



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION NO.2750 OF 2024
WITH
CONTEMPT PETITION NO.24 OF 2024
IN
COMMERCIAL SUIT NO.18 OF 2022

IDBI Trusteeship Services Limited ... Plaintiff/Applicant
V/s.
Ozone Infra Con Private Limited & ors. ... Defendants
and
Mr. Mahesh Gowda and anr. ... Respondents

Mr. Ashish Kamat Senior Advocate with Mr.Aniruddh Gambhir, and
Mr. Keshab Roy Choudhary i/by M/s Cyril Amarchand Mangaldas,
Advocates for the Plaintiff/Applicant.

Mr. Simil Purohit Senior Advocate with Mr. Ranjith Nair, Ms.Tarni
Agarwal i/by M/s Shardul Amarchand Mangaldas, Advocates for the
Respondent No.1 and 2 in IA/2750/2024 and Defendant No.3 in
COMS/18/2022 and Respondent No.1 and 2 in Contp/24/2024.

CORAM : N. J. JAMADAR, J.

DATE : 17th OCTOBER 2024

PC.:

1. Heard the learned Counsel for the parties.
2. The Applicant/petitioner is the plaintiff in Commercial Suit No.18 of 2022. Respondent No. 1 is the original Defendant No.1. Respondent No.2/Defendant No.2 is the Promoter and Director of Respondent No.1. The Respondent No.3 is the company secretary of

Respondent No.1.

3. The Defendants had executed debenture documents under which the plaintiff came to be appointed as debenture trustee under the Debenture Trust Deed dated 25th April 2018 in terms of which M/s.Ozone (D1) has availed the facility to the tune of Rs. 63 cores. Defendant No.2 has also executed deed of personal guarantee dated 25th April 2018 in favour of the plaintiff. M/s.Ozone Urban Infra Developers Pvt. Ltd./Defendant No.3 executed corporate guarantee in favour of the plaintiff on 25th April 2018.

4. On account of failure on the part of defendant No.1 and 2 to make the payment of outstanding amount under the Debenture Trust Deed dated 25th April 2018 and rectify other breaches of their obligations, the plaintiff recalled the entire amount of non-convertible debentures and invoked the guarantee.

5. In view of the default, the plaintiff was constrained to institute the Suit, *inter alia*, for recovery of outstanding amount from the Defendants to the tune of Rs.1,08,40,08,556/-, alongwith further interest and for specific performance of the agreement to create further security, and for enforcement of the security also.

6. In the Suit, by an order dated 23rd December 2021 in IA(L)/25446/2021, by way of ad-interim relief, the defendants were

directed not to create any third party rights and interest in the properties described in Exhibit G-1, G-2 and G-3 of the Plaint as well as any other assets belonging to defendant Nos. 2 and 3 except in ordinary course of business. By further order dated 20th January 2022, an ad-interim injunction in terms of prayer clause (d) of the application restraining M/s.Ozone (D1) from in any manner directly or indirectly selling, transferring, alienating, parting and/or creating any third party rights, interests including charges in respect of properties described in Exhibit G-1, G-2 and G-3 to the Plaint came to be granted.

7. In Commercial Appeal (L) No. 2441 of 2022, by an order dated 11th February 2022, the Appeal Bench, in addition to the order passed by the learned Single Judge dated 20th January 2022 directed that all the covenants in the personal guarantee dated 24th April 2018 and the Corporate Guarantee dated 25th April 2018 given/provided by Defendant Nos. 2 and 3, respectively, shall be binding on Defendant No.2 and 3.

8. The applicant/petitioner, has preferred these application and petition alleging deliberate violation of the aforesaid interim orders passed by this Court and the Appeal Bench. It is asserted that when the plaintiff ascertained the status of the securities and got title search conducted, it transpired that on 17 July 2023 Vasudevan

Sathyamoorthy (father of Respondent No.2), Mr.N. Thangaraj (land owners) represented by the general power of attorney holder, M/s.Ozone (R1), through its authorized Representative/respondent No.3, executed sale deed in favour of M/s. El Paraiso Housings Pvt. Ltd. (R4) and thereby sold properties bearing Survey No.193/1, 193/2, 193/5, 193/6 and 193/7 (the mortgage properties) for a consideration of Rs. 7,94,75,000/-. Those properties form part of the properties described in Exhibit G-3 to the Plaint. Copies of the Title Search Report and impugned instrument are annexed to the application.

9. An affidavit-in-reply is filed on behalf of Respondent No.1 and 2 and Defendant No.3. It is contended that land owners Mr. Vasudevan Sathyamoorthy (father of Respondent No.2) and Mr.N. Thangaraj were not parties to IA/25446/2021 wherein ad-interim injunction has been granted. Only M/s.Ozon (R1) was restrained by this Court by the said interim orders. Therefore, M/s.Ozon (R1), which has executed the sale deed on the strength of General Power of Attorney dated 23rd March 2018, being an agent of the disclosed principal, is not personally liable in such capacity.

10. Secondly, the transactions cannot be said to have been executed in a clandestine manner as registered instrument has been executed. In fact, Respondent No.1 and 2 and Defendant No.3 had entered into a

settlement agreement with the applicant, on 1st April 2024. The Respondent No.1 had sought further time to make payment in terms of the said agreement. The debenture holders, however, did not accede to the request to extend the time. Correspondence has been exchanged between the Respondent No.1 and 2 and the debenture holders which shows that, the debenture holders were in the loop. Therefore, the sale deed cannot be said to have been executed with an intent to defraud the plaintiff or debenture holders.

11. Mr. Kamat, the learned Senior Advocate appearing for Applicant/plaintiff submitted that, the sale deed has been executed in flagrant violation of the interim order. The justification sought to be offered does not merit countenance. On the contrary, the affidavit-in-reply indicates that the Respondent Nos.1 and 2 and Defendant No.3 are in the process of alienating further properties as is evident from the public notice published by one of the prospective purchasers on 9th August 2024.

12. Mr.Purohit, the learned Senior Advocate appearing for Respondent No.1 and 2 and Defendant No.3, attempted to salvage the position by canvassing the submissions that the properties were sold with the consent of the debenture holders. An endeavour was made to urge that despite the sale of the properties under the impugned sale

deed, in the public notice given by prospective purchasers, those properties are also included and that manifests the bonafide intent of the respondents.

13. I am afraid to accede to the aforesaid submissions of Mr.Purohit. The sale deed, as is evident, has been executed by M/s.Ozon (R1) in the capacity of the power of attorney of land owners. M/s.Ozon (R1) cannot be heard to urge that it has executed the sale deed as an agent, when an ad-interim order passed after hearing M/s.Ozone (R1) operates against it. The Appeal Bench order further enjoined the personal and corporate guarantors to abide by the covenants thereunder.

14. In this view of the matter, a prima facie case of willful disobedience of the order is made out. It is trite law that an alienation in breach of the prohibitory order is void and *non-est* in the eyes of law. Such a sale does not confer any lawful title on the purchaser. The court dealing with such contumacious conduct is not denuded of the authority to pass consequential orders to restore *status quo ante*. It is not necessary to implead the prospective purchaser as a party to the contempt proceeding. In the case at hand, despite notice, respondent No.4 chose not to appear. Reliance placed by Mr.Kamat on a recent decision in the case of ***Balwantbhai Somabhai Bhandari Vs. Hiralal***

Somabhai Contractor (Deceased) Rep. By Lrs. And Ors.¹ appears to be well-founded.

15. Having noticed that there is a *prima facie* willful disobedience of the orders of the Court and furthermore there is an imminent threat of further breach of the prohibitory order as a public notice for sale of the other mortgage properties has been issued, clearly manifesting the intent of the respondents, it is necessary to pass further an ad-interim order, and take measures to protect the subject matter of the suit and also issue notice to the respondents to show cause as to why action for willful disobedience of the order be not taken. Hence, the following order:

ORDER

(i) Issue notice to Respondent No.1 to 4 to show cause as to why action for breach of order dated 20th January 2022 passed in IA(L)/25446/2021 be not taken against them, returnable **28th November 2024**.

(ii) In addition, there shall be ad-interim relief in terms of prayer clause (f) and (h) which read as under:

“f) restrain and prohibit Respondents by an order of injunction from in any manner effecting or acting upon the Impugned Sale Deed (Exhibit B hereto) or exercising any rights in relation to dealing with or alienating the subject

¹ 2023 SCC OnLine SC 1139

properties (Exhibit B hereto);
 h) that appropriate orders and directions be passed by this Hon'ble Court for appointment of a Court Receiver of High Court Bombay or any other fit and appropriate person as this Hon'ble Court may deem fit and proper, as Receiver on the Mortgage Properties sold by Respondent Nos. 1 to 3 to Respondent No.4 under the Impugned Sale Deed and to take custody of all documents, papers and other such other deeds in relation to the said properties;"

(iii) The Court Receiver, High Court Bombay stands appointed in respect of the mortgage properties sold by respondent No.1 to 3 to Respondent No. 4 under the impugned sale deed with all the powers under Order 40 Rule 1 of the Code of Civil Procedure except power to sale and dispose of the said properties.

(iv) For the present, the Court Receiver shall take symbolic possession of the aforesaid mortgaged properties sold under the impugned Sale Deed and affix the board of the Court Receiver.

(v) The Plaintiff shall lodge papers and proceedings with the Court Receiver and deposit the amount towards the charges and expenses of the Court Receiver as per rules.

CONTEMPT PETITION NO.24 OF 2024

1. Issue notice to the Respondents to show cause as to why action for contempt of the order passed by this Court on 20th

January 2022 in IA(L)/25446/2021 be not taken against them,
returnable **28th November 2024**.

(N. J. JAMADAR, J.)