

M/S Shilpa Shares And Securities & Ors vs The National Co-Operative Bank Ltd & Ors on 19 April, 2016

Equivalent citations: AIRONLINE 2016 SC 307

Bench: R. Banumathi, Kurian Joseph

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4239 OF 2016
[@ SPECIAL LEAVE PETITION (C) NO. 24712 OF 2014]

M/S SHILPA SHARES AND SECURITIES & ORS Appellant(s)

VERSUS

THE NATIONAL CO-OPERATIVE BANK LTD & ORS Respondent(s)

J U D G M E N T

KURIAN, J.

1. Leave granted.

2. The case before us has a chequered history involving so many litigations. The appellants availed a loan from the first respondent - Bank. The loan was not serviced and hence, the Bank took steps to recover the dues by proceeding against the secured assets of the appellants. In the meanwhile, the Reserve Bank of India announced two One-Time Settlement Schemes, one in the year 2004 and the other in the year 2006.

3. According to the appellants, when the matter was under consideration before the Bank, the auction was conducted on 11.02.2008. However, according to the respondents, the auction was conducted after the rejection of the proposal for One-Time Settlement.

4. Be that as it may, the auction conducted on 11.02.2008 was set aside by the Divisional Joint Registrar, Cooperative Societies, exercising his powers under Section 154 of the Maharashtra Cooperative Societies Act read with Rule 107 of the Maharashtra Cooperative Societies Rules, 1961, as per order dated 20.05.2013.

5. Challenging the order passed by the Divisional Joint Registrar, both the Bank as well as the 7th respondent-auction purchaser have filed two writ petitions before the High Court, being Writ

Petition No. 650 of 2014 by the Bank and Writ Petition No. 572 of 2014 by the 7th respondent-auction purchaser.

6. In the meanwhile, the appellant had already filed Writ Petition No. 173 of 2014 before the High Court, praying for a direction to the first respondent to process his application for One-Time Settlement. That Writ Petition was dismissed by the High Court as per the impugned Judgment dated 20.03.2014. It appears that the High Court has not gone into the merits of the case and the writ petition was rejected mainly on the ground that the writ petition filed by the Bank against the order passed by the Divisional Joint Registrar setting aside the sale was already pending. As a matter of fact, we have already noted that the writ petition filed by the 7th respondent is also pending before the High Court.

7. In the above factual matrix, in our view, the approach made by the High Court, in rejecting the writ petition filed by the appellant on the ground that writ petition filed by the Bank is pending, is not correct. No doubt, the question of consideration of the writ petition filed by the appellant herein would arise only in case the writ petitions filed by the Bank and the 7th respondent-auction purchaser are dismissed.

8. Therefore, we set aside the impugned Judgment of the High Court and restore Writ Petition No. 173 of 2014 to the files of the High Court of judicature of Bombay for consideration afresh, after disposal of the Writ Petition No. 572 of 2014 and Writ Petition No. 650 of 2014 filed by the first respondent - Bank and the 7th respondent-auction purchaser respectively.

9. Sh. Sudhanshu S. Choudhari, learned counsel appearing for the appellants, on instruction, submits that the appellants will not initiate any fresh litigation in respect of the dispute on the action taken by the Bank for recovery, till the Writ Petition No. 173 of 2014 is finally disposed of. The above submission is recorded.

10. We make it clear that it will be open to the parties to take all available contentions before the High Court, including the contentions taken by the Bank and the 7th respondent on the maintainability of the Revision Petition under Section 154 of the Maharashtra Cooperative Societies Act read with Rule 107 of the Maharashtra Cooperative Societies Rules, which led to the order dated 20.05.2013 passed by the Divisional Joint Registrar. We also make it clear that we have not considered the subject matter on merits.

11. It is seen that on 20.09.2014, this Court had passed an order, as a pre-condition for issue of notice in the Special Leave Petition, directing the appellants to deposit an amount of Rs. 44,97,000/- with Respondent No. 1 - Bank. We note that the said amount has already been deposited.

12. It will be open to the High Court to pass appropriate orders with regard to the said amount, while disposing of Writ Petition No. 173 of 2014 filed by the appellants.

13. Needless also to say that the writ petition will be heard and disposed of by the High Court, uninfluenced by any of the observations made in this Judgment.

14. We request the High Court to dispose of the writ petition expeditiously and preferably within six months from today.

15. With the above observations and directions, the appeal is disposed of.

No costs.

.....J. [KURIAN JOSEPH]J. [R. BANUMATHI] New Delhi;

April 19, 2016.