

IN THE COURT OF JUDGE CO-OPERTIVE COURT SOLAPUR

C-op. Case No- 03/2021

Sugarcane Producers Vividh Karyakari Sahakari Society Ltd

Malinagar, Tal-Malshiras, Dist-Solapur

:-Disputant

Vs

Gajanan Krushi Seva Kendra 25/4 Lavang

Prop-Shri Suresh Narayan Nalawade

:- Opponent.

Order Below Exh 5

- HA
1. This is the application filed by disputant society therein praying for directing attachment before award of the properties of opponent.

Briefly stated application is as under

2. It is contended by disputant society that present dispute is filed by it against the opponent for recovery. The opponent is member of disputant. He has the business of sale of Seeds and Fertilizer's under the name Gajanan Krushi Kendra at Lavang Tal-Malshiras Dist-Solapur. The opponent used to purchase Fertilizer's from disputant society on credit basis and pay for that within period of one month from the date of purchase. The opponent has/had executed agreement to that effect in favour of disputant on 10/08/2017. As per the said agreement the opponent was bound to pay interest @ Rs 18 % p.a on the dues by way of compensation to disputant. From time to time the opponent has purchased fertilizer's from disputant on credit basis. Against such purchase made by opponent, after deducting the payments made by him from time to time, as per the accounts maintained by disputant, an amount of Rs 35,22,840/-

is due and outstanding to it from opponent. So also as per the business customs interest @ Rs 18 % p.a on the said amount is also due from opponent. The disputant society time and again orally as well as in writing has demanded the dues from opponent, however on each time he goes on to avoid the payment and hence disputant is constrained to file this dispute for recovery against the opponent.

3. It is further contended by disputant that, it has every guarantee of securing success in the present matter. Though heavy amount is due and recoverable to disputant from opponent, instead of making payment thereof to disputant, the opponent is trying and attempting to dispose of his landed property bearing Gat No 10/2/A, to the extent of an area 0H 20R situated at village Ganesh gaon Tal-Malshiras Dist Solapur. The opponent if succeeds in his said attempt then the disputant will suffer great loss. The decree/award passed if any in future would remain paper decree only. There will be no source to execute the same. The disputant will be unable to recover its dues and that will cause monetary loss and therefore to avoid that it is necessary to order attachment before award of the properties of opponent. If such order is passed no loss or hardship would be caused to opponent. Accordingly with these contentions the disputant society has lastly prayed for allowing the application and for directing attachment of property of opponent bearing Gat No 10/2/A, area adm 0H 20R situated at village Ganeshgaon Tal-Malshiras Dist Solapur.

4. On summons and show cause notice of this application the opponent has appeared in the matter and filed his say cum written statement at Exh 11. In the written statement cum say the opponent has contended that due to lock-down followed by Corona Virus Pandemic his business was remained closed for long time. In fact as on 11/01/2020 an amount of Rs 27,61,640/- only was payable by him to disputant. He was and is ready to pay the said amount to disputant by

installments. However due to pandemic situation he could not pay the said amount to disputant within time. However due to change in mind, the disputant by making misuse of two blank cheques that were taken from him at the time of agreement, filed complaint against him under section 138 of NI Act in the JMFC court at Malshiras and in that case Rs 33,81,840/- is shown as dues and in this dispute Rs 35,22,840/- is shown as dues. That means the accounts maintained by disputant society are not proper and on the basis of false record dispute claiming recovery of false amount has been filed against him. The disputant society had refused to accept the dues by installments of Rs 50,000/-. The dispute filed is imaginary one. So also the application is also imaginary and not legal one. This application is filed only with an intention to harass the opponent. Accordingly with these contentions the opponent has lastly prayed for dismissing the application with cost.

HA 5. In the light of rival contentions of the parties, following points arise for my determination and i have recorded my findings thereon for the reasons recorded as under

Points	Findings.
1. Whether disputant society has proved that the opponent with intention to delay the execution of award is trying to dispose his property as described in prayer clause Exh 5 ?	<u>Partly affirmative.</u>
2. Whether this application is liable to be allowed as prayed by disputant ?	Affirmative.
3. What order ?	See at last.

REASONS

6. As to all points :- Heard learned Advocates appearing for both sides. Admittedly this dispute has been filed by disputant society against the opponent

thereby claiming recovery of an amount of Rs 35,22,840/-, which amount is allegedly due and payable by opponent to disputant on account of fertilizer's purchased by opponent from disputant from time to time on credit basis. After service of summons of this dispute the opponent has appeared in the matter and filed his say cum written statement at Exh 11. In the say the opponent has not denied the suit transaction. What he has denied is his alleged liability to pay the suit amount to disputant. According to opponent the amount claimed and shown as due from him is false. Same is based on false and incorrect accounts. His contention is that he owes an amount of Rs 27,61,640/- only and not more than that to disputant.

7. Thus from the say filed by opponent one thing becomes crystal clear that he is partly admitting the suit claim of disputant. In the instant application the concern is only with regard to attachment of the property of opponent. This application has the base of recovery. It is the contention of disputant that heavy amount is due from opponent to it and therefore security is required for recovery of such amount in the event claim is allowed by court. It is the contention of disputant that to avoid liability in relation to heavy dues the opponent is trying to dispose of his property and if that happens, heavy loss will be suffered by disputant, it will lose the security and therefore to avoid that attachment of the property of opponent is necessary. It is very interesting to note that in the entire say filed by opponent, nowhere he is saying that he has no intention to dispose of the property or that he has not made any attempt to dispose of the same. Furthermore the opponent though has appeared in the matter, did not file any undertaking before court stating he will not dispose of the property at least till the disposal of this dispute.

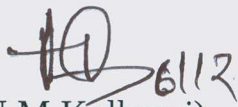
8. Admittedly the suit claim of disputant society is for recovery of huge amount. The documents produced by disputant along with dispute prima facie

shows that the claim is well founded. More over the claim in part is already admitted by opponent. In such circumstances the say of disputant that it has good case on merits has to be prima facie accepted. Therefore in my opinion some security for such heavy claim is needed, otherwise the order passed by court will remain paper order only. There will be difficulties in execution of the same. In such circumstances purpose of justice will be served if the order of attachment of the property of opponent is passed as prayed by disputant. If such order is passed, no loss or hardship would be suffered by opponent. He can furnish requisite security equivalent to suit amount at any time for vacating the order of attachment. The 7/12 extract of land gat no 10/2/A produced along with list Exh 4 shows that the opponent Shri Suresh Nalwade is the owner of OH 20R land form said gat number. In such circumstances there is no hurdle in passing the order of attachment. Therefore with this discussion, the points are answered by me accordingly. In answer to point no 3 i proceed to pass the following order,

Order

1. Application stands allowed.
2. The property of opponent bearing land Gat No 10/2/A to the extent of an area adm OH 20R, situated at village Ganeshgaon Tal-Malshiras, Dist-Solapur stands attached before award. The opponent is hereby restrained and prohibited from transferring, alienating and disposing of his aforesaid property in any manner till disposal of this dispute on merits.
3. No order as to cost.

Date :- 06/12/2021


(U.M.Kulkarni)

Judge

Co-op. Court Solapur