

MHNS130003072024



Reg. Civil Suit No.57/2024

Sandip & Ors. ..Vs.. Special Recovery  
Officer + 1

**ORDER PASSED BELOW EXH.5**

The present application has been filed by the plaintiffs seeking temporary injunction in order to restrain defendant no.1 from conducting auction of the suit property till the disposal of the suit. Perused the application and say filed by defendant no.1 . Heard both.

2. **Plaintiff's case is as follows:-**

Plaintiff no. 1 and 2 are brothers. Plaintiff no.3 is their mother and defendant no.2 is their father. Defendant no.1 is Special Recovery Officer of Patsanstha from whom defendant no.2 obtained loan of Rs. 8,00,000/-. There is partition by metes and bounds between the plaintiffs and defendant no.2. 67R agricultural land out of gat no.122/2 situated at Pachora Wani, Tal. Niphad, Dist. Nashik is the suit property. The plaintiffs and defendant no.2 are joint family. The suit property is ancestral and joint family property of the plaintiffs and defendant no.2. The plaintiffs have  $\frac{1}{4}$  each share in the suit property. However, defendant no.2 obtained loan from defendant no.1 without any necessity. Defendant no.2 defaulted the said loan. Therefore, defendant no.1 published paper notice in daily newspaper for auction of the suit property for the recovery of loan. Hence, the

plaintiffs sent notice to defendant no.1 through their advocate and taken objection on the legality of said auction. Therefore, in order to protect the plaintiff's share they filed present suit for declaration and partition. By way of the present application the plaintiffs prayed to restrain defendant no.1 from conducting auction procedure of the suit property.

3. Defendant no.1 appeared and resisted the suit and application Exh.5 by filing their written statement at exh.13. He contended that the suit is not maintainable and it is barred by Section 91, 163, 164 and 154 of the Maharashtra Co-operative Societies Act, 1960. He contended that plaintiff no.2 obtained loan of Rs.8,00,000/- on the basis of security of suit property. Defendant no.2 stands surety for the said loan. Plaintiff no.2 and defendant no.2 defaulted the repayment of said loan. Therefore, defendant no.1 started recovery procedure by obtaining certificate under section 101 of the Maharashtra Co-operative Societies Act. Defendant no.1 has already given sufficient opportunity for the repayment of loan. Plaintiff no. 2 paid Rs.35,000/- towards the payment of loan on 07/07/2023. The auction procedure initiated on behalf of defendant no.1 is proper and legal. Plaintiff no.2 has not challenged the said procedure by filling review petition before Divisional Joint, Registrar, Nashik. In order to avoid payment of 50% amount towards the payment of loan, plaintiffs filed the present suit. Hence, it is prayed that application Exh.5 may kindly be rejected.

4. Taking into consideration, the case of both parties and

arguments advanced by learned advocate for the plaintiffs and defendant, following points arise for my determination to which I have given reasons and findings thereon:-

|    | <b>POINTS</b>   | <b>REASONS</b>                  |
|----|---|---------------------------------|
| 1. | Whether the plaintiffs prove that prima-facie case is in their favour ?                                 | <b>No.</b>                      |
| 2. | Whether the plaintiffs prove that the balance of convenience tilts in their favour?                     | <b>No.</b>                      |
| 3. | Whether the plaintiffs prove that irreparable loss would be caused to them, if application is rejected? | <b>No.</b>                      |
| 4. | What order?   | <b>Application is rejected.</b> |

### REASONS

#### AS TO POINTS NO. 1 :-

5. Considered submissions. Admittedly, the suit is filed for seeking declaration to restrain defendant no.1 from conducting auction of plaintiff's share in the suit property and partition and separate possession of the suit property. On perusal of plaint and application Exh.5 it is nowhere seen that the plaintiffs asked partition and defendant no.2 refused for the same. Therefore, prima facie it is seen that there is no cause of action for the claim of partition.

6. Plaintiff no.2 denied the loan of Rs.8,00,000/- from defendant no.1. However, on perusal of loan application dated 15/08/2019, filed by defendant no.1 prima facie it seen that plaintiff no.2 Sagar Shantarm Watpade asked for the loan of Rs.9,00,000/- for his dry grapes business. Loan Sanction letter dated 28/08/2019 prima facie shows that defendant no.1 sanction the loan of Rs.8,00,000/- to plaintiff no.2. Prima facie it is seen that defendant no.2 is surety for the said loan. However, plaintiff no.2 denied the said loan from defendant no.1. Further, prima facie it is seen that the plaintiffs and defendant no.2 stay together in the joint family. There is no pleading of strained relationship between the plaintiff and defendant no.2. Therefore, in existence of prima facie documentary evidence of loan, it is unacceptable that defendant no.2 obtained loan without knowledge and consent of the plaintiffs, specifically plaintiff no.2. Furthermore, defendant no.2 was duly served on 06/03/2024 vide Exh.10. However, he did not turn up and contest the suit. Therefore, the absence of defendant no.2 speaks for itself. Hence, prima facie it seems that plaintiffs and defendant no.2 filed the present suit in collusion with each other.

7. Plaintiff no.2 denied the fact of obtaining loan. However, documentary record prima facie shows that he filed an application for repayment of loan dated 27/03/2023. Prima facie nothing is appeared to show that there is infringement of Rule 19A of Maharashtra Co-operative Societies Rules, 1961 at the instance of defendant no.1. Hence, prima facie it is seen that the plaintiffs have not come with clean hands. Therefore, for the above mentioned

reason plaintiffs have not prove the prima facie case in their favour. The plaintiffs are not entitled for the equitable and discretionary relief as they have not come with clean hands. Therefore, prima-facie it is seen that the plaintiffs failed to prove prima-facie case in their favour. Hence, I answered point no.1 in the negative.

**AS TO POINT NO. 2 AND 3 :-**

8. Plaintiffs failed to show that balance of convenience is in their favour. Further, prima facie it is not seen that no irreparable loss would caused to the plaintiffs if the application is rejected. Therefore, as far as the findings given in points no. 1, balance of convenience and irreparable loss does not tilt in favour of plaintiffs. Hence, I answer points no.2 and 3 in the negative.

**AS TO POINT NO. 4 :-**

9. In answer to point No. 4, the following order is passed :-

**ORDER**

1. Application is rejected.
2. Cost in main cause.

( *Dictated & pronounced in open Court* )

Date:- 22/07/2024

( P. D.Kolekar )  
Civil Judge Junior Division.,  
Pimpalgaon(B.)