
(2013) 03 BOM CK 0028

In the Bombay High Court

Case No : Appeal No. 261 of 2012 in Writ Petition No. 2602 of 2011

Vinod Agarwal

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 01-03-2013

Acts Referred:

Maharashtra Co-operative Societies Act, 1960 — Section 156

Citation : (2013) 4 ABR 173 : (2013) 2 ALLMR 855 : (2013) 6 BomCR 725 :
(2013) 3 MhLj 480

Hon'ble Judges : M.S. Sanklecha, J;J.P. Devadhar, J

Bench : Division Bench

Advocate : P.S. Jaiswal with Mr. A.C. Sarkate, for the Appellant; I.K. Calcuttawala, AGP for Respondent Nos. 1 and 2, Mr. Ranjit Thorat with Mr. Pravin D. Kadam, Advocate for Respondent No. 3 and Mrs. Rekha Panchal, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

M.S. Sanklecha, J.—This appeal challenges the order of the learned Single Judge dated 6th March, 2012 dismissing the Writ Petition by the Appellant challenging the order dated 17th October, 2011 of the Respondent No. 1 (Divisional Joint Registrar of Co-operative Societies, Mumbai Division). The learned Single Judge refused to issue a writ to set aside the order dated 17th October, 2011 of Respondent No. 1. The learned Single Judge refused to direct Respondent No. 3 (Satyam-I Cooperative Societies Ltd.) to transfer the shares in the Respondent No. 3-Society, attributable to Flat No. 602 in "A" wing of the Respondent No. 3-Society (subject flat) to the name of the Appellant from the owners of the subject flat i.e. Appellant's brother and sister-in-law viz. Respondent Nos. 5 and 6. This was in view of the fact that the Respondent No. 4 (The Deccan Merchant Cooperative Bank Ltd.) had an interest in the subject flat due to non-satisfaction of the amounts decreed by the Co-operative Court by its order dated 24th August, 2000 as payable by Respondent Nos. 5 and 6 to the Respondent No. 4-Bank. Briefly, the facts leading to this appeal are as under:

(a) The Appellant is the brother of Respondent No. 5 and brother-in-law of Respondent No. 6. In the records of the Respondent No. 3-Society, the Respondent Nos. 5 and 6 are members/owners of the subject flat.

(b) On 17th May, 2001 a family arrangement was entered into between the Respondent Nos. 5 and 6 and the Appellant. By the above family arrangement, it was agreed that Respondent Nos. 5 and 6 for the purposes of maintaining family peace and harmony will transfer their rights, title and interest in the subject flat to the Appellant.

(c) On 6th June, 2001 the appellant applied to the Respondent No. 3-Society for transfer of the shares of Respondent Nos. 5 and 6 in regard to the subject flat to him on the strength of the Family Arrangement dated 17th May, 2001. The Respondent No. 3-Society by communication dated 21st July, 2002 informed the Appellant that the transfer of shares could only be effected on payment of transfer fees as per the Bye laws of Respondent No. 3-Society.

(d) On 6th August, 2002 the Special Recovery Officer of the Respondent No. 4-Bank addressed a communication to the Respondent No. 3-Society. By the aforesaid communication it was pointed out that a sum of Rs. 81.85 lakhs along with interest thereon was recoverable from Respondent Nos. 5 and 6, consequent to a decree dated 24th August, 2000 passed by the Co-operative Court and thus the Respondent No. 4-Bank had a lien over the subject flat. This power was being exercised u/s 156 of the Maharashtra Co-operative Societies Act, 1961 (the said Act) read with Rule 107 of the Maharashtra Co-operative Societies Rules 1961 (the said Rules), The above communication dated 6th August, 2002, further directed the Respondent No. 3-Society not to allow Respondent Nos. 5 and 6 to sell, transfer or otherwise dispose of the subject flat without the written consent of the Special Recovery Officer of Respondent No. 4-Bank. By a letter dated 10th August, 2002 the Respondent No. 3-Society informed the Special Recovery Officer that the charge of the Respondent No. 4-Bank in respect of subject flat had been noted.

(e) Being aggrieved by communication dated 29th July, 2002 of Respondent No. 3-Society, the Appellant filed an Appeal on 22nd October 2002 with the Respondent No. 2 u/s 23 of the said Act. The relief sought in the Appeal was a direction to Respondent No. 3-Society to transfer the shares and the subject flat to the name of the Appellant.

(f) In the appeal filed by the Appellant before the Respondent No. 2, the Respondent No. 4-Bank also filed an intervention application seeking leave to be joined therein as a party Respondent. The Respondent No. 2 after hearing the Appellant, Respondent No. 3-Society and the Respondent No. 4-Bank by order dated 7th June, 2003, dismissed the Appellant's Appeal. The Respondent No. 2 held that dues of the Respondent No. 4-Bank payable by Respondent Nos. 5 and 6 arise out of the order dated 24th August, 2000 of the Cooperative Court were much prior in time to the alleged family arrangement dated 17th May, 2001 and

the application made by the Appellant on 6th June, 2010 for transfer of the subject flat from Respondent Nos. 5 and 6. Thus as the lien of the Respondent No. 4 was registered and noted by the Respondent No. 3-Society, the application of transfer made by Appellant was disapproved.

(g) Being aggrieved by the order dated 7th June, 2003 of the Respondent No. 2, the Appellant carried the matter in Revision to Respondent No. 1. By an order dated 17th October, 2001, the Respondent No. 1 dismissed the Revision Application filed by the Appellant on the ground inter alia that the Respondent Nos. 5 and 6 were indebted to Respondent No. 4-Bank and thus the attachment of the subject flat by the Bank was proper. The Respondent No. 1 held by the above order that the transfer of the subject flat could not be effected till the claim of Respondent No. 4-Bank is satisfied.

(h) The Appellant challenged the order dated 17th October, 2011 of Respondent No. 1 in Revision by filing Writ Petition No. 2602 of 2011 in this Court. By the impugned order dated 6th March, 2012, the Petition was dismissed by the impugned order inter alia holding that registered members/owners of the shares in respect of the subject flat i.e. Respondent Nos. 5 and 6 had failed to pay the amounts due in accordance with the decree dated 24th August, 2000. Thus, the clog on the transfer of the shares relating to subject flat was justified. This exercise of lien was in terms of Rule 107 (4) (ii) of the said Rules as the sale proceeds of the properties hypothecated by Respondent Nos. 5 and 6 to the Bank were insufficient to meet in full decretal amount as ordered by the Cooperative Court. In these circumstances, the Respondent No. 4-Bank is entitled to proceed against the other immovable properties i. e. the subject flat belonging to the defaulter viz. Respondent Nos. 5 and 6. Further, looking at the sequence to events, the learned Single Judge held that transfer of the subject flat sought on the basis of the family arrangement dated 17th May, 2001 did not appear bona fide but only to defeat the admitted decree claim of Respondent No. 4-Bank. In these circumstances the Appellant's Petition was dismissed.

2. In support of the Appeal, the learned Counsel Mr. Jaiswal submits that the impugned order is bad in law for the following reasons:

(a) The basis of entire proceedings initiated by the Appellant was the obligation of Respondent No. 3-Society to transfer the shares relating to the subject flat from Respondent Nos. 5 and 6 without charging any transfer fees from the Appellant as they are part of family. Thus according to him, the issue of Bank having a prior claim in respect of the subject flat was not a subject matter of any issue raised by the Appellant and ought not have entered into consideration while deciding the Appellant's grievances;

(b) The subject flat and the shares relating thereto was not a subject matter of the property hypothecated and/or given as security to the Respondent No. 4-Bank by Respondent Nos. 5 and 6. This according to him is evident from the consent decree dated 24th August, 2000 of the Co-operative Court. In these

circumstances, it was open to the Respondent Nos. 5 and 6 to sell and/or transfer shares relating to subject flat to any person without any qualification/limitation. Therefore, the subject flat could also be transferred to the Appellant under the family arrangement. There is no requirement of the family arrangement having to be stamped. Consequently, it was not open to ignore the family arrangement dated 17th May, 2001 and in any case if stamping was necessary then the Appellant could have paid the requisite penalty and duty on the document of family arrangement and the same could be considered as admissible evidence; and

(c) The lien exercised by the Special Recovery Officer of Respondent No. 4-Bank by his letter dated 6th August, 2002 to the Respondent No. 3-Society, is contrary to the prescribed procedure under the said Act and the said Rules. Consequently, the lien exercised by the Special Recovery Officer in respect of the subject flat is without jurisdiction and illegal.

3. As against above, Mr. Ranjit Thorat, Advocate appearing for Respondent No. 3-Society and Mrs. Rekha Panchal, Advocate appearing for Respondent No. 4-Bank, submit that the impugned order is correct in law and calls for no interference. Attention was invited to Rule 107 (4) (ii) of the said Rules which provides that when the sale proceed received from the attached properties are insufficient to meet the demand of the bank, then other immovable properties belonging to defaulter may be proceeded with. It is on the basis of the above provisions that the bank has exercised its rights over the subject flat which belongs to an admitted defaulter namely Respondent Nos. 5 and 6. Further, Mrs. Panchal submits that for the purposes of exercising a lien, as done by the letter dated 6th August, 2002 of the Special Recovery Officer of Respondent No. 4-Society, no specific procedures are provided under the Act and the Rules. The procedure as referred to by the Appellant is only after the attachment of the properties for the purposes of sale of the attached property.

4. We have considered the submissions of the learned Counsels appearing for the parties. We find that it is an admitted position before us that Respondent Nos. 5 and 6 owe money to the Respondent No. 4-Bank by virtue of order dated 24th August, 2000 passed by the Cooperative Court. It is an admitted position that the order of the Cooperative Court dated 24th August, 2000 has not been honoured by Respondent Nos. 5 and 6. It is only after the passing of the consent decree dated 24th August, 2000 that on 17th May, 2001, a family arrangement was entered into whereby Respondent Nos. 5 and 6 for the purposes of family peace and harmony had agreed to transfer the subject flat belonging to them to the Appellant. Consequent thereto, an application was made on 6th June, 2001 to the Respondent No. 3-Society for having the shares relating to subject flat transferred. By a communication dated 21st July, 2002, the Respondent No. 3 informed the Appellant that the application for transfer was kept in abeyance till payment of transfer fees in accordance with the bye laws of the Respondent No. 3-Society. In the mean time, the Special Recovery Officer of Respondent No. 4-

Bank by its communication to Respondent No. 3-society exercised its lien in respect of subject flat to recover the unpaid amount due from Respondent Nos. 5 and 6 by adopting procedure under Rule 107(4)(ii) of the said Rules. Respondent No. 4-Bank is entitled to proceed under the above Rule against the other properties of the debtors when the amounts recovered from sale of hypothecated properties are insufficient to satisfy its dues. It was only after the Special Recovery Officer exercised Respondent No. 4-Bank's lien on the subject flat by communication dated 6th August, 2002 that the appeal by the Appellant to Respondent No. 2 was filed on 22nd October, 2002. The relief sought in the appeal filed by the Appellant to the Respondent No. 2 was to direct the Respondent No. 3-Society to transfer the shares and the subject flat to the Appellant. In these circumstances the submission of the Appellant that the issue of lien exercised by Respondent No. 4-Bank could not be considered by the authorities as the appeal was only relating to Respondent No. 3-Society seeking transfer fees when the transfer is between family members is not correct. Before directing the Respondent No. 3-Society to transfer the subject flat to the Appellant the matter of lien exercised by the Respondent No. 4-Bank also becomes an issue for consideration and rightly considered by the authorities under the Act, This right of the Respondent No. 4-Bank involving public money cannot be defeated and ought not to be delayed merely by raising technical objections. From the sequence of events, it is clear that the family arrangement dated 17th May, 2001 was entered only with a view to defeat the rights of Respondent No. 4-Bank by transferring the subject flat to the Appellant so as to defeat the claim of Respondent No. 4-Bank. In these Circumstances, we find no fault with the order of the learned Single Judge dated 6th March, 2012.

5. Moreover, the conduct of the Appellant as also that of Respondent Nos. 5 and 6 as is evident from the sequence of events narrated herein above clearly demonstrates that the entire aforesaid exercise is only to defeat the just claims of Respondent No. 4-Bank. The exercise of a writ jurisdiction being an extraordinary jurisdiction is to be exercised only if justice is on the side of the party moving the Court for extraordinary relief under its writ jurisdiction. In this case certainly justice is not on the side of the Appellant.

6. Accordingly, appeal is dismissed with no order as to costs. At this stage, Mr. P. S. Jaiswal. Counsel for the Appellant seeks a stay of this Order for six weeks. No case is made out to stay this Order. Application is rejected.