

	<p style="text-align: center;">Shri Subhash Govind Gavade & Ors. Vs. Chandgad Urban Co-op. Bank Ltd., Chandgad & Ors.</p>
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1. The plaintiffs have filed this suit for a declaration and perpetual injunction against the defendants and this is an application for temporary injunction as provided in Order 39 Rule 1, 2 of the Civil Procedure Code, 1908.

2. The facts in dispute can be summarized as under :-

It is contention of the plaintiff that, the suit property i.e. Grampanchayat Property No.364/1, situated in Chandgad, Taluka – Chandgad, Dist. Kolhapur (City Survey No.262 and 263) including land and constructed RCC structure on it, was owned by the plaintiffs. They mortgaged it with defendant No.1 by executing mortgage deed in the year 2015, accordingly two mortgage deeds were executed. On failure to pay EMI regular, their account becomes NPA. Therefore, bank initiated recovery proceeding under SARFAESI Act, 2002. As one time settlement could not arrived at, Bank proceed further to complete auction proceeding. On 01.04.2019 Bank obtained symbolic possession of the suit property after publishing public notice in English News Paper ‘Business Standard’ and Marathi News Paper ‘Tarun Bharat’ on 27.03.2019. Then, Bank applied for permission with the Collector, Kolhapur for auction sale. The Bank obtained actual possession of the suit property on 14.05.2025, with the help of The Tahasildar, Chandgad.

3. It is further contention of the plaintiff that, the auction proceeding undertaken by the Bank with the help of Recovery Agent i.e. defendant No.2, after 6 years of possession, is time barred proceeding. Therefore, it is challenged by the plaintiff with prayer to declare that the auction proceeding initiated by the Bank and

recovery agent is time barred. Also to declare that the sale certificate issued in respect of the suit property is illegal and to give direction to the Bank to redeem the mortgage deed after accepting the due amount from the plaintiffs.

4. By filing temporary injunction application, the plaintiff submitted that, in pursuant of that sale proceeding the defendant No.2 execute the sale deed dt. 07.08.2025 with the defendant No.3. Thereafter, defendant No.3 has undertaken work of renovation, alteration with intent to change in the suit property. As plaintiffs challenged the sale proceeding itself as time barred, they requested to stop/restrain the defendant No.3 from carry out renovation, alteration in the suit property till final adjudication of this suit.

5. The defendant No.3 filed his say/written statement below Exh.13 and submitted that, plaintiffs bank account becomes NPA and after conducting proper procedure as provided in SARFAESI Act, the Bank handover the vacant and peaceful possession to him under the auction sale and he paid Rs.1,09,00,000/- to the bank in the sale proceeding. His name is recorded later on in Nagarpalika Chandgad and in Revenue Record as a owner of the suit property. Now, he becomes absolute owner of the suit property and plaintiff cannot claim ownership over the suit property. According to the defendant No.3 the plaintiffs should have approach DRT to raise their grievance, but instead they filed this suit which is not maintainable in civil court. Therefore, they filed an application Exh.23 for rejection of plaint as provided under Order 7, rule 11 of the Code of Civil Procedure. By giving reference of amended provisions of Section 13 of SARFAESI Act, the defendant No.3 requesting in that application to reject the plaint in present suit. Till date plaintiffs have not filed say to application Exh.23.

6. The defendant No.3 further submitted that he is trade dealer of agriculture products and mainly dealing in supply of food grain. Therefore, for storage of grain he requires strong and packed rooms. Therefore, he undertaken construction of air tight shutter and new

tiles to protect grains from rat and other reptiles. According to the defendant No.3, he accumulated money from various Banks and businessman and paid Rs.1,09,00,000/- to the Bank. He is *bona fide* purchaser. If he stopped from using the suit property and from carry out renovation, then it will cause irreparable loss to him which cannot be compensate in money. Therefore, he requested to reject the application for temporary injunction.

7. Whereas, defendant No.1 and 2 are the Bank and recovery agents. They filed their joint Written Statement and Say below Exh.16 to this temporary injunction application. According to these defendants, due to proclamation of lock-down and Covid-19 pandemic, recovery proceeding from the Bank was completely stopped as per directions of the Honorable High Court. At that time another proceeding was initiated by the plaintiffs against the Bank i.e. RCS No. 27 of 2021. The plaint has been rejected in that suit by he court by passing order dated 21.12.2023. The plaintiffs concealed this fact from this court, therefore, according to this defendants the plaintiffs are not entitled to claim equitable relief in present suit.

8. The defendant No.1 and 2 further point out that the plaintiff paid Rs.5,00,000/- two times with the Bank, when the proceeding was pending before the DRT, Pune, but later on, plaintiffs failed to clear remaining due loan amount. Therefore, defendant No.1 and 2 initiated the sale proceeding in respect of the suit property as per Rules. Therefore, defendant No.3 is absolute owner of the suit property as, he purchased it in auction sale by paying Rs.1,09,00,000/- to the Bank. Therefore, defendant No.1 and 2 requested to reject the temporary injunction application with compensatory cost.

9. Heard Ld. Advocate for the plaintiffs and the defendants. Perused all documents filed by the plaintiffs and the defendants. After considering the pleadings and submissions of both parties, I have formulated the following points for my determination and their findings are recorded along with reasons as follows :-

Sr. No.	POINTS	FINDINGS
1)	Do the plaintiffs have made out a <i>prima facie</i> case in their favor ?	No
2)	Does the balance of convenience lie in favor of the plaintiffs ?	No
3)	Who would suffer an irreparable loss, which cannot be compensated in money, if the prayer of temporary injunction is allowed ?	The defendant No.3.
4)	What order ?	Application is rejected.

-: REASONING :-

AS TO POINT NO. 1 TO 3 :-

10. According to plaintiffs they were owner of the suit property. On failure of regular payment of EMI in respect of loan availed from the defendant No.1, they declared account as a NAP and initiated recovery proceeding against the plaintiffs under the SARFAESI Act, 2002. After obtaining symbolic possession the Bank started auction proceeding and sold the suit property to defendant No.3. According to plaintiff the Bank after lapse of limitation period started auction proceeding therefore, that proceeding itself is time barred and it is not binding on the plaintiffs. Therefore, they have filed this suit for declaration and perpetual injunction. In this temporary injunction application by filing photographs of suit property submitted that, defendant No.3 has undertaken work of renovation, alteration with intent to change in the suit property. As plaintiffs challenged the sale proceeding itself as time barred, they requested to stop/restrain the defendant No.3 from carry out renovation, alteration in the suit property till final adjudication of this suit.

11. On the other hand, defendant No.3 contended that, after conducting proper procedure as provided in SARFAESI Act, the Bank handed over the vacant and peaceful possession of the suit property to him under the auction sale and by accumulating money from various Banks and businessman, paid Rs.1,09,00,000/- to the Bank in the sale proceeding. His name is recorded as a owner of suit property in record of Nagarpalika Chandgad and in Revenue Record. Now, he becomes absolute owner of the suit property and plaintiff cannot claim ownership over the suit property. As per contention of the defendant No.3 he is trade dealer of agriculture products and mainly dealing in supply of food grain. Therefore, for storage of grain he requires strong and packed rooms. Therefore, he undertaken construction of air tight shutter and new tiles in the suit property to protect grains from rat and other reptiles. According to the defendant No.3, he is *bona fide* purchaser. If he stopped from using the suit property and from carry out renovation, then it will cause irreparable loss to him which cannot be compensate in money.

12. The photographs filed by the plaintiffs as well as defendant No.3 shows that, the defendant No.3 has undertaken work of renovation of the suit property to make it usable for his business. If that work remain as it is it will not be beneficial to either plaintiffs or the defendants. Even if the renovation work is stopped they plaintiffs would not get any benefits. On perusal of photographs prima facie it appears that, the defendant No.3 has undertaken only renovation of suit property and not material alteration in structure of the suit property. In the event if plaintiff succeed in his case he can ask for compensation from the Bank but not from the defendant No.3. The plaintiffs have dispute with the bank and not against the defendant No.3. The defendant No.3 is a *bona fide* purchaser of the suit property. At this *prima facie* stage we have to accept that the proceeding initiated by the bank are as per rule and they have followed due process of law.

13. Considering all these facts, I do not find any justifiable reason to consider plea of plaintiffs to give directions to the defendant No.3 to stop work of renovation of the suit property. Therefore, I hold that, the plaintiffs failed to prove prima facie case in their favor. The balance of convenience is in favour of the defendant No.3 and if stop work directions are given at this stage then it would be causing irreparable loss to the defendant No.3 which cannot be compensate in money later on. Therefore, considering hardship caused to the defendant No.3 request of the plaintiff has to be rejected. Therefore, I record my finding on point No. 1 and 2 in the negative and point No. 3 in favour of defendant No.3. Thus, I pass the following order.

AS TO POINT NO. 4 :-

14. Considering the finding of point No. 1 to 3, I pass the following order.

:- ORDER :-

- (1) The application (Exh. 5) filed to restrain the defendant No.3 from carry out renovation in the suit property, is rejected.
- (2) The plaintiffs are directed to file say on Exh.23 i.e. application for rejection of plaint filed by the defendant No.3, on next date.
- (3) Cost in cause.

Place :- Gadhinglaj
Date :- 08-05-2025

(S. C. Havelikar)
Jt. CJSD, Gadhinglaj
District :- Kolhapur.