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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELATE JURISDICTION
WRIT PETITION NO.4045 OF 2012

M/s.Dhananjay Farms & Ors. ...Petitioners
vs.
Renuka Chandra Agro Farms
Pvt.Ltd. & Ors. ...Respondents

Mr.A.Y.Sakhare, Senior Advocate i/b Mr.Joel Carios for the Petitioners
Mr.N.D.Buch i/b Mr.S.E.Rajhansa for the respondent Nos.1A and 1B.

CORAM : A.S.OKA, &
V.L.ACHLIYA, JJ.
DATE : SEPTEMBER 3, 2015

P.C.:

1 Heard the learned counsel for the petitioners and the learned counsel for respondent Nos.1A and 1B.

2 Bank of India filed two suits against the petitioners for recovery of two distinct amounts of Rs.48,62,610.13 and 27,81,600.85 from the first petitioner and the second petitioner. Special Civil Suit No.30 of 1991 was filed against the second petitioner for recovery of a sum of Rs.27,81,600.85 together with interest. Special Civil Suit No.21 of 1991 was filed against the first petitioner for recovery of a sum of Rs.48,62,610.13 together with interest thereon. Thereafter, the two suits were transferred in the Debt Recovery Tribunal, Pune. The suit against the second petitioner was numbered as Original Application No.772-P/2001 and the suit

against the first petitioner was numbered as 773-P/2001.

3 In Original Application No.773-P/2001 a permission was sought by they first petitioner for the sale of the mortgaged immoveable properties which are more particularly described in paragraph 3 of the consent terms filed in the said original application (Exh.C to the petition).

4 An order was made by the learned Presiding Officer of the DRT, Pune on 7th February 2002. Permission to sell the property in question was granted subject to following conditions:

> "(I)The proposed sale shall be approved by the Applicant;
> (I) The sale transaction should be done in consultation with the Applicant Branch;
> (II) The sale proceeds should deposited in the Applicant Bank."

5 There is an order passed by the learned Presiding Officer on 24th July 2002 after considering the offers made by the prospective purchasers received by the Bank as well as the petitioners which were placed before the DRT. Following order was made by the DRT, Pune on 24th July 2002:

> "Since the offer made by Renuka Chandra Agro Farms P. Ltd is the highest one, it is desirable to sale the property to Renuka

Chandra Agro Farms P. Ltd. However, if first purchaser fails to purchase the same, the offer would be open to second purchaser, on his failure to third purchaser, on her failure to forth purchaser and on his failure, the offer will be open to the fifth purchaser.

The prospective purchaser shall deposit 25% of the amount quoted with the bank within 10 days from the receipt of the offer and the balance amount of 75% shall be paid within three months. Failure to deposit the amount shall entail forfeiture of 25% amount."

6 The said Renuka Chandra Agro Farm (P) Ltd is the first respondent herein. Subsequently, a joint consent terms were filed in the Original Applications which were signed by the petitioners as well as the Bank of India. There is no dispute that the petitioners have signed the consent terms. Paragraph 3 of the consent terms reads thus:

"3 Pending the proceedings before DRT, by Order of DRT, the Mortgaged Property of M/s.Dhananjay Farms bearing Gat Nos.1485 admeasuring 3.98 Hectares, Gat No.1534 admeasuring 1.88 Hectares and Gat No.1536 admeasuring 3.74 Hectares, totally admeasuring 9.60 Hectares at Tambe Wadi, Village Yavat, Taluka Daund, District Pune was sold and an amount of Rs.26,25,000/- was deposited in the account of M/s.Dhananjay Farms towards part outstanding amount."

7 Paragraph 6 records that the decree in both the applications will be marked as satisfied subject to the petitioners depositing a sum of Rs.25,83,000/- with interest as provided in sub clause(c) thereof jointly and severally in the manner indicated in the said clause.

8 It appears that a pursis was filed by the Bank of India in Recovery Proceeding No.91 of 2004 on 30th September 2005 recording that a payment of Rs.31,50,000/- has been received and the account stands closed. Accordingly, No Dues Certificate was issued by the Bank on 1st October 2005 to the petitioners.

9 An application was made by the first respondent before the DRT praying for issue of a Sale Certificate in respect of the mortgaged lands sold to it. The said application was opposed by the present petitioners. The Bank of India admitted the sale of the mortgaged property to the first respondent with the permission of DRT. However, it was contended that the Bank was under no obligation to apply for issuance of sale certificates and debtors had not transferred the title to the first respondent. Objections raised by the present petitioners were on the grounds of bar of limitation, lack of jurisdiction and illegality of the sale. Another contention of the petitioners was

that the first respondent was not placed in possession of the property. All the objections were negatived by the learned Presiding Officer of the DRT by order dated 28th January 2009. The DRT directed the Recovery Officer to issue Sale Certificate. An appeal was preferred by the petitioners before the DRAT which has been dismissed by the Judgment and Order dated 27th February 2015. These are the two orders which are questioned in this petition under Article 226 of Constitution of India.

10 The learned senior counsel for the petitioners submitted that there was no auction sale held by the DRT and by a private arrangement to which the Bank of India was a party, it was agreed to sell the mortgaged property to the first respondent. His submission is that as there was no auction sale through the DRT, remedy if any, of the first respondent was to enforce the agreement by approaching the Civil Court. He submitted that it is not the finding recorded by both DRT and DRAT that the auction sale has taken place through the legal process adopted by the DRT. He urged that in any event, compliance was not made with the order dated 24th July 2002 by the first respondent by depositing 75% balance amount within a period of three months from the said date. These were the submissions made on the last date.

11 Today, an additional submission is made by the petitioners by pointing out that the pursis dated

30th September 2005 filed by the Bank of India shows that the entire amount of Rs.31,50,000/- was paid by the petitioners on the basis of which No Dues Certificate was issued. There is no evidence to show that the balance sale consideration was deposited by the petitioners. Our attention is also invited to the findings recorded by the DRT and DRAT and in particular finding recorded in paragraph 20 of the Judgment of the DRAT that the sale was with "the indulgence of the Tribunal". We have also heard the learned counsel for the respondent.

12 We have carefully considered the submissions. It is not in dispute that the order dated 24th July 2002 passed by the learned Presiding Officer of the DRT records that an offer made by the first respondent of purchasing the mortgaged property at the price of Rs.26,25,000/- was accepted by the Bank of India as well as by the present petitioners. There is no dispute that 25% of the said amount was deposited by the first respondent within the time specified in the said order.

13 At this stage, we make a useful reference to the consent terms filed by and between the Bank of India and the petitioners. We have already quoted the paragraph 3 of the said consent terms which were signed on 31st October 2003. Paragraph 3 unequivocally records that the mortgaged property of the first petitioner described therein has been sold to the first respondent and the amount of Rs.26,25,000/- was deposited in the account of the

first petitioner towards part outstanding amount. Clause 6 of the consent terms records that the bank agreed to mark the decree as satisfied subject to the petitioner jointly and severally paying a sum of Rs.25,83,000/- together with interest in the manner provided in clause (6). This amount of Rs.25,83,000/- with interest is over and above the total sale consideration of Rs.26,25,000/- deposited by the first respondent in the account of the first petitioner as stated in clause (3). Though the consent terms were signed on 31st October 2003, there is nothing on record to show that the contents of clause (3) of the consent terms were ever disputed by the petitioners. If the consent terms are perused very carefully and if clauses (3) and (6) are read conjointly, it is very clear that the amount mentioned in the pursis which is filed on 30th September 2005 by the Bank of India has nothing to do with the sale consideration of Rs.26,25,000/- paid by the first respondent. The pursis refers to the amount payable by the petitioners under the clause 6 of the consent terms. Thus, after having signed the consent terms on 31st October 2003 and after unequivocally accepting in paragraph 3 that the agreed consideration of Rs.26,25,000/- was deposited by the first respondent in the account of the first petitioner towards the part payment of outstanding amount payable by the first petitioner to the Bank, the petitioners are estopped from contending that the entire consideration was not paid by the petitioners. In fact, the consent terms show that the amount of Rs.26,25,000/- paid by the first respondent by way of consideration was adjusted towards dues payable by the petitioners and that is how a sum of Rs.25,83,000/- remained payable by the petitioners as set out in clause (6). Sub clause(c) of paragraph 6 of the consent terms shows that the amount of Rs.25,83,000/- was to be paid along with the interest at the rate of 11.50% and that is how the amount of Rs.31,50,000/- is mentioned in the pursis filed by the Bank of India.

14 Both the DRT and DRAT have recorded a concurrent finding that the sum of Rs.26,25,000/- was paid by the first respondent and the last installment towards the said amount was paid on 6th February 2003. Thus, the entire amount was paid by the first respondent more than eight months prior to the date of the consent terms.

15 From the admitted position, the scenario which emerges is that the Bank of India issued No Dues Certificate to the petitioners after considering the amount of Rs.31,50,000/- paid by the petitioners under the clause (6) of consent terms as well as the a sum of Rs.26,25,000/- paid by the first respondent being the full agreed sale consideration in respect of the mortgaged land.

16 It is in the light of these admitted facts that there is an observation made by the Chairperson of the Appellate Tribunal that the sale was with the indulgence of the Tribunal. It is in this context that in paragraph 24, the Chairperson of the

Appellate Tribunal observed that the petitioners had never raised any objection that the first respondent had not deposited the sale consideration with the Bank.

17 Writ Jurisdiction is always discretionary. The writ jurisdiction cannot allowed to be invoked by the litigants like petitioners who have taken full advantage of the entire sale consideration paid by the first respondent. They have obtained No Dues Certificate from the Bank.

18 Apart from the fact that all the technical arguments have been negatived by both the Tribunals, even assuming that there is some merit in the submission made by the learned counsel for the petitioners, a writ Court cannot pass any order which will give an unfair advantage to the litigants like the petitioners whose stand is dishonest and unfair. All that the learned Presiding Officer of the DRT has done is to direct issuance of sale certificate after finding that entire sale consideration as agreed has been paid by the first respondent as recorded in the consent terms.

19 Therefore, in our view, even on merits and otherwise, this is not a case where a writ Court should interfere. Considering the conduct of the petitioners, this is not a fit case where the petitioners should be allowed to invoke writ

jurisdiction under Article 226 of the Constitution of India. Accordingly, writ petition is rejected.

(V.L.ACHLIYA,J.) (A.S.OKA,J.)

CERTIFICATE

Certified to be true and correct copy of original signed Judgment/Order.