

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 740 OF 2015

Ajit s/o Lakhminchand Bothra

Petitioner

V E R S U S

M/s Nirmal Constructions & Ors.

Respondents

Shri R.N. Dhorde, Advocate with
Shri V.R. Dhorde, Advocate for the petitioner

CORAM : A. V. NIRGUDE &

V. K. JADHAV, JJ.

DATE : 21st January, 2015

PER COURT :

1. This writ petition does not deserve admission.

2. The petitioner is auction purchaser of the petition property. This property was put up for auction by secured creditor/State Bank of India in a proceeding undertaken under provisions of Securitization Act. The auction took place in the year 2003. The judgment debtors filed appeal. Ultimately they succeeded in getting sale in favour of the petitioner set aside. The petitioner went up to the Supreme Court, but in-vain. On the other hand, secured creditor [Bank] also filed a separate appeal bearing No.205/2005 before D.R.A.T. This appeal was not

decided along with the appeal filed by the petitioner and it remained pending. It was taken up for hearing rather belatedly and certain observations are made in the judgment which decided the said appeal. The appeal was dismissed, but the petitioner is trying to take advantage of certain fact that is mentioned in the judgment of Debts Recovery Tribunal. The Judgment Debtor before the auction sale had sold half portion of the land to a third party. The learned senior counsel contended that on this point the locus of judgment debtors to challenge the Auction Sale could have been questioned. This point was not raised earlier. Since this was not done, he wants appropriate relief for the petitioner. This submission now is merely academic. Even if we assume that the judgment debtors were guilty of suppression of certain fact, for several other reasons, the sale in favour of the petitioner was set aside. The appeal bearing No. 205 of 2005 of the secured creditor bank remained pending before Debts Recovery Tribunal was virtually infructuous. The bank could not have derived any benefit in this appeal, because up to the Supreme Court the auction sale was held to be bad in law. So, the judgment in Bank's appeal No. 205 of 2005 is of no consequence to the parties and to the outcome of this litigation.

3. The petitioner has still not lost all the hopes. If the property is put up for auction sale, he

may try to buy it. The Writ Petition stands dismissed.

(V.K. JADHAV, J.)

(A.V. NIRGUDE, J.)

SRM/21/1/15