

MHLA050012192009



Arb.R.D.No.127/2009

Osmanabad Janta Co-op. Bank

Vs. Avinash and ors.

ORDER BELOW EXH.342.

01. Application at Exh.342 is filed by J.D. No.1 Avinash and J.D. No.3 Sarita (they are husband and wife), for cancellation of arrest warrant issued against them as per the order passed below Exh.310. They have contended that, the arrest warrant is issued for a period of 7 days against them as per order passed below Exh.310. Further order was passed to waive notice under Order XXI Rule 37 of the Code of Civil Procedure.

02. They have mentioned the observations of the court in para No.5 of the order passed below Exh.310. Subsequently, orders were passed for making compliance of the order by the D.H. The warrant is issued hurriedly. J.D.s are having various properties and sufficient means. Therefore, the arrest warrant cannot be issued until and unless the property is attached. They have mentioned several properties valued more than Rs.6,00,00,000/-.

03. Land Gat No.81/1/1 was put for auction, but as some disputes were raised, the auction was not finalized. J.D. No.1 has requested the D.H. Bank to permit to sell some of the part of the land. Gat No.81/1/1 was purchased by the J.D. No.1 and 5 from J.D. No.4 on 01/04/2003. It was mortgaged on the same day with D.H. bank. On the basis of sale deed dated 01/04/2003, loan was sanctioned and was disbursed on 31/03/2003 i.e. before the execution of the sale deed.

04. J.D. No.4 is nominal party to the sale deed as she has not paid anything towards consideration amount. The bank was interested in the property bearing Gat No.81/1/1. So, without execution of the sale deed the loan was disbursed and mortgage deed was executed. In order to suppress the fraudulent activities, arbitration award was obtained. The bank can take decision about that mortgaged property. Unless that property is sold, arrest warrant cannot be issued.

05. J.D. No.4 is having 5 plots. The D.H. bank made an attempt to auction those plots, but thereafter no steps were taken to sell them. There is collusion between the D.H. and J.D. No.4. J.D. No.5 is having 2 H 43 R land at village Chilka in Gat No.227, which she has transferred to Sarika, after obtaining loan, by compromise court decree in RCS No.67/2006. J.D. No.5 also has transferred her plot No. E-229 at Ahmedpur to her minor daughter. J.D.No.1 is having 1 H 21 R land at village Konali (Dongar), Tq. Jalkot in Gat No.139.

06. The land is transferred to the D.H. The D.H. filed application for attachment of the land. That application is not decided yet. Another application Exh.331 is also not decided. J.D.s are intending to pay all the dues. So, as there is property available for auction, warrant may be cancelled. The dispute was raised by one Ravi Madrewar about Gat No.81/1/1 though he has no interest in it. That application was rejected on 05/07/2013. The D.H. did not take further steps in the auction.

07. Though, an order is passed in RCS No.11/2009 on the temporary injunction application (Exh.434) that the temporary injunction

order can not be an embargo to proceed further for the bank. As there is collusion between D.H. and J.D. No.4, the bank is not proceeding further. J.D.s are senior citizens and one of them is a lady. So, it is submitted that, the application may be allowed. An affidavit is filed below Exh.345 by J.D. No.1 in support of the contents of the application.

08. The D.H. filed its say at Exh.349 and has admitted the contents in para No.1 and 2 in the application. It is also admitted that, J.D. No.1 and 5 mortgaged land Gat No.81/1/1 admeasuring 90 R with the D.H. for a security and repayment of loan. Rest of the contents are denied by the D.H. J.D. No.1 has no right to say anything about the properties of J.D.No.4 and 5. The property in Gat No.139 of J.D. No.1 is having valuation worth of Rs.5,05,000/-. Various opportunities are given for the repayment of the decretal amount to the J.D. since the year 2009.

09. Ravi Madrewar has filed the suit against J.D. No.1, 4 and 5 and J.D. No.5 has filed R.C.S. No.293/2024 against J.D. No.1. J.D. No.5 has also filed another suit against Ravi Madrewar. The arbitration award is not challenged by the J.D. So, it is prayed that, the application may be rejected. Affidavit filed by the branch manager of D.H. in support of all the contents in the say at Exh. 356.

10. Objection petitioner resisted it being non tenable (Exh.359)

11. Heard Ld. Advocate for the parties. Ld. Advocate for the J.D. submitted that, the D.H. bank is interested to grab the land and to protect the interest of J.D. No.4. Disbursement of loan itself is put in question and

also the mortgage deed was put in question by him. He submitted that, J.D. is ready to pay dues as he has ample properties, which can be auctioned by the bank. So, unless and until all the properties are attached and auctioned, arrest warrant cannot be issued. But, as it is issued the same may be cancelled.

12. Per contra, the Ld. Advocate for the D.H. submitted that, there is no provision to cancel the arrest warrant once issued. The J.D.s have not challenged the award before the Hon'ble District Judge. The Hon'ble High Court even has ordered J.D.s to pay dues. So, he submitted that, the application may be rejected.

13. Basically, the arbitration award passed in case No.279/2007 is put for execution, wherein the J.D. No.1 to 5 were directed to pay the amount of Rs.1,01,75,162/- alongwith interest @ 21% per annum alongwith costs of award to the D.H. Hundreds of orders have been passed in the matter to recover the amount from the J.D.s. The property bearing land Gat No.81/1/1 was put for auction. The auction was stayed by the Hon'ble High Court in the order passed in W.P. No.6518/2013. J.D. No.1 has filed various applications, which has resulted in lingering the matter for more than 15 years.

14. When the J.D.s say in this application that they have various properties, which could be attached and auctioned, if he really had any wish to pay all the dues of the D.H., he could have sold those properties, which are mentioned below Exh.341 i.e. land at village Konali (Dongar), village Chilka, various houses in the names of Supriya Gadewar, Shewta

Gadewar and Bhimashankar Gadewar. The prime responsibility of J.D. No.1, who is borrower, is not complied with by him to pay the dues.

15. Now, he has mentioned that, the co-borrower has his properties which can be auctioned. It is the collective responsibility of all the J.D.s to clear the dues of the D.H.

16. During the argument Ld. Advocate for the D.H. submitted that, the bank was ready to bring down the amount with almost Rs.75,00,000/-, if parties were ready to settle the matter. But, J.D.s have not taken benefit of the bank proposal. It may be the situation but, at this juncture, when the arrest warrant is issued against the J.D.s, the same cannot be called back.

17. Before passing an order on Exh.310 (application under order XXI Rule 37 of the C.P.C.), my Ld. Predecessor had called say of J.D. on 27/11/2023. J.D. No.1 to 3 filed their say below Exh.313 and J.D. No.4 and 5 filed their say at Exh.312 to the application of the D.H. to issue arrest warrant. As they had filed their say, which is accepted as per Order XXXI Rule 37 of the Code of Civil Procedure, further order was passed on 03/04/2025 that, the J.D.s should not taken defence of non issuance of notice under Order XXXI Rule 37 of the C.P.C. as they have filed their say to the application to issue arrest warrant (Exh.310). So by giving proper opportunity to all the J.Ds., the order was passed below Exh.310.

18. J.D. No.4 and 5 rushed to the Hon'ble High Court against that order in W.P No. 5357/2025. The Hon'ble High Court was pleased to

dispose of the writ petition on 05/05/2025. In para No.9 of the order of the Hon'ble High Court can be read in verbalism as under,

“It is further needs to be noted that, the petitioner is very much party to the First appeal and the earlier writ petitions. In spite of this being the position, he has not pointed out orders passed by this Court to the executing Court. This Court finds force in the arguments of learned Advocate Mr. Deshmukh that it was necessary for the petitioner to point out earlier orders to the executing Court. Since the observations of the order passed by the executing Court and the operative order appear to be some what contrary, it would be for the petitioner to deposit the amount within eight weeks by putting any other property to sell. The effect of the impugned order is suspended for eight weeks.”

19. Since the day of passing of order by the Hon'ble High Court, J.D. No.4 and 5 have not paid anything in this matter or to the D.H. Instead, they filed application below Exh.353 to cancel the arrest warrant issued against them with a contention that, they were not the parties to the loan proceeding and they were witnesses for the mortgage deed. That application is altogether different and order shall be passed upon it. But, at this juncture J.D. No.1 who has submitted the documents of the properties below Exh.341 show that, property bearing Gat No.139 at village Konali (Dongar), is owned by J.D. No.1. Except that property no other property of J.D. No.1 is displayed by him. The extracts of the properties of J.D. No.5 Hemlata are filed on record. It is not the say of J.D. No.1 that Gat No.139 of village Konali (Dongar) is mortgaged by him or the D.H. has kept encumbrance upon it. So, he was free to sell that

property and pay the amount of consideration towards repayment of loan of the D.H. J.D. No.1 and 2 are interested in keeping lingering the matter.

20. The executing court cannot go behind the decree whether the award is right or wrong can be decided in an appeal and not before this court. None of the parties have preferred any appeal against the award as per section 34 of the Arbitration and Conciliation Act, 1996. So, nothing can be stated against it in this application. The Hon'ble High Court in the order of W.P. No.5327/2025 has clarified the situation in paragraph No.8 and. Hence, the order passed to issue arrest warrant cannot be recalled and therefore, there is no merit in the application. Hence, it is rejected.

Date:04/08/2025.

Sd/-
(S.N.Sarde)
Civil Judge Sr. Div., Ahmedpur.