

WOODS BEACH HOTELS LTD. A
V.
MAPUSA URBAN CO-OPERATIVE
BANK OF GOA LTD. & ORS.
Civil Appeal No. 1830 of 2009

MARCH 24, 2009 B

[TARUN CHATTERJEE AND HARJIT SINGH BEDI, JJ.]

Code of Civil Procedure, 1908 – Restitution of property – When decree holder himself auction purchaser in court auction sale held in execution of decree which is subsequently set aside – Held: Restitution of property can be ordered in favour of judgment-debtor and decree-holder auction purchaser is bound to return property – If at court auction sale in execution of decree, properties are purchased by bona fide purchaser who is stranger to court proceedings, sale in his favour is protected and he cannot be asked to restitute property to judgment-debtor if decree is set aside – On facts, High Court stayed order of Registrar setting aside sale of mortgaged property, however, status quo in respect of the property during pendency of writ petition not granted – Such order was interim order in nature – Highest bidder in auction held by Bank deposited certain sum with bank and third party interest was created in the said property – Sale by auction not confirmed, entire sale consideration money not deposited by subsequent purchaser, no sale deed effected nor possession of property handed over to purchaser by bank – Thus, in the interest of justice, parties to maintain status quo as regards the property, in the event judgment-debtor deposits amount in writ application pending before High Court and in the event said amount is deposited within the time specified, interim order would continue till the disposal of writ petition and in default of making deposit, interim order would stand vacated. C D E F G

Padanathil Rugmini Amma vs. P.K. Abdulla 1996 (7) SCC 668 – referred to.

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Case Law Reference**1996 (7) SCC 668 Referred to Para 9**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1830 of 2009

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From the Judgement and Order dated 17.03.2008 of the High Court of Bombay at Goa in Writ Petition No. 138 of 2008.

Venkateswara Rao Anumolu, for the Appellant.

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Rai Rodrigues, Santosh Paul, Arvind Gupta, K.K. Bhat, S.N. Bundela, M.J. Paul, Anupam Lal Das, for the Respondents.

The Judgement of the Court was delivered by

TARUN CHATTERJEE, J.

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1. Leave granted.

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2. This appeal is filed against an interim order dated 17th of March 2008 in Writ Petition No. 138 of 2008 passed by the High Court of Bombay at Goa whereby the High Court admitted the Writ petition filed by Respondent No.1 and stayed the operation of order dated 16th of August 2007 passed by the Registrar of Co-operative Societies, Goa.

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3. The relevant facts leading to the filing of this appeal as emerging from the records of this case have been succinctly referred here for the better understanding and determination of the instant appeal.

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The MAPUSA Urban Cooperative Bank of Goa Ltd. (Respondent No.1, hereinafter referred to as "the Bank") had extended credit facility of Rs.20 lacs to a proprietary firm belonging to one of the Directors of the Woods Beach Hotel Ltd. (hereinafter referred to as "the appellant") and an immovable property of the appellant namely "Soranto" was allegedly mortgaged to cover the aforesaid credit facility. The appellant was not the principal borrower. The name and constitution of

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the appellant company was changed and notified to the bank in 1994 but the notice did not mention about the change of shareholders. The Bank initiated the proceedings for recovery of the due amount before the Asst. Registrar (Respondent No.3) of the Multi State Cooperative Societies under section 74 of The Multi State Cooperative Societies Act, 1984 wherein the appellant was impleaded in the capacity of third party mortgagor. The proceeding was initiated in the old name of the appellant company and it was alleged by the appellant that no notice was served on the appellant.

4. After obtaining an award from the Assistant Registrar, the Bank filed execution application on 23rd of September 1999 for a sum of Rs. 52.35 lacs wherein it sought attachment of the immovable property of the appellant. After being aware of the award, the appellant tried to settle the matter with the Bank and paid Rs. 6.63 lacs to the Bank in the process. However the recovery officer of the bank went ahead with the sale of the mortgaged immovable property and due to non-availability of buyers eventually the Bank itself purchased the property for Rs.97,04,222/- and the appellant alleged non-service of notice regarding the same.

5. In July 2004, the appellant was forcibly dispossessed from its property. Aggrieved by the said action, the appellant preferred an appeal on 7th of December, 2005 before the Registrar of Cooperative Societies (Respondent No. 2 herein) as according to them the property was worth more than Rs. 10 Crores and no notice was given to them during the entire process. The appellant had also filed a Writ Petition no. 378 of 2004 in the High Court of Bombay at Goa seeking orders to restore the possession of the property and to direct the bank to deal with the property after giving due notice to the appellant. The High Court rejected the Writ petition by its order dated 29th of March 2005. Against this, the appellant filed Special Leave Petition No. 17486 of 2005 in this Court, which was dismissed with the observation that the appeal was filed in the Court of Registrar, Multi State Cooperative Societies, Goa.

A 6. The Registrar, during the pendency of the appeal, granted an interim stay of operation of the order of the Assistant Registrar and directed stay of the sale of the property in question. By an order dated 16th of August, 2007, the Registrar had set aside the Judgment of Assistant Registrar and directed the following :-

B “(a) The award/Judgment dated 26th August, 1995 passed by the Asst. Registrar against the Appellant Company is set aside subject to the appellant company making payment of Rs. One Lac as cost to the Respondent Bank within a period of two weeks.

C (b) The Asst. Registrar is directed to re-hear the case and decide the same within 6 months.

D (c) *The appellant company is directed to deposit with the Asst. Registrar the amount of the decretal dues as on date of this order within 4 weeks from today and this amount shall be held by the Asst. Registrar in interest-earning deposit for 6 months pending decision from the Asst. Registrar.*”

E Meanwhile, the Bank tried to find prospective buyers and tried to sell off the property in question to a buyer named Softitel Hospitality & Management which was found to be the highest bidder having offered a price of Rs. 7.04 crores during the auction conducted by the bank and they deposited an amount of Rs.1 crore on 06th of May, 2006 with the bank in pursuance of their bid. At the same time, the bank filed a review application praying for review of the order before the Registrar, which was also dismissed.

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G 7. Against the aforesaid order of the Appellate Authority, the Registrar of Cooperative Societies, Goa, the Bank has filed a writ petition being W.P. No. 138 of 2008 before the High Court of Bombay at Goa, which is now pending decision. In the said writ application, the Bank has taken a plea *inter alia* that the Registrar had no jurisdiction to entertain the appeal against the order of the Assistant Registrar.
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8. While entertaining the prayer for interim relief, the High Court *prima facie* found that the appeal itself was not maintainable because the impugned order was passed nearly after 10 years when there was no right subsisting in favour of the appellant bank on the day, the appeal was filed. Some other findings were made in favour of the appellant bank *prima facie* and for that purpose, the interim order of stay of the operation of the order of the Registrar was granted by the High Court. However, in the impugned interim order, it would also be evident that a prayer was made by the appellant that the status quo should be maintained by the parties during the pendency of the writ petition in respect of the property in question. The High Court by the impugned order rejected the said prayer and the Special Leave Petition has been filed in this Court against the said refusal, which, on grant of leave, was heard in the presence of the learned counsel for the parties.

9. Since the appellant has already filed the writ petition, which is pending before the High Court, in which the question of jurisdiction of the Registrar to entertain the appeal filed against the order of the Assistant Registrar shall be decided finally by the High Court in the writ application, we are not inclined to delve into the questions raised by the parties before us in depth at this stage of the proceedings. The learned Senior Counsel appearing on behalf of the appellant sought to argue before us that during the pendency of the writ application, the parties should be directed to maintain status quo in respect of the property mortgaged by the appellant. On the other hand, the learned senior counsel appearing for the respondent bank sought to argue that since they have already accepted a bid of Rs. 7.04 crores offered by Softitel Hospitality & Management, they will suffer irreparable loss and injury if status quo is granted till the disposal of the writ application. Reliance was placed in a decision of this Court in the case of *Padanathil Ruqmini Amma vs. P.K.Abdulla* [1996 (7) SCC 668] for the parties showing that when the decree holder himself was the auction purchaser in a court auction sale held in execution of a decree which is

A subsequently set aside, restitution of the property can be ordered in favour of the judgment-debtor and the decree-holder auction purchaser is bound to return the property. In that decision, it was also held that it is equally well settled that if at a court auction sale in execution of a decree, the properties are purchased by
B a bona fide purchaser who is a stranger to the court proceedings, the sale in his favour is protected and he cannot be asked to reconstitute the property to the judgment-debtor if the decree is set aside. It was further held in that decision that the ratio behind this distinction between a sale to a decree-holder
C and a sale to a stranger is that the court, as a matter of policy, will protect honest outside purchasers at sales held in the execution of its decrees, although the sales may be subsequently set aside, when such purchasers are not parties to the suit. At this stage, the principle laid down by this Court in the aforesaid
D decision need not be gone into in view of the fact that –

(1) The impugned order passed by the High Court was the interim order in nature.

(2) The sale by the auction has not yet been confirmed nor the Softitel Hospitality and Management has yet deposited the entire sale consideration money nor any sale deed has been effected relating to the property in question ?

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F 10. Considering the facts of the present case and taking into account the fact that the Softitel Hospitality & Management was the highest bidder in the auction held by the bank and they have already deposited an amount of Rs. 1 crore with the bank, we are of the view that a third party interest has now been created in the aforesaid property. It is not in dispute that the Softitel
G Hospitality and Management has not yet put in the balance amount of Rs.6.04 crores nor the sale has yet been confirmed. It is also not in dispute that the possession of the property in question has not yet been handed over to Softitel Hospitality and Management by the bank. Under the aforesaid
H circumstances, and considering the balance of convenience and

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inconvenience and for meeting the ends of justice, we feel it proper to dispose of this appeal in the following manner: -

(a) In the event, the appellant deposits a sum of Rs. 6.04 crores in the pending writ application before the High Court within three months from this date, the parties shall be directed to maintain status quo as regards the property in question initially for a period of three months unconditionally from this date and in the event the aforesaid amount is deposited within the time specified hereinabove, the interim order shall continue till the disposal of the writ petition or until further orders to be passed by the High Court in the writ application.

(b) In default of making the deposit, as mentioned herein above, the interim order, as granted, shall automatically stand vacated.

(c) We make it clear that we have not gone into the question whether the impugned order granting ad interim stay of the order of the Registrar was justified or not, as the parties before us have restricted their arguments in respect of the grant of status quo relating to the properties in question only.

(d) The High Court is requested to decide the pending writ petition within three months from the date of supply of a copy of this order positively, after giving hearing to the parties and after passing a reasoned order in accordance with law.

11. We make it clear that whatever observations that have been made by the High Court in the impugned order and any observations, on the merits of the writ petition, if made by us in this order, shall not stand in the way of the High Court from deciding the writ application on merits without being influenced by such observations, if any.

12. The appeal is thus disposed of. There will be no orders as to costs.

N.J.

Appeal disposed of.