

IN THE COURT OF JUDGE, CO-OPERATIVE COURT, JALGAON.
(BEFORE SMT.R.S.SHAIKH,JUDGE)

Dispute No.J/1/1018

DISPUTANT : Subhash Chawk Urban Co-operative Credit Society Ltd.,Jalgaon – Address – 9 Navi Peth,Shri. Plaza,Second floor,Jalgaon,Tal.Dist.Jalgaon.Through Shri. Gopal Pratapsing Patil.
V/s.

OPPONENTS: 1.Murlidhar Mukunda Wani
 Age -49, Occ.Business,
 Address- Makadya Maroti Chawk,Near Shantinath Patsasntha,Parola,Tal.Parola,Dist.Jalgaon.
2.Sau.Vaishali Vikas Deo (Wani)
3.Shri.Manoj Bapu Wani,

:ORDER BELOW EXH.5:
(Passed on :28.02.2018)

1. The disputant society has filed the present application u/s.95 r/w. Order 38, Rule 5 of C.P.C. for attachment before judgment of the property of opponent No.2. The disputant society in the alternatively prayed for injunction restraining the opponent No.2 from transferring, selling and creating any sort of third party interest in the mortgage property of opponent No.2 bearing land Gut No.592,ad-measuring area 0 H.41R/0-4-0 ane, assessed Rs.1.80ps.situated at Parola, Tal. Parola, Dist.Jalgaon.

2. The disputant society has filed the dispute for recovery of its amount of Rs.3,77,161/- alongwith future interest jointly and severally from opponent Nos.1 to 3. The disputant society contended that the opponents do not possess sufficient properties so as to satisfy the loan of disputant. The claim of disputant society is based on voluminous documents

and the disputant having hope of success in the dispute. The disputant society contended that the value of mortgage property is much less than the decree amount which is likely to be passed in the present dispute.

3. The disputant society contended that the opponents are aware that the disputant society has filed present dispute and is trying hard for the recovery of the outstanding loan. The opponent No.2 is the owner of agricultural land ad-measuring area 0 H.41R/0-4-0 ane, assessed Rs.1.80ps. situated at Parola, Tal.Parola, Dist. Jalgaon. However, since the opponent No.2 realize that the disputant society is taking steps to recover the loan. Therefore, with an intention to defeat and to delay the execution of the decree i.e. likely to be passed against the opponents. The opponent No.2 has hurriedly trying to sold out her portion of land to third party and trying to dispose off and sell out the said portion just to delay the repayment of loan of disputant society. The disputant society contended that if the property of opponent No.2 is not attached and if she is not restrained from alienating the property, the opponent No.2 will be successful in disposing of her property and thereby the recovery of the loan of disputant will become impossible. The disputant society contended that the fact of the efforts of opponent No.2 about transferring her property came to the knowledge of disputant from the Talathi-Parola, Dist. Jalgaon. Therefore, the disputant society has constrained to file the present application for attachment before judgment and in alternatively for grant of injunction.

3. The opponent Nos.1 to 3 though have been served duly with summons, they remained absent. Hence, dispute and present

application proceeded exparte against them.

4. The disputant society to substantiate the case made out in the application has produced on record the documents alongwith list Exh.2. I have heard the Ld.counsel for disputant society. Perused the contents in the application and the documents filed on record by the disputant society. After perusal of the documents alongwith list Exh.2, it appears that these documents consolidates the case of disputant society of the advancement of loan of Rs.3,00,000/- to the opponent No.1. It is the contention of the disputant society that the opponent No.1 has obtained loan of Rs.3,00,000/- from disputant society to which the opponent Nos.2 and 3 stood as guarantors. For the loan in question, the opponent No.2 also mortgage her property with disputant society for the security of the loan. The disputant society along-with list Exh.2 at serial No.11 has filed the copy of mortgage deed which is a registered document. It is the contention of disputant society that though the opponent No.2 has mortgage her property for the loan obtained by opponent No.1. However, as the opponents have got the knowledge about the filing of dispute and taking of steps by the society to recover the outstanding loan from them. Therefore, the opponent No.2 in hurried manner is trying to sold out her portion of land situated at Parola, Dist.Jalgaon. From the documents filed by the disputant society alongwith list Exh.2, it appears that the disputant society has not produced either any document or any particulars or any instance so as to show the alleged attempt by the opponent No.2 regarding alienation of the property mentioned in para - No.3 of the application. Therefore, the disputant society is not

found entitled for the attachment of said property before judgment. However, considering the contention of disputant society regarding getting knowledge about the efforts of opponent No.2 in respect of transferring her property from the Talathi, Parola – Dist. Jalgaon if the restraintment order is not granted much inconvenience as well as irreparable loss would be caused to the disputant society and the claim amount become unsecured. From the documents filed on record by the disputant society, it appears that the opponent No.1 obtained loan of Rs.3,00,000/- in the year – 2015 from disputant society and opponents are in arrears of Rs.3,77,161/- as on 20.11.2017. Therefore, in such circumstance, if the opponent No.2 succeeds in alienating or creating third party interest in the property mentioned in para No.3 of the application, the proposed decree/award that may be passed in favour of disputant society would remain only a paper decree. Admittedly, the opponents have not resisted the contentions made by the disputant society in the application by causing their appearance and by filing their say to the present application. Therefore, in view of the above stated facts and circumstances of the case, it can be positively held that the disputant society has made out the sufficient prima-facie case so as to grant the relief in its favour. The balance of convenience also lies in favour of disputant and the disputant society would face an irreparable loss if the injunction as prayed is refused. Thus, I proceed to pass the following order.

: ORDER :

1. The application below Exh.5 is partly allowed.
2. The opponent No.2 is hereby temporarily restrained

from alienating, transferring or creating any third party interest in the portion of land ad-measuring area 0 H.41R/0-4-0ane, assessed Rs.1.80ps.situated at Parola, Tal. Parola, Dist. Jalgaon (property mentioned in para No.3 of the application) till the final decision of the dispute.

3. Order pronounced in open court.

DATED : 28/02/2018.

**(Smt.R.S.Shaikh)
Judge,
Co-operative Court, Jalgaon.**