

MHLA050012192009



Arb.R.D.No.127/2009

Osmanabad Janta Co-op. Bank
Vs. Avinash and ors.**ORDER BELOW EXH.353.**

01. The application is filed by J.D. No.4 Bhimashankar and J.D. No.5 Hemlata (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 purchased by J.D. No.1 and 5 from J.D. No.4 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. So, it is submitted that, the application may be

allowed. An affidavit is filed below Exh.354 by J.D. No.4 in support of the contents of the application.

08. The D.H. filed pursis below Exh.358 and accepted the say filed below Exh.349 to be the say to the application filed by J.D. No.4 and 5. 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.

10. Heard Ld. Advocates for the parties.

11. It is pertinent to note here that, J.D. No.4 and 5 have challenged the order passed below Exh.310 before the Hon'ble High Court in W.P. No.5327/2025, wherein the Hon'ble High Court was pleased to pass an order giving an opportunity to J.D. No.4 and 5 to deposit the amount within 8 weeks by putting any other property to sell for the period of 8 weeks, the order of issuance of arrest warrant

was suspended. The order was passed by the Hon'ble High Court on 05/05/2025 .

12. J.D. No.4 and 5 did not deposit any amount in this matter. The period of 8 weeks expired on 30/06/2025. Thereafter, present application came to be filed without uttering anything about W.P. No.5327/2025 in the application.

13. J.D. No.4 and 5 have challenged the award by saying that, they were not parties to the loan here they were just witnesses to the deed of mortgage. Whether the award is right or wrong can be decided in an appeal and this court is least concerned with it. The court can surely see whether J.D.s are following the orders of the court in its letter and spirit.

14. When J.D.s are not following the directions given by the Hon'ble High Court in W.P. No.5327/2025, the J.D.s have lost their right to challenge the arrest warrant issued against them. The Hon'ble High Court had given an opportunity to J.D. No.4 and 5 to pay dues and with kind heart, the Hon'ble High Court suspended the order of issuance of arrest warrant for 8 weeks. J.D. No.4 and 5 have not acted upon the orders of the Hon'ble High Court in W.P. No.5327/2025. So, there is no necessity as to why the application be allowed. Hence, for above reasons I pass the following order.

ORDER

The application is rejected.

Sd/-

(S.N.Sarde)

Civil Judge Sr. Div., Ahmedpur.

Date:04/08/2025.