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

WRIT PETITION NO.7659 OF 2014

Branch Manager,
State Bank of India,
Main Branch Chandra Nagar
Latur, Tal. & Dist. Latur

..PETITIONER
(Orig. Decree Holder)

VERSUS

1. M/s ABCO Tiles & Marbles
Industries, Through
Bhanudas s/o Vithal Jadhav,
Age : 65 Yrs., Occ. Business,
R/o E-39, MIDC, Latur,
Tal. & Dist. Latur

2. Shaikh Mohammad s/o Muzibkhan,
Age : 50 Yrs., Occ. Business,
R/o E-39, MIDC, Latur,
Tal. & Dist. Latur
(Original Judgment Debtors)
**(Respondents no.1 & 2 deleted
as per order dated 21.11.2014)**

3. Shaikh Shabbir Ahmed,
Age Major Yrs., Occ. Business,
R/o India Nagar, Latur,
Tal. & Dist. Latur
(Auction purchaser)

..RESPONDENTS

Mr P.B. Paithankar, Advocate for petitioner;
Mr R.P. Adgaonkar, Advocate for respondent no.3

CORAM : N.W. SAMBRE, J.

DATE : 23rd November, 2015

ORAL ORDER :

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By an order dated 4th February, 2014, passed by Civil Judge Senior Division, Latur, below Exh.115, in Special Darkhast No.52 of 1998, the petitioner Bank – decree holder, was directed to pay interest at the rate of 12% per annum on auction amount of Rs.11,50,000/-, deposited by the respondent – auction purchaser, from 9th March, 2009 till realization of the said amount.

2. After passing of the above referred order, on 5th May, 2014, the learned Civil Judge Senior Division, Latur ordered issuance of recovery warrant against decree holder Bank for recovery of amount of interest, which order is impugned in the present petition.

3. Learned Counsel appearing on behalf of the petitioner would submit that if the respondent – auction purchaser is permitted to execute the warrant, then he will be double benefitted, as he has already received the interest on the amount that he has deposited, being successful auction purchaser in the Court below, which amount was invested in fixed deposit, which he has received along with interest, as is reflected in the order dated 21st September, 2013.

4. The aforesaid position is not objected to by the learned Counsel appearing on behalf of the respondent – auction purchaser.

5. In view of above, the only modification that could be granted is, the amount to be recovered towards interest will be calculated after taking into

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account already paid interest of Rs.2,83,058/-.

6. Learned Counsel appearing on behalf of the petitioner Bank makes a statement that the balance amount, after deducting amount of Rs.2,83,058/- from the interest to be paid to the respondent – auction purchaser will be deposited before the executing court, within a period of four weeks, which statement is accepted as an undertaking.

7. With the above observations, petition stands partly allowed, with no order as to costs.

(N.W. SAMBRE, J.)

amj