

ITEM NO.103

COURT NO.12

SECTION IX

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 1702-1703/2008

BANK OF MAHARASHTRA

Appellant(s)

VERSUS

NATHA & ORS.

Respondent(s)

(with appln. (s) for exemption from filing O.T. and interim relief and office report)

Date : 30/03/2017 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ARUN MISHRA
HON'BLE MR. JUSTICE S. ABDUL NAZEER

For Appellant(s) Mr. Sachin Patil, Adv.
Mr. Sanjay Kharde, Adv.
Ms. Monika Pandey, Adv.
Ms. Chandan Ramamurthi, Adv.

For Respondent(s) Mr. Basant R., Sr. Adv.
Mr. M. Y. Deshmukh, Adv.
Mr. Kartik, Adv.
Mr. Shakti Pandey, Adv.

Mr. Rameshwar Prasad Goyal, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The appeals are allowed to the extent indicated in the signed order. No order as to costs.

DRT is hereby directed to decide the case as expeditiously as possible.

(NEELAM GULATI)
COURT MASTER

(TAPAN KR. CHAKRABORTY)
COURT MASTER

(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No(s). 1702-1703 OF 2008

BANK OF MAHARASHTRA

Appellant(s)

VERSUS

NATHA & ORS.

Respondent(s)

O R D E R

1. Heard Mr. Sachin Patil, learned counsel appearing for the appellant and Mrs. R. Basant, learned senior counsel for the respondents.

2. The Bank of Maharashtra has questioned the order passed by the High Court of Judicature at Bombay Bench at Aurangabad on 8.12.2003 in Writ Petition No. 5120 of 2003 thereby allowing the writ petition filed by respondent Natha and others and directing the disbursement of compensation to the petitioner for the land which had been acquired and dismissal of review application.

3. Bank of Maharashtra (in short 'the Bank') had filed the review application which had been dismissed

by the High Court. It is a case which projects serious nature of suppression made by the respondents before the High Court as unfolded by the following facts:

One Pradeep Vithalrao Kolhe had obtained a loan of Rs.9.95 lakhs from the appellant- the Bank. Venkat Kolhe stood as guarantor of the said land. Venkat Kolhe has died. His successors are also respondents in the appeal. Appellant- Bank filed an application in the suit for recovery of amount, seeking attachment before judgment of the property of defendant no.2 to 8 which included disputed land Gat no. 65 area 2 Hectares 53 Ares of village Khuntegaon, District Latur which was in ownership and possession of Venkat Kolhe. It is further case set up by the Bank that on 26.11.1991 the learned trial judge in the course of civil suit passed an order of attachment before judgment which is also placed on record.

4. On 12.12.1991 order of attachment was executed and served on defendant no. 8- Venkat Kolhe and panchnama for the same was prepared.

5. On 25.10.1996 Tahsildar, AUSA, District Latur informed Talathi of Khuntegaon to take entry of attachment order to obtain 7/12 extract of the property.

6. On 24.2.1999 defendant no. 8 had transferred 1 hectare 53 Ares land comprised in Gat No. 65 which was under attachment in favour of respondent no.5. It is alleged that there was partition between Venkat Kolhe and respondent no. 6-Govind and 1 hectare of land was given to Govind and Gat No. 65 was divided as 65/1 areas 1 H 53 Ares which was purchased by respondent no.5 and 65/2 area of 1 Hactare which was given to respondent no. 6-Govind.

7. The land comprised in Gat no. 65 which was under attachment was acquired by the land Acquisition officer (in short 'the LAO'), Latur by issuing a Notification under Section 21 of the Land Acquisition Act dated 18.01.2001. Pursuant thereto, an Award was passed on 26.09.2001 by the LAO, Latur.

8. On 22.09.2003 suit pending before Civil Court was transferred to the Debt Recovery Tribunal (in

short 'the D.R.T. '), Aurangabad. The Bank then filed an application for passing an order of garnishee against the LAO, Latur and prayer was also made for future interest to be debited to the loan account of defendant no.1 from the date of lodgment of the claim till date, the joint and several liability of the defendants was more than Rupee one crore.

9. The D.R.T., Aurangabad had passed a conditional order of garnishee on 24.09.2003 directing the LAO, Latur to withhold the payment of amount of the compensation of the acquisition of land payable to the landowner of Gat No. 65.

10. The Bank's case is that the respondent Nos. 5 & 6 on getting the knowledge about the steps taken by the Bank had filed a writ petition in the High Court on 25.9.2003 after garnishee order had been passed by the DRT, Aurangabad, in which the impugned order has been passed.

11. It is pertinent to mention that in the writ application which was filed in the High Court, the Bank had not been impleaded as respondent and absolutely no whisper was made in the writ application

with respect to the order of attachment passed by the Civil Court and the order of garnishee passed by the DRT, Aurangabad. Venkat Kolhe was one of the defendant in the case before the civil court which was transferred to the DRT, Aurangabad. The purchase was made from him during the *lis pendens*.

12. The order of garnishee passed by the Presiding Officer (P.O.), DRT, Aurangabad was served upon the LAO, Latur on 14.10.2003. The High Court decided the writ application subsequently on 8.12.2003. At that time, it was not disclosed to the High Court by the LAO, Latur or by respondents that the land was under attachment and that order of garnishee had been passed by the DRT, Aurangabad which had also been served upon the LAO, Latur on 14.10.2003 before the writ petition was decided by the High Court. The High Court was kept entirely in dark with respect to the proceedings in the civil court/DRT as well as the order of garnishee passed by the DRT, Aurangabad.

13. On 29.4.2004, the Bank filed an application for passing further order directing the garnishee,

the Special LAO, Swarna Project, Latur to deposit the entire amount of compensation with the DRT, Aurangabad.

14. Pursuant to the Order passed by the P.O., DRT, Aurangabad the Special LAO, Swarna Project, Latur has deposited the amount of Rs.27,23,441/- (Rupees twenty seven lakhs twenty three thousand four hundred and forty one only) in the DRT, Aurangabad.

15. The respondent Nos. 5 & 6 have tried to execute the order of the High Court for payment of compensation by filing a Contempt Petition in the High Court and ultimately in May, 2004 they have filed an application before the DRT, Aurangabad with whom the original proceedings for recovery of the dues filed against the original defendents was pending and respondent nos. 5 and 6 have been impleaded as defendant nos. 9 and 10 in the case pending before the DRT, Aurangabad.

16. On 24.7.2004 the Bank came to know about the judgment and order passed by the High Court and filed Review Application pointing out the aforesaid fact. However, the High Court unfortunately did not agree to

entertain the Review Application holding that they have passed the order on the basis of the Award which had been passed in the case.

17. After dismissal of review applications the orders passed by the High Court, on 8.12.2003 in the writ petition and on 25.2.2005 in the Review Application, have been assailed in the appeals.

18. Learned counsel appearing on behalf of the Bank has submitted that when there was order of attachment before the judgment and it was served upon the defendant no.8- late Venkat Kolhe on 12.12.1991 He could not have sold the property to respondent no.5. Apart from that it was incumbent upon the respondents to have disclosed the fact before the High Court about attachment before the judgment as well as about the garnishee order passed by the DRT, Aurangabad. Thus the orders are liable to be set aside.

19. Learned senior counsel appearing on behalf of respondent nos. 5 & 6 has submitted that there had been a partition between the Venkat Kolhe and respondent nos. 6- Govind on 2.3.1991 by a registered

deed. One hectare land was given to Govind and Gat No. 65 was divided as 65/1 comprised in area 1 hectare 53 Ares which was purchased by respondent no.5. 65/2 was given un-partitioned to Govind -respondent no.6. Thus the suit land was not under attachment and was acquired by the LAO, Latur and the Award had been passed on 22.9.2003 though the suit was transferred from Civil Court, Latur to DRT Aurangabad and order of Garnishee had also been passed which did not relate to the property in question.

20. Aggrieved by the order of garnishee which had been passed by the DRT, Aurangabad, the respondent nos. 5 & 6 have preferred an appeal before the DRAT. The appeal is pending consideration before the DRAT.

It is seriously disputed between the parties that who has played the fraud in the matter. On the one hand the Bank contended that facts were suppressed and the order was obtained fraudulently and on the other hand, it is vehemently contended by learned senior counsel for respondents that property was not under attachment and they are being harassed under the guise of order of attachment and order of

garnishee.

21. It prima facie appears that land was under attachment and it was to the knowledge of deceased Venkat Kolhe because the order of attachment had been served on him on 12.12.1991 and the order of garnishee had also been passed which is supposed to be in the knowledge of respondent nos. 5 & 6. As the writ petition was preferred without mentioning any fact whatsoever late Venkat Kolhe had sold the land to respondent no.5 on 24.02.1999 during pendency of proceedings. After execution of orders of attachment of the property. As property was under attachment it was incumbent upon the respondent to make due enquiries with respect to the property and he could not have purchased the property particularly when it was under attachment. However, he is supposed to know the fact by exercising reasonable diligence that property was under attachment and subsequently order of garnishee had also been passed by DRT. All aforesaid facts regarding attachment etc were suppressed from the High Court. In our opinion, without impleadment of the Bank all these questions

about attachment, validity of the order of garnishee and whether property was free from encumbrance and there was no charge of the Bank were required to be decided before order of disbursement of compensation could have been passed. The fairness of judicial process requires that banks should have been heard and without deciding all these questions, impugned orders could not have been passed. As late Venkat Kolhe stood as guarantor and as property was under attachment obviously the Bank would have the first charge on the attached property, which has now taken the shape of compensation after acquisition of the land order of garnishee had been passed. The respondent nos.5 & 6 have been impleaded before the DRT, Aurangabad as respondents. They have also preferred an appeal against the order of garnishee which is stated to be pending before DRAT. All these questions have to be decided in the pending proceedings.

22. Thus, in our opinion, the orders passed by the High Court in Review Petition as well as in the Writ Application cannot be allowed to sustain, the

same are hereby set aside. Writ petitions stand dismissed.

23. However, it is made clear that any observation made in the order will not affect the merit of the decision to be rendered by the DRT after holding such inquiry as may be necessary in accordance with law or by DRAT in pending appeal. Our order is to be taken as expression of opinion for the purpose of deciding the correctness of the order of the High Court which was passed without impleading Bank, as well as regards to the appropriate remedy for adjudication of the aforesaid question in a proper forum after hearing the parties affected thereby.

24. DRT is hereby directed to decide the case as expeditiously as possible. The appeals are accordingly allowed. No order as to costs.

.....J.
(ARUN MISHRA)

.....J.
(S. ABDUL NAZEER)

NEW DELHI;
MARCH 30, 2017