

IN THE COURT OF CO-OPERATIVE COURT AHMEDNAGAR

(Presided over by Shri. B.S. Lakhote- Judge)

Case No.176/2017

Ahmednagar Shahar Sahakari Bank Ltd**DISPUTANT**

Vs.

Dr. Nilesh Vishwas Shelake and others.....**OPPONENTS**

ORDER BELOW EX.99

1. The disputant filed dispute for the recovery of Rs.2,11,91,193/-. The opponent no.1 was applied for loan and the disputant bank sanction loan Rs.1,50,00,000/-. The opponent no.2 to 6 are guarantors to the loan of the opponent no.1. The opponents executed all relevant loan documents.

2. The opponent no.6 hereinbefore for the purpose of purchased of flat in the name of his wife and in his name applied for loan to the disputant bank and the disputant sanction Rs.70,00,000/- loan to each and they purchased the flat in their name and they mortgage the said flat to the disputant bank on 06/05/2016. The opponent no.6 in the following property has 1/2 undivided share. the opponent no.6 is guarantor to the loan disbursed to the barrower in dispute no.174/2017 and 175/2017. The opponent no.16 is intending to dispose of the said property and the opponent no.6 become success in transfer of the property, the disputant would cause loss.

3. The property mention in schedule B is belonging to the opponent no.6 and he has 1/3 share in the property and opponent no.6 also intending to transfer his

share to third party and if he done so the disputant bank will cause loss.. the opponent no.6 to avoid the repayment of the loan of the bank, is intending to transfer the said property and therefore it is necessary to grant ineterim relief agsint the opponent no.6. The property of the opponent no.6 is as under.

Schedule

(a) Division Pune, Sub division Haveli Viman Nagar Lohgaon, S.N.211 share 3/2 constructed on area 12100 Sq. Mtrs. Lukand sky V project building no.A-3 ,6th floor unit no.602 area 118.61 Sq. Mtrs. carpet area and two car parking area 20 Sq. Mtrs. situated within the Pune mahanagarpalika limit, bounded as under

Toward East-Muncipal Road and S.N.204 AND 205

Toward South-S.N.211 share no.1+2/E

Toward East- S.N.211,share no.1+2/D

Toward North- S.N.211 share 1+2/C

(b) bearing G.L.R survey no.40 Bunglow no.13 total admeasuring area 3.13.acres i.e.12666.70 Sq.Mtrs. along with entire construction over said plot admeasuring 373.00 Sq.Mtrs. situated in Indian Infantry land in camp Nagar Ahmednagar within Municipal corporation limit of Ahmednagar. Out of this area 6333.35 Sq. Mtrs. constructed area 186.50 Sq.Mtrs. and out of this 1187.50 Sq.Mtrs. area and constructed area 34.97 SqMtrs. Bounded as-

East--Aurangabad Road and G.L.R.No.44

South-G.L.R.No.41 and 44 Bazar

West- G.L.R No.38 and 41

North- G.L.R.No.39 and Nepiar Road

The share of the opponent no.6 in the above these property required to attached and accordingly the disputant prayed fro relief.

4. The opponent no.6 in pursuance of the application of the disputant filed his reply below Ex.102 and submitted that he is not guarantor to the loan of the

opponent no.1. the bank has sufficient security for the repayment of the loan. The opponent no. 2 to 4 executed mortgage deed I favour of the disputant and they mortgage their property to the loan of the opponent no.1 and the value of the properties is more than 10 cores. the loan was given for the purchased of the machinery but the disputant bank has not attached the said machinery or taken any action under the securitization Act. The property mention in schedule (a) is belonging to the Anita Soni and property mention in schedule (b) belonging to the Darshan Soni. The opponent no.6 is not owner of these properties, the disputant is not entitled for the interim relief.

5. The opponent no.7 and 8 filed their reply to the application below Ex.117 and submitted that the loan amount was transfer to the account of the person who as given the quotation and not to the barrower. The original barrower executed mortgage deed as collateral security to the disputant. The valuation of the mortgage property is more than the loan to be recover from the barrower. and therefore without any reason the disputant filed application against the opponent no.6. The property are not mortgaged to the present loan of the disputant. hence the disputant has not right to claim relief against the opponent no.6. The disputant sought attachment of property situated at Pune, said properties was mortgaged by the Nilesh Shelke for housing loan and he become defaulter and said properties at the request of the past managing committee members, these opponents purchased properties fro which the disputant bank sanction loan and the loan amount was deposited in the loan account of the Dr. Nilesh Shelke. the housing loan paid by the opponent no 6 to 8 and hence it was assured by the managing committee members of the disputant bank that they will not claim right on the property.

6. They submitted that the other property of the opponent no.6 has been attached as per court order. The co-operative department after enquiry, lodge

criminal complaint against the Ex- managing committee members and the officer of the bank in regard of loan in dispute. the entire loan sanction on false and bogus documents. the opponent barrower also obtained loan from Nagar co-op. Urban Bank. the loan for which purpose it was disbursed, not utilized. the officer of the bank was aware about this but they have not taken any action.. The DDR made enquiry and found him that said loan sanction by playing fraud and sanction against the violation rule and to that effect he filed report to the bank and senior officer. There was collusion between the barrower and the managing committee members of the bank. the opponent no. 6 and his legal heir are not liable for the claim loan and application is liable to rejected.

In view of the rival contention of the parties following point arise for my determination and my finding with reason as follows.

POINT

FINDING

- | | |
|---|--------------------------|
| 1. whether disputant is entitled for
interim relief in respect of properties
mention in schedule (a) and (b)
of application? | Positive |
| 2. What order? | As per final order |

REASONS

7. The contention of the disputant that the opponent no.6 transferred his property to opponent no.7 and 8 who are family members of the opponent no.6. the opponent no.6 is the guarantor to the loan obtained by the deceased opponent o.1. the opponent no.6 is intending to disposed of his property. The opponent no.6 in reply denied this fact and submitted that he is not guarantor to the loan of the deceased opponent no.1. He is not owner of the property mention in the schedule referred in the application. the opponent no.7 and 8 in reply submitted

that property mortgage by the opponent no.2 to 4 are sufficient to satisfied the loan of the disputant.

8. The point for the consideration whether the properties mention in the application required to attached or restrained to the opponent no.6 from transferring his share to third party. The counsel of the disputant Shri. Deshpande submitted that opponent No. 7 is the wife of opponent No.6 & opponent No.8 is a son of opponent No.6 and they purchased property from the loan obtained . The said flat was mortgage to the bank on 06/05/2016. The opponent No.6 is having 1/2 share in that property. The opponent No.6 executed gift did in favour of opponent No.7 & 8 with intention to avoid the payment of loan amount. Therefore the property mention about is liable to attach.

Per contra, the counsel of opponent No.7 & 8 Shri. A.B.Kothari submitted that the property in question is not property of loan and not mortgage in favour of bank. The property mortgage by opponent No.1 is adequate to repay the loan of the bank and there is no necessity to attach the property of opponent No.7 & 8. Further submitted that the bank is having sufficient security to satisfied the loan of the bank.. the counsel Shri.Kothari argued that the house of the opponent o.6 already attached vide order passed below Ex.5 , the hospital of the opponent no.5 also attached.

9. It is fact that the disputant bank disbursed loan to the deceased opponent no.1 and the opponent no.2 to 6 are the guarantors to the loan of the deceased opponent no.1. It is seen from the order Ex.5 the properties of the opponent no.2,3 5 and 6. The disputant. there is no dispute that opponent no.6 and his wife Anita Soni was obtained loan form the disputant bank and they paid the loan. The disputant bank averred that bank came to know that the opponent no.6 trying to transfer his flat and the bank constrained to filed application. Now in order to

claim relief of attachment of the property or restrained to opponent no.6 from transferring his share in the properties mention in schedule (a) and (b), the ingredient of the order 38 rule (1) and 39 rule (1) of civil procedure code required to be established. The disputant bank need to show the intention of the opponent no.6 that he is going to transfer his interest to third party.

10. The disputant bank filed document on record that is gift deed executed by the opponent no.6 in favour of the opponent no.7 and 8 which is not denied by the opponent no.7 and 8. It appears that the opponent no.7 and 8 impleaded in the dispute after transaction made by the opponent no.6 in their favour. The contention of the opponent no.6 that said properties mention in schedule (a) and (b) are belongs to the opponent no.7 and 8 and he is not owner of these properties. It is fact the opponent no.7 is the wife of the opponent no.6 and opponent no.8 is the son of the opponent no.6. The gift deed produce on record indicate that opponent no.6 on 14/05/2021 in favour of opponent no.8 and opponent no.7 on 17/05/2021 in favour of opponent no.8 executed gift deed which is challenge by the disputant bank by way of amendment in dispute. The intention of the opponent no.6 reveal from these transaction and his intention is only to avoid the repayment of loan of the disputant bank. The opponent no.6 has not shown that the properties mention above purchased from the income of the opponent no.7 and 8 and they are exclusively owner of these properties. In absence of such fact, I have no reason to hold that opponent no.6 has 1/2 and 1/3 share in properties mention in schedule (a) and (b) respectively.

11. Now whether there is substance in the submission of the opponent no.7 and 8 counsel Shri. Kothari argued above. There is no dispute that the properties of the opponents as per order passed below Ex.5 attached wherein one of the property of the opponent no.6. The disputant do not claim that the properties

mention in the application entirely be attached, prayer only to the extent of attachment of share of the opponent no.6 in that properties and merely other property opponent no.6 attached does not barred to claim to attached another properties. Shri Kothari counsel for the opponent no.7 and 8 contended that valuation of the attached properties is more than the amount claim in the dispute and hence no necessity to attached the properties. I am not agreed with the contention of the Shri. Kothari for the reason that the amount claim in the dispute is more than 2 crores and if the disputant succeed in the dispute the certainly claim amount will increased can not be ignored. what is material to see at the time of the considering the application, is whether the opponent no.6 is trying to disposed of his property. The intention of the opponent no.6 established by the disputant bank. The disputant made out prima facie case and also established balance of convenience in its favour. hence to protect the interest of the disputant bank, the interim relief against the opponent no.6 required to granted, otherwise bank would cause loss. hence to the extent of restrained him from transferring his share in the above properties and creating their party interest in those properties is allowed. accordingly I pass following order.

ORDER

- 1) The application is hereby partly allowed.
- 2) The opponent no.6 is hereby restrained from transferring his share in the properties mention in schedule (a) and (b) and restrained to create third party interest in the properties till disposal of the dispute.

Place : Ahmednagar
Dated : 02/08/2022

(B.S.Lakhote)
Judge
Co-op. court, Ahmednagar