motion by a well reasoned speaking order dated 27th November 2001.

Being aggrieved by the aforesaid order of refusal, the plaintiff preferred this appeal on the grounds set out in the memo of appeal.

The Submissions :

8. The learned counsel appearing for the appellant/plaintiff took me through the entire material available on record including the document styled as "leave and licence agreement" and contended that the plaintiff was and is holding possession of the suit flat in the capacity of the licensee of defendant No. 3; in his own rights. The licence in question being in perpetuity he has a subsisting interest in the suit flat. In his submission, this interest can very well be described as "encumbrance" on the suit property. It was, therefore, obligatory on the part of the Recovery Officer to show this encumbrance over the property (suit flat) as laid down under Rule 107 of the said Rules. The plaintiff, therefore, contended that the Court below was wrong in refusing to grant ad-interim relief and thereby refusing to protect his possession over the suit flat. He prayed for setting aside the impugned order and to grant injunction by making the notice of motion absolute.

9. Per contra, Mr. Tembe, learned counsel appearing for the Bank took me through the detailed procedure required to be followed under the provisions of the Maharashtra Co-operative Societies Act, 1960 and rules framed thereunder to execute award or decree. He also brought to my notice the necessary steps which were taken for execution of the award by the Bank. He relied upon Rule

107 which deals with encumbrances and possession of the property u/s 156 of the Act. He submitted that the alleged leave and licence agreement could not be said to be a prior encumbrance on the suit flat. He further submitted that the order of attachment before judgment dated 30th April 1998 culminated in the confirmation thereof with passing of the award. The defendant No. 3 was very much present before the Co-operative Court and at no point of time he set up any objection to the effect that he was not in possession of the suit flat since the plaintiff was put in possession thereof. He further pointed out that at the time of execution of the mortgage deed and indemnity bond, the officers of the Bank had carried out physical verification and at that time they did find that defendant No. 3 was in exclusive possession of the suit flat. He further contended that the alleged leave and licence agreement between the plaintiff and defendant No. 3 dated 1st June 1993 is nothing but a bogus and fabricated document not only prepared subsequent to the date of mortgage but appears to have been prepared even subsequent to the date of award passed by the Cooperative Court so as to deprive the Bank of its legitimate right to reap the fruits of the award. He further contended that the said document styled as "leave and licence agreement", if further examined in detail, it would be clear that the said document is on the stamp paper dated 2nd March 1993 which is in the name of Unique Land Developers and not in the name of either of the parties to the agreement.

10. In the submission of the learned counsel for the Bank, the leave and licence agreement is normally for eleven months with renewal clause. No leave and licence agreement is made in perpetuity. Sub-para (a) of para-2 of the said agreement states that party has agreed that there is no loan outstanding against the flat and that flat is not mortgaged to any party or any financial institution and that no order of attachment subsists. Such recitals, generally, are not to be found in the leave and licence agreement.

11. Mr.Tembe further pointed out that in para 4 of the agreement alleged payment of Rs. 1,20,000/- has been shown to have been made by the plaintiff towards compensation for a period of ten years from 1st June 1993 to 30th May 2003 that too in cash. Besides these recitals no documentary evidence or any other evidence or proof is produced on record to show that really such payment of Rs. 1,20,000/- was made by the plaintiff to defendant No. 3. In his submission, this document appears to be manipulated and fabricated document brought into existence just to defraud the creditor -- Bank. He, in the wake of his submissions, prayed for dismissal of the appeal.

THE STATUTORY PROVISIONS :

12. Before I deal with the aforesaid contentions raised on behalf of the parties to the appeal, it would be appropriate to first consider the statutory provisions applicable in the present case.

Section 100 of the Act reads as under :

"100. Transfer of property which cannot be sold. -- (1) When in any execution of

an order sought to be executed u/s 98, or the recovery of any amount u/s 101 or Section 137, any property cannot be sold for want of buyers, if such property is in occupancy of the " defaulter, or of some person in his behalf, or of some person claiming under a title created by the defaulter subsequently to the issue of the certificate of the Registrar, Court, liquidator or the Assistant Registrar, under Clause (a) or (b) of Section 98, or u/s 101 or 137, the Court or the Collector or the Registrar, as the case may be, may, notwithstanding anything contained in any law for the time being in force, direct that the said property or any portion thereof shall be transferred to the society which has applied for the execution of the said order, in the manner prescribed.

(2) Where property is transferred to the society under the foregoing sub-section or where property is sold u/s 98, 101 or 137, the Court, the Collector, or the Registrar, as the case may be, may, in accordance with the rules, place the society or the purchaser, as the case may be, in possession of the property transferred or sold.

(3) Subject to such rules as may be made in this behalf, and to any rights encumbrances, charges or equities lawfully subsisting in favour of any person, such property or portion thereof shall be held under Sub-section (1) by the said society on such terms and conditions as may be agreed upon between the Court, the Collector or the Registrar, as the case may be, and the said society. Subject to the general or special orders of the State Government, the Collector or the Registrar may delegate to an officer, not below the rank of an Assistant or the Deputy Registrar under this section."

Rule 85 of the said Rules, so far as it is relevant, reads as under :

85. Transfer of property which cannot be sold-

(1) to (7).....

(8) The Transfer of the property under Sub-rule (5) shall be effected as follows :
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(i) (ii) In the case of immovable property :--

(a) (b) Where the property is in the possession of the defaulter or of some person on his behalf or some person claiming under a title created by the defaulter subsequent to the issue of a certificate u/s 98, the Court or the Collector or the Registrar, as the case may be, shall order delivery to be made by putting the society or any person whom the society may appoint to receive delivery on its behalf in actual possession of the property and if need be, by removing any person who illegally refuses to vacate the same.

(c) Where the property is in the possession of a tenant or other person entitled to hold the same by a title acquired before the date of issue of a certificate u/s 98, the Court or the Collector or the Registrar, as the case may be, shall order delivery to be made by affixing a copy of the certificate of transfer of the

property to the society in some conspicuous place on the property and proclaiming to such person by beat of drum or other customary mode at some convenient place, that the interest of the defaulter has been transferred to the society.

(9) to (15) " Rule 107 of the said Rules, so far as is relevant, reads as under :

"107. Procedure for attachment and sale of property u/s 156. -- (1) A creditor holding a decree requiring the provisions of Section 156 to be applied, or society to which :--

(a) (b) (c)
(d) (e) any amount is due under a certificate granted by the Registrar under Sub-section (1) or (2) of Section 101 or under Sub-section (1) of Section 137 together with interest, if any, due on such amount or sum and the costs of process by the attachment and sale or by sale without attachment of the property of the person against whom such decree, decision, award or order has been obtained or passed, shall apply to the Recovery Officer within whose jurisdiction the debtor resides or the property of the debtor is situated. In the case of a society, a copy of the resolution of the committee of the society authorising any of the members to make and sign the application on its behalf, shall accompany the application.

(2) to (10) (11) In the attachment and sale or sale without attachment of immovable property, the following rules shall be observed.

(a) to (d) (e) Proclamation of sale shall be published by affixing a notice in the office of the Recovery Officer and the taluka office at least thirty days before the date fixed for the sale and also by beat of drum in the village (on two consecutive days previous to the date of sale and on the day of sale prior to the commencement of the sale). Such proclamation shall, where attachment is required before sale, be made after the attachment has been effected. Notice shall also be given to the applicant and defaulter. The proclamation shall state the time and place of sale and specify as fairly and accurately as possible :--

(i) the property to be sold,

(ii) any encumbrance to which the property is liable;

(iii) the amount for the recovery of which sale is ordered and

(iv) every other matter which the Sale Officer considers material for a purchaser to know in order to judge the nature and value of the property.

(f) When any immovable property is sold under these rules, the sale shall be subject to the prior encumbrances on the property, if any. The applicant shall, when the amount for the realisation of which the sale is held exceeds Rs. 100, furnish to the Sale Officer within such time as may be fixed by him or by the

Recovery Officer, an encumbrance certificate from the Registration Department for the period of not less than twelve years prior to the date of attachment of the property sought to be sold, or in cases falling under the proviso to Sub-rule (10), prior to the date of the application for execution. The time for production of the encumbrance certificate may be extended at the discretion of the Sale Officer or the Recovery Officer, as the case may be. The sale shall be by public auction to the highest bidder;

Provided that it shall be open to the Sale Officer to decline to accept the highest bid where the price offered appears to be unduly low or for other adequate reasons:

Provided further that the recovery Officer or the Sale Officer may, in his discretion, adjourn the sale to a specified day and hour, recording his reason for such adjournment. Where a sale is so adjourned for a longer period than seven days, a fresh proclamation under Clause (e) shall be made, unless the defaulter consents to waive it.

The sale shall be held after the expiry of not less than thirty days calculated from the date on which notice of the proclamation was affixed in the office of the Recovery Officer. The time and place of sale shall be fixed by the Recovery Officer and the place of sale shall be the village where the property to be sold is situated or such adjoining prominent place of public resort as may be fixed by the Recovery Officer:

Provided that in cases where an encumbrance certificate is not obtainable owing to the destruction of the connected records, an affidavit from the village Talathi or corresponding officer in regard to the encumbrances known to him supported by a certificate from the Registration Department that the encumbrance certificate cannot be granted owing to the destruction of the connected records shall be accepted in place of an encumbrance certificate.

(g) to (k)(12) to (23)"

DISCUSSION AND FINDINGS :

13. Having heard the rival contentions and having perused the record and the compilation of documents produced by the Bank, it is clear that the plaintiff is claiming possession over the suit flat under the document styled as "leave and licence agreement", purported to be dated 1st June 1993, alleged to have been executed by the borrower of the Bank, Shri Raghunath T. Kuckian, the defendant No. 3. The contention based on the above document, sought to be canvassed by the appellant is that, in view of Rule 107(11)(e) of the said Rules, the possession of the suit flat under leave and licence agreement is an encumbrance on the suit property, as such it ought to have been reflected in the sale proclamation so as to make the sale, if any, subject to the prior encumbrances on the property. Another contention sought to be canvassed is that Section 100 of the Act contemplates that when in execution of the order sought to be executed u/s 98,

or recovery of any amount u/s 101 or Section 137, any property cannot be sold for want of buyers, if such property is in occupancy of the defaulter, or of some person in his behalf, or of some person claiming under title created by the defaulter subsequent to the issue of the certificate of the Registrar, the Court, or the Collector, as the case may be, may, notwithstanding anything contained in any law for the time being in force, direct that the said property or any portion thereof shall be transferred to the society which has applied for the execution of the said order, in the manner prescribed. If that be so, the possession can only be taken in accordance with the procedure laid down under Rule 85 of the said Rules, subject to the prior encumbrances on the property. In other words, the submission of the appellant/plaintiff is that the suit flat cannot be transferred in favour of the society since he is in possession of the suit flat much prior to the date of attachment before judgment and, at any rate, if at all the possession is to be taken, it should be subject to his right to possess the same in his own rights; as envisaged in the document styled as "leave and licence agreement". These contentions need judicial scrutiny.

14. In my view, none of these submissions are sustainable. Rule 107 contemplates encumbrance certificate from the Registration Department for a period of not less than 12 years prior to the date of attachment of the property sought to be sold so as to establish encumbrance on the property. Reading of this rule as a whole would unequivocally show that the encumbrance must be created by a document which is required to be registered with the office of the Sub-Registrar under the provisions of the Registration Act. So far as the present document styled as leave and licence agreement is concerned, this document has not been registered with the Registration Department, what is contemplated under the aforesaid Sub-rule (11)(f) of Rule 107 of the said Rules is the registered encumbrance, as such; unregistered document under which leave and licence has been created cannot be said to be an act creating encumbrance on the property as contemplated under Rule 107(11)(f) of the said Rules. The leave and licence agreement in question cannot be said to be an encumbrance on the suit flat as contemplated under the said Rules. The submission made in this behalf is thus liable to be rejected being without any merit.

15. A document legally creating leave and licence in favour of the licensee cannot create encumbrance on the immovable property for the simple reason that whenever the licence is created in favour of the licensee, the licensee is always treated to be in permissive possession. He is given only authority to enter into the premises. The possession is always with the licensor. Only entry in the premises is made legal. It does not create any title in favour of the licensee. A licence is a mere grant of a personal privilege to do something upon, without conferring an estate in the land. The classic definition of a licence was propounded by Vaughan C. J. in the seventeenth century in *Thomas v. Sorrell*, 1673 Vaughan 330 (P. 351)

A dispensation or licence properly passed no interest nor alters or transfers

property in anything, but only makes an action lawful, which without it had been unlawful.

Section 52 of Indian Easements Act, 1882 defines licence as follows. Where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in property, the right is called a licence. It does not create any right to possess in favour of the licensee. Viewed from all these angles, by no stretch of imagination it can be said to be an encumbrance on the immovable property in any manner. The title is always with the licensor. The plaintiff has no interest in the property. He has no locus to raise any objection in this behalf so as to prevent the Bank from claiming vacant possession of the flat in question. He cannot be allowed to file litigation on behalf of some other person taking advantage of the document styled as leave and licence agreement.

16. Apart from the above, assuming for the sake of argument that the alleged leave and licence agreement is an encumbrance and amounts to a transfer of suit property as argued by the appellant, even then, this document styled as leave and licence agreement is liable to be ignored being a fraudulent document brought into existence only to defeat the liability towards the creditor, the Bank. The said document is hit by the provision of Section 53 of the Transfer of Property Act, 1882("T.P. Act" for short), the relevant portion of which thus reads as under :

"53. Fraudulent transfer. -- (1) Every transfer of immovable property made with intent to defeat or delay the creditors of the transferor shall be voidable at the option of any creditor so defeated or delayed.

Nothing in this sub-section shall impair the rights of a transferee in good faith and for consideration.

Nothing in this sub-section shall affect any law for the time being in force relating to insolvency.

A suit instituted by a creditor (which term includes a decree-holder whether he has or has not applied for execution of his decree) to avoid transfer on the ground that it has been made with intent to defeat or delay the creditors of the transferor shall be instituted on behalf of, or for the benefit of, all the creditors.

(2) Every transfer of immovable property made without consideration with intent to defraud a subsequent transferee shall be voidable at the option of such transferee.

For the purposes of this sub-section, no transfer made without consideration shall be deemed to have been made with intent to defraud by reason only that a subsequent transfer for consideration was made.

17. Before analysing the section mentioned above, it will be necessary to quote the averments made in the reply by the creditor -- Bank. In para-4 of the affidavit in reply, the Bank has stated that such an agreement does not create any right or interest in immovable property. It is said that for various reasons set out in the reply the purported leave and licence agreement is a false and fabricated document, which has been ante-dated and has been brought into existence with the malafide intention to support the false case of defendant No. 3. The very fact that such covenant contains the recitals that no loan is outstanding against the suit flat shows that the document has been prepared with intention to defraud the creditor -- Bank with full knowledge of the existence of such loan liability secured by mortgage of the suit flat. The said document is a fabricated and antedated document created with a view to circumvent the said mortgage and defeat the loan security. It appears that sometime after the award of the Co-operative Court during the pendency of the execution proceedings the defendant No. 3 in collusion with the plaintiff prepared this false document and inducted him in the suit flat with dishonest and malafide intention to deprive the Bank of its valuable security.

18. It is no doubt true that the affidavit in reply has not been artistically drafted; keeping in view the language of Section 53(1) of the T.P. Act, but in the light of the averments made it must be held that the defendant No. 2 -- Bank raised two distinct pleas that the document in question is false, fabricated and brought into existence illegally with intention to defraud defendant No. 2 to deprive its valuable security and not entitle to pass any title in favour of the plaintiff. In the alternative, it has also been pleaded that the document in question is not only false but also fraudulent. The purpose of the plea, if read as a whole in its proper perspective, it could not be said that there is no sufficient plea to defend, based on Section 53 of the T.P. Act so as to justify or entitle the Court to offer relief, if satisfied or proved.

19. u/s 53 of the T.P. Act a person who challenges the validity of the transaction must prove two facts -- (1) that the document was executed by the settler and (2) that the said document was executed with clear intention to defraud or delay the creditor. How the intention is to be proved is a matter which would largely depend on the facts and circumstances of each case. One has to take into account that the document in question is on the stamp paper purchased in the name of one Unique Land Developer, who is not party to the document, who has nothing to do with the transaction in question. Had it been the genuine transaction, the stamp paper would have been purchased in the name of either of the parties. The very fact that the old stamp paper lying with somebody, other than the persons involved in the transaction, has been used is one of the strong indicators to suggest that possibility of the document being ante-dated cannot be ruled out.

20. The mode, manner and tenor of the document including the contents thereof; strongly suggest that the draftsman of the document is not other than

of a legal brain. It cannot be assumed that the draftsman of the agreement had no knowledge about the drafting of such document and requirement of registration thereof but he must have been handicapped because of the necessity to create document in a previous date so as to show that the transaction has been done much prior to the date of attachment before judgment. The document in question contains factually incorrect recitals with respect to non-borrowing of loan and non-creation of any charge on the suit property even though these facts were well within the knowledge of the licensor, the defendant No. 3, the original owner of the flat, obviously, to show the transaction as genuine and prior to the date of attachment order. Apart from this, the document contains recital showing payment of Rs. 1,20,000/- in cash. There is no material available on record from which account the cash was withdrawn by the plaintiff and how such payment of huge amount was made in cash. There is also no material on record to show that how such cash was really received by defendant No. 3 and that he invested the same in some security or used for making certain payments. All these facts and circumstances, if seen in its proper perspective, it would be clear that the document in question is nothing but a fraudulent document brought in existence to defeat the claim of the creditor/defendant No. 2 bank.

21. For the reasons recorded hereinabove, even the second limb of the submission based on Section 100 of the Act read with Rule 85(8)(b) and (c) of the said Rules is also liable to be rejected being devoid of any substance. No right can be said to have been created in favour of the plaintiff on the basis of the document alleged to be an agreement of leave and licence. The said document is not only illegal, bad and inadmissible but the same is also false, fabricated, manufactured and engineered to defeat the lawful claim of the creditor Bank, the decree holder. It has no legs to stand in the eye of law and the same does not create any right, title and interest muchless any encumbrance on the suit flat in favour of the plaintiff.

22. This is a case where the appellant produced a fabricated and anti-dated document showing transfer of possession in his favour and tried to build false thereon, as such he did not approach the Court with clean hands. He is, therefore, not entitled to equitable relief of injunction. The Apex Court, in the case of S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, observed as under :-

"The Courts of law are meant for imparting justice between the parties. One who comes to the Court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court process a convenient lever to retain the illegal gains indefinitely. We have no hesitation to say that a person whose case is based on falsehood, has no right to approach the Court. He can be summarily thrown out at any stage of the litigation.

Similar view has been expressed by the Supreme Court in the case of Chandra

Shashi Vs. Anil Kumar Verma, , In the said Judgment it is observed as follows :

"The stream of administration of justice has to remain unpolluted so that purity of court's atmosphere may give vitality to all the organs of the State. Polluters of judicial firmament are, therefore, required to be well taken care of to maintain the sublimity of court's environment, so also to enable it to administer justice fairly and to the satisfaction of all concerned.

2. Anyone who takes recourse to fraud, deflects the course of judicial proceedings, or if anything is done with oblique motive, the same interferes with the administration of justice. Such persons are required to be properly dealt with, not only to punish them for the wrong done, but also to deter others from indulging in similar acts which shake the faith of people in the system of administration of justice.

3. These prefatory remarks well project the importance of the point under consideration in this suo motu contempt action taken against respondent Anil Kumar for his having filed a fabricated document to oppose the prayer of his wife seeking transfer of matrimonial proceeding from Delhi to Unnao. It shall be first required to be seen whether Anil did file a fabricated document and then we shall address ourselves as to whether filing of a forged document with intention to defraud amounts to contempt of court, as this expression has been defined in Section 2 of the Contempt of Courts Act, 1971 (the Act.)

5. "The real question is whether filing of the aforesaid forged and fabricated document amounts to contempt. According to Shri Ganguli, appearing for Anil Kumar this does not. Let it be seen whether the contention advanced by Shri Ganguli is tenable."

8. To enable the courts to ward off unjustified interference in their working, those who indulge in immoral acts like perjury, prevarication and motivated falsehoods have to be appropriately dealt with, without, which it would not be possible for any Court to administer justice in the true sense and to the satisfaction of those who approach it in the hope that truth would ultimately prevail. People would have faith in Courts when they would find that (In Marathi script) (Satyamev Jayte) (truth alone triumphs) is an achievable aim there, or (In Marathi script) Yato Dharmastato Jay) (it is virtue which ends in victory) is not only inscribed in emblem but really happen in the portals of courts."

This view has been followed by our own High Court in Company Petition No. 395 of 1994 decided on 3rd April, 1996 by one of us (Vyas, J.). In the aforesaid judgment, noticing the earlier two judgments of the Supreme Court, this Court has observed as follows :

"One who comes to Court must come with clean hands. The position in law is too well settled to require any elucidation. The Apex Court has in S.P. Chengalavaya Naidu v. Jagannath and Ors. reported in AIR 1994 SC at page 853 inter alia observed that the Courts of law are meant for imparting justice between the

parties, that one who comes to Court must come with clean hands and that it can be said without hesitation that a person whose case is based on falsehood has no right to approach the Court and he can be summarily thrown out at any stage of the litigation that a litigant who approached the court is bound to produce all the documents which are relevant to the litigation, and that if he withholds a vital document in order to gain advantage on the other side, then he would be guilty of playing fraud on the Court as well as on the opposite party. The Apex Court therein was dealing with a case where it was found that a preliminary decree was obtained by playing fraud on the Court. It, therefore, observed that a fraud is an act of deliberate deception with a design of securing something by taking unfair advantage of another and that it is deception in order to gain by another's loss. A cheating intended to get an advantage. Again, the Apex Court in the decision of Chandra Shashi v. Anil Kumar Verma reported in 1991 (1) SCC 421 inter alia held that to enable Court to ward off unjustified interference in their working, those who indulge in immoral Acts like perjury, prevarication and motivated falsehoods have to be appropriately dealt with, without which it would not be possible for any Court to administer justice in the true sense and to the satisfaction of those who ultimately prevail, that any one who takes recourse to fraud, deflects the course of judicial proceedings, that if anything is done with oblique motive, the same interferes with administration of justice and that such a conduct is contempt of Court."

The same view has been expressed in Indian Bank Vs. M/s. Satyam Fibres (India) Pvt. Ltd., . Where the Supreme Court has observed as under :

"Since fraud affects the solemnity, regularity and orderliness of the proceedings of the Court and also amounts to an abuse of the process of Court, the Courts have been held to have inherent power to set aside an order obtained by fraud practised upon that Court. Similarly, where the Court is misled by a party or the Court itself commits a mistake which prejudices a party, the Court has the inherent power to recall its order."

Keeping in view the aforesaid observations, the trial Court was perfectly justified in refusing to grant interim injunction.

CONCLUSION :

23. In the above view of the matter, for the reasons recorded hereinabove, no fault can be found with the impugned order, whereby the notice of motion of the plaintiff was dismissed by the trial Court. No prima facie case or balance of convenience in his favour is established by the plaintiff. Plaintiff is not going to suffer any legal injury, if no interim injunction is granted in his favour. Thus no interference with the impugned order is called for. In the result, appeal is dismissed with cost quantified in the sum of Rs. 5,000/-.

24. It is made clear that the observations made are prima facie and the trial Court shall decide the suit on its own merits after recording evidence of the parties without getting influenced with the observations made herein.

25. At this stage, the learned counsel appearing for the appellant prayed for stay of this order so as to enable him to approach the Apex Court. Considering the request made by the appellant, four months time is granted. The defendant No. 2 -- Bank is directed not to take possession from the plaintiff/appellant for a period of four months from today. In the meanwhile, the appellant/plaintiff shall neither create any third party interest nor part with possession of the suit flat in favour of anybody in any manner whatsoever. Issuance of the certified copy is expedited.