

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

- “1. I have heard Mr.A.D.Shinde, learned Advocate alongwith Advocate Mr.K.B.Jadhav for the petitioner and Mr.V.D.Hon, learned Senior Advocate on behalf of respondent Nos.3 and 4. Learned AGP has appeared on behalf of respondent Nos. 1 and 2.
2. After hearing the respective advocates for quite some time, it was indicated that this Court would not be interfering with the impugned orders. Mr.Shinde, learned Advocate has taken instructions from the

husband of the petitioner namely Mr.Bhagwan Rambhau Karankal, who is present in the Court when this matter is taken up. A draft undertaking is prepared by the husband of the petitioner, who is identified by learned Advocate Mr.K.B.Jadhav. Copy of the said undertaking has been handed over to Mr.V.D.Hon, the learned Senior Advocate.

3. The draft undertaking signed by the husband of the petitioner, who is the principal borrower and a defaulter as on date, has mentioned four properties in paragraph No.1. Learned Advocate for the petitioner, states on instructions that no encumbrances and/or third party interest have been created in any of the four properties mentioned.
4. It is further stated in the said draft undertaking that the petitioner would sell these properties on or before 02/05/2015 by a private transaction and will deposit the entire loan amount as on the date of actual repayment (presently it being Rs.92,00,000/).
5. Any transaction by the petitioner and her husband principal borrower, for selling the said properties, shall be after giving proper notice to respondent No.3 and the representative of respondent No.3 shall remain present in any such meeting wherein the petitioner and her husband would negotiate with the prospective buyer. In short, the representative of respondent No.3 shall be a witness to the transaction in which the petitioner and her husband would sell the property.
6. In the event the said amount is not repaid, respondent Nos.3 and 4 would be at liberty to proceed to auction the said properties and the petitioner as well as her husband / principal borrower shall neither challenge the said action, nor create any hurdles in the process adopted by respondent Nos. 3 and 4 for recovery. The inability of the petitioner and her husband in selling of any of the properties mentioned in the undertaking, shall not be a ground for extending the date of repayment as mentioned in paragraph No.4 hereinabove.
7. Mr.Hon, therefore, submits that the draft undertaking submitted by the husband of the petitioner namely

Mr.Bhagwan Rambhau Karankal, be treated as an undertaking given to the Court and the same be taken on record as such. Mr.Shinde, learned Advocate on instructions submits that the said draft undertaking, which is duly signed, be taken on record as an undertaking of the said borrower and he shall have no right to question the same, on any ground whatsoever, hereinafter.

8. *In the light of these statements, the said undertaking is taken on record and marked as "X" for identification. It be noted that any violation of this undertaking by the said Mr.Bhagwan Rambhau Karankal shall be treated as a breach of the undertaking given to the Court.*
9. *In the event, any of these properties are surreptitiously disposed of or any encumbrances and/or third party interest are created by the said borrower, without depositing the proceeds acquired from such transaction with respondent Nos. 3 and 4 Bank, and in violation of the direction of this Court set out in paragraph No.5 hereinabove, it shall be treated as a fraudulent act.*
10. *Mr.Hon, learned Senior Advocate submits that a similar undertaking ought to be filed by the petitioner herself and only on such condition, the respondents would agree to abort the auction proceedings scheduled for 05/02/2015. Mr.Shinde, learned Advocate submits on instructions that such an undertaking, duly signed and sworn by the petitioner herself, would be filed in this Court on 06/02/2015.*
11. *In the event, such an undertaking is not filed on 06/02/2015, respondent Nos. 3 and 4 would be at liberty to auction the said four properties that are mentioned in the undertaking submitted by the husband of the petitioner and also recover costs for postponing the auction dtd.05/02/2015 and for holding auction proceedings on any subsequent date.*
12. *In the light of the above, stand over to 06/02/2015. As such, the auction proceedings scheduled for 05/02/2015 shall be stayed by respondent Nos.3 and 4."*

2 Pursuant to the above order, the Petitioner has filed an undertaking which is supported with an affidavit duly sworn in by her. The said affidavit/ undertaking is taken on record and marked as “Y” for identification. A copy of the said undertaking is received by the Respondent Nos.3 and 4 through Mr.A.V.Hon, Advocate.

3 The learned counsel appearing for the Petitioner states that the Petitioner is present in the Court and he identifies her. He, therefore, submits that all the statements made before this Court are on instructions.

4 In the light of the above, the order passed on 04.02.2015 shall equally apply to the Petitioner herself. For clarity the said order and particularly the directions given in para 5 of the said order, shall apply to both the Petitioner as well as her husband. Both shall be bound by their undertakings given to this Court. Similarly, if any of the undertaking given to this Court is violated, same shall be treated as a fraudulent act as is observed in paragraph 9 of the said order dated 04.02.2015.

5 Mr.Hon, on instructions, submits that the auction proceedings shall stand aborted in the light of the undertakings at Exhibits-X and Y submitted by the husband of the Petitioner and the Petitioner herself and

in the light of the directions given by this Court in the order dated 04.02.2015 and the order passed today.

6 The Writ Petition is, accordingly, disposed of.

(RAVINDRA V. GHUGE, J.)