

IN THE COURT OF JUDGE CO-OPERATIVE COURT NO.1 SANGLI

Shri Parshawanath Sah Pat Mar

Disputant

VS

Mahavir Babagaonda Patil(Expired) etc 3

Opponent

ORDER BELOW EXH. 05

01. The present application filed by the Disputant society under section 95(4) of Maharashtra Co-Op Societies Act (Herein after for sake of brevity referred as M.C.S. Act) on 06/01/2010.

02. It is contended by the Disputant society that, the Opponents have availed Rs. 10,19,956/- and accepted their joint and several liability to repay the loan.

03. It is further contended by the Disputant society that, the Opponents No.1 has expired on 12/01/2005. He has one wife and three sons as his legal heirs. They are impleaded as party to present dispute as Opponent No.1A to 1D. The deceased Opponent No.1 was owner and possessor of the 3 properties bearing Gat No. 15/3, 15/2 and City Survey No. 161A. (The same are described in para 3 of this application.)

04. It is further contended by the Disputant society that, the Opponent No.2 is owner and possessor of the property bearing Gat No. 383/3. He expired. The Opponent No. 2A and 2B were his legal heirs. (The same are described in para 3 of this application.)

05. It is further contended by the Disputant society that, the opponents have not repaid the loan due amount. It has sent various demand notices. But Opponents have not replied the same. It appear from conduct of the Opponents that they have not willing to repay the loan. The Opponents with intention to defeat the execution of award if passed trying to sell the properties to the third person. If the Opponents become successful in alienating the properties then it will create the hurdle in recovery of the award. Hence it prayed for restraining the Opponent No. 1 and 2 from transferring or alienating their properties.

06. The Opponent No. 2 has filed his say below Exh.37 and written argument below Exh.51. It is submitted by the Opponent No.2 that the Jaypal Dighe has no authorisation to file and proceed present Dispute. He has denied all the averments made in the application specifically regarding selling of property by him. It is contended by him that the disputant has made false and baseless contention in the application regarding selling and alienation of properties. It has not pleaded the basis of apprehension. The application not satisfying the criteria of the provisions. It is further contended by him that if the properties were attached then he will suffer irreparable loss. Hence he prayed for rejection of the application.

07. To substantiate his contention and submission he relied on following case laws :-

- I) Durga Das v/s Nalin Nandan cited in AIR 1934 CAL 694 in which Hon'ble Calcutta High Court has held that mere vague allegations are not sufficient, the intention of obstruction or delaying execution of decree must be proved.
- II) Bedanand Rai v/s Nabokumar Singh cited in AIR 1938 PAT 161 in which it was held by Patna High Court that, the transaction

subsequent to filling of the suit are going to be made, must be proved, mere allegation is not sufficient.

- III) Shriniwasan v/s Shriniwasan cited in AIR 1985 MAD 269 in which it was held by the Hon'ble Madras High Court that the attachment before judgment could not be granted as a matter of course but only if condition set out in Rule 5 are satisfied.
- IV) Har Krishna Khosla v/s M/S Alemic Chemicals cited in AIR 1986 ALLAHABAD 87 in which it was held by the Hon'ble Allahabad High Court that application for attachment before judgment, source of information not disclosed, then application can not be allowed.
- V) Tatanagar Transport Corp vs M/S Ajanta Enterprises cited in AIR 1987 Orissa 107 it was held by the Hon'ble Orissa High Court that calling for security is precondition for exercising attachment before judgment order.
- VI) Saraswat Co-Op Bank ltd vs Chandrakant Shah cited in 2002 C.T.J. 710 in which Hon'ble Bombay High Court has held that, there has to be some prima facie material on the basis of which the court satisfy itself that the condition requisite for making order of attachment before judgment exist.
- VII) Murtuza Khan vs Ballarpur Industries Ltd cited in 2002 (3) MH L J 399 in which Hon'ble Bombay High Court has held that, the plaintiff should satisfy the court that defendant is about to dispose off the property from local jurisdiction of the court with intent to obstruct or delay the execution of decree.
- IX) M/S Raman Tech and Process Eng Co vs M/S Solanki Traders cited in 2008 SAR (Civil) in which Hon'ble Apex Court has held that, the removal of asset by itself is not ground for granting attachment, the plaintiff has to show prima facie that his claim is

bonafide and valid and also satisfy the court that the defendant is about to remove his property with intension of delaying the execution of any decree that may be passed against him.

08. The ratio laid down in all the aforesaid citation are the settled principles of law which can be made applicable to every case including case in hand.

09. Heard. Perused Record. After going through rival contentions and submissions following points arise for determination and I record my findings thereon with reasons as under.

SR NO	POINTS	FINDINGS
1.	Whether the Disputants proves that the Opponents with intension to defeat, delay or obstruct the execution of award are about to dispose of the whole or any part of his property?	In Negative
2.	What Order ?	Application Rejected

-:REASON:-

10. The Disputant has relied on Resolution (Exh.3/10), Loan Demand Applications (Exh.3/1), Promissory Note (Exh.3/2), Loan Agreement (Exh.3/3), Continuing Letter (Exh.3/4) and Death Certificate (Exh.3/09)

AS TO POINT NO. 1 AND 2 :-

11. The Disputant came with the claim that the Opponents have availed loan of Rs. 4,00,000/- but same is not repaid by them. Now, there is outstanding loan of Rs. 10,19,956/- against Opponents.

12. As per loan documents viz Promissory Note (Exh.3/3) on record it transpire that the Opponents have availed the loan of Rs. 4,00,000/- on 30/03/2002. It reveal from account extract (Exh.1) that there is outstanding of Rs. 10,19,956/- as on 01/04/2008. So, prima facie it appear that there is a disbursement of the loan amount to Opponents and same is due against them.

13. The Death Certificate (Exh.3/9) reveals that the Opponent No.1 is expired on 12/01/2005. The Opponent No.1A to 1D have not challenged the factum of death of deceased Opponent No.1 Mahavir. As per 7/12 extracts (Exh.09 and 11) the properties bearing No. 15/02 and 383/3 is still stood in the name of deceased Opponent No. 1 Mahavir Patil and deceased Opponent No.2 Rajiv Kore. Both were expired. The names of their legal heirs were not yet entered 7/12 extract. These properties described in para 3B and 3.1A of this application were stood in the name of dead persons. Hence same are not liable for attachment at present.

14. It appear from 7/12 extract (Exh.08) of property bearing No. 15/03, the name of 1B to 1D were entered. The other right column of this property discloses the three different Charges of bank for total amount of Rs. 1,45,00,000/- are entered. It appear from city survey extract (Exh.10) that, the property bearing No. 161A stood in the name of the 1A to 1D. It also appear that the said property is attached by The Ashta Peoples Co-Op Bank for its recovery of loan of Rs. 29,03,749/-. As such both these properties described in para 3A and 3C of present application were not free from encumbrances. There were interest already created in other right coloumns of these properties.

15. The contentions raised by the Disputant is specifically denied by the Opponent. The disputant has not brought on record any other documents

to fortify his contentions regarding selling of the properties by Opponents. It is for the disputant to brought on record certain material to show that its apprehension is well founded. There are vague allegations. There is no specification of alleged proposed sell or alienation. The names of buyer, agent or person giving the information or source of information is not disclosed in the application. Hence being guided by the ratio laid down in aforesaid precedents of Durga Das and Har Krishna Khosala the properties described in para 3 of the application can not be attached. Hence I answer point No.1 in negative and in answer to point No.2 I pass following order.

:- ORDER :-

1. The present application for stay stands rejected.
2. No order as to cost.

Dated : 22-11-2019

(A. B. Katte)
Judge
Co-operative Court No.1, Sangli