IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4780 OF 2015

M/s. Hillway Engineering Works .. Petitioner

Versus

The Special Recovery & Sales Officer,

The Greater Bombay Co-op. Bank Ltd.

GBCB House, 89, Bhuleshwar, Mumbai and others .. Respondents

Mr. Girish Godbole a/w Mrs. J. V. Kanade i/by Mr. A. S. Paulose, for the Petitioner.

Mr. P. K. Dhakephalkar Senior Advocate i/by Mr. S. R. Bhalekar, for the Respondent Nos.1 & 2.

Mr. S. D. Rayrikar, AGP for the Respondent No.3.

Mrs. Aarti Gunjikar, Respondent No.4 in person present.

CORAM : R.M. SAVANT, J.
DATE : 30th JUNE, 2015

P.C.

1. The Writ Jurisdiction of this Court is invoked against the order dated 31.03.2015 passed by the Divisional Joint Registrar, Co-operative Societies, Mumbai Division, Mumbai, by which order the Revision Application No.510 of 2013 came to be dismissed. The said Revision Application was filed against the notice of attachment dated 25.07.2013 and notice of proclamation of sale dated 19.09.2013. The said attachment and proclamation was done pursuant to the Award passed by the Co-operative Court in Dispute No.CC/I/568/1988 which Award is

dated 27.12.2012 for a sum of Rs.9,51,744.07 with interest at 17% per annum with effect from 01.07.1987 against the Petitioner herein who was the borrower of the Respondent No.1 Bank. The decreetal amount therefore comes to Rs.48,11,132.72 approximately as on 31.12.2013. The said proclamation for sale has been preceded by the issuance of demand notice dated 25.07.2013 after the upset price for the property in question was fixed by the District Deputy Registrar, Co-operative Societies at Rs.1,08,85,360/- which was communicated by letter dated 12.09.2013 to the Respondent No.1. The auction sale took place on 22.10.2013. The participants submitted their bids in sealed covers along with the EMD. The offer of the Respondent Nos.4 and 5 of Rs.1,09,50,000/- being the highest was accepted and the Respondent Nos.4 and 5 were directed to deposit the balance of the EMD i.e. 15% of the sale price within two days as the said Respondents had increased the offer by Rs.50,000/- in the course of the auction, it seems that the Respondent Nos.4 and 5 had forwarded the cheque for Rs.9696/- which was the balance of the EMD on the same day itself.

2. The Petitioner herein thereafter moved the instant Revision Application on the same day i.e. on 22.10.2013 in view of the fact that the auction had taken place in the morning. In the said Revision Application an order came to be passed to the following effect "Status-quo to be

continued till next date of hearing by both the sides". At the hearing of the Revision Application on the said day the Respondent No.1 Bank objected to the stay being granted on the ground of non-compliance of Section 154(2A) of the Maharashtra Co-operative Societies Act on the ground of the pre-deposit as contemplated by the said provision being not made. The said objection it seems was countered on the ground that the property is sold in auction for Rs.1,09,50,000/- and therefore there is no necessity to make the pre-deposit. The Revision Application it seems thereafter appeared on 12.11.2013 when the Petitioner who was the Applicant and his Advocate remained absent. The Revision Application was thereafter posted to 19.11.2013 and was adjourned from time to time up to 07.01.2014 when it was closed for orders and the impugned order ultimately came to be passed on 30.04.2014. The said order was taken exception to by the Petitioner by way of Writ Petition No.8653 of 2014 in this Court. The principal contention urged in the said Writ Petition was that the contentions urged on behalf of the Petitioner whilst challenging the said order dated 30.04.2014 were not considered by the Revisionary Authority. A Learned Single Judge of this Court accordingly by order dated 07.10.2014 set aside the said order dated 30.04.2014 and relegated the matter back to the Revisionary Authority for a de-novo consideration of the said Revision. It is on remand that the instant order dated 31.03.2015 has been passed by the Revisionary Authority. The Revisionary Authority has considered the challenge raised by the Petitioner on the ground of non-compliance of Rule 107 (11)(g) and (h) of the Rules and having regard to the facts relating to the deposits made as also having regard to the orders passed in the Revision Application has recorded a finding that there is no non-compliance of the said Rules and therefore, there was no merit in the Revision Application and has accordingly dismissed the Revision Application by the impugned order.

3. The Learned Counsel appearing on behalf of the Petitioner Mr. Girish Godbole sought to reiterate the case of the Petitioner as regards the non-compliance of the said Rule 107(11)(g) and (h) of the Rules. The Learned Counsel would contend that since it is well settled by the judgments of the Apex Court that the said Rules are mandatory. The amount contemplated under Clause (g) and (h) is required to be paid within the time stipulated in the said Rules. See ***AIR 1954 SC 349*** in the matter of ***Manilal Mohanlal Shah and others Vs. Sardar Sayed Ahmed Sayed Mohmad and another*** and ***(2007) 12 SCC 165*** reported in ***Shilpa Shares and Securities and others Vs. National Cooperative Bank Ltd. and others***. The Learned Counsel by relying upon the endorsement made on the letter dated 24.10.2013 addressed on behalf of the Respondent Nos.4 and 5 to the Respondent No.1 Bank would contend that since the

balance amount of Rs.9696/- has also been included in the amount of the cheque given by the Respondent No.4 for the balance of the sale price, it would have to be held that the Respondent No.4 has not deposited the 15% of the amount i.e. EMD in terms of Clause (g) of Rule 107(11) on 22.10.2013.

4. The Learned Counsel would contend that the stay which was operating was only for a period of two days and thereafter there was no impediment for the Bank and the Respondent Nos.4 and 5 to pay the amount. However, the amount has admittedly been paid on 27.05.2014. The Learned Counsel would therefore contend that in view of the breach of the said Rules the proceedings relating to the auction sale are vitiated on account of the said illegality and therefore the same is required to be set aside.

5. Per contra, the Learned Senior Counsel Mr. P. K. Dhakephalkar appearing on behalf of the Respondent No.1 Bank would support the impugned order. The Learned Senior Counsel by referring to the facts which are on record and especially the cheque for the amount of Rs.9696/- would contend that the amount of 15% has been paid on the same day. The Learned Counsel would contend that in so far as the balance of the sale price is concerned, in view of the fact there was an order of status-quo operating in the Revision filed by the Petitioner the

cause for acceptance and the payment of the said amount arose only after Revision Application came to be dismissed on 30.04.2014 after which the Respondent Nos.4 and 5 approached the Respondent No.1 Bank on 13.05.2014 after having got knowledge of the dismissal of the Revision Application. It is therefore on 13.05.2014 that the period stipulated in Clause (h) of the said Rules would have to be computed. The Learned Counsel would contend that in so far as compliance of the amount of stamp duty is concerned, the said Rule is not mandatory and the indicia for the same is the proviso to the said Rule, which postulates extension of time. The Learned Counsel would lastly contend that the Petitioner was granted an opportunity on 08.05.2014 to pay the outstanding amount, however the Petitioner did not avail of the said opportunity. The Learned Counsel would further contend that the Petitioner could have taken recourse to the remedy provided under the Rules, at the stage of attachment or sale but has purposely not done so as the same would entail the deposit of the sale price along with an additional amount being 5% of the sale price.

6. Heard the Learned Counsel for the parties. In my view, there is no merit in the above Petition. It is required to be noted that the auction sale took place on 22.10.2013 on which day the auction purchasers it seems had increased their offer by Rs.50,000/- thereby resulting in a

higher EMD that was required to be deposited. The Respondent Nos.4 and 5 have accordingly deposited the balance of the EMD amounting to Rs.9696/-on the same day. In so far as the balance of the sale price i.e. 85% of the amount which was required to be deposited, in terms of Clause (h) of Rule 107(11) is concerned, as indicated above there was an order of status-quo which was operating in the Revision Application filed by the Petitioner. The said order passed by the Revisionary Authority has already been extracted herein above. The status-quo was to continue till the next date of hearing. The hearing did not materialize as the Revision Application came to be adjourned from time to time, ultimately it was heard on 07.01.2014 and was reserved for orders. The case of the Respondent No.1 Bank that it was labouring under an impression that order of status-quo was to continue till the hearing of the Revision Application cannot be brushed aside considering the fact that the subject matter of the Revision Application in effect was the auction sale which had taken place on 22.10.2013. The explanation given by the Respondent No.1 Bank as to why it did not accept the balance amount and therefore did not call upon the Respondent Nos.4 and 5 to deposit the amount, on the ground of the order of status-quo being in operation in the Revision Application filed by the Petitioner can be said to be a plausible explanation. It is required to be borne in mind that there was no specific order passed by the Revisionary Authority vacating status-quo and therefore, the parties were bonafide in the belief that the order of status-quo is in operation in the Revision Application. As indicated above, the Revision Application filed by the Petitioner came to be dismissed on 30.04.2014. It seems that the Respondent Nos.4 and 5 got knowledge of the dismissal of the Revision Application and accordingly approached the Respondent No.1 Bank on 13.05.2015, but prior thereto the Respondent Bank had called upon the Respondent Nos.4 and 5 to deposit the amount. The said Respondents accordingly deposited the amount of the balance sale price on 27.05.2014 by RTGS, if one considers the date of knowledge as 13.05.2014 which can be attributed to the Respondent Nos.4 and 5, the deposit having been made on 27.05.2014 cannot be said to be beyond the prescribed period mentioned in Clause (g) of Rule 107(11). It is in the context of the peculiar facts of the present case where the Petitioner challenged the auction by a Revision Application filed before the Revisionary Authority that the matter would have to be considered. The matter would also have to be considered from the aspect of the Respondent No.1 Bank is to recover dues from the Petitioner who was a borrower and who has defaulted in the payment of the amount which was advanced to him in the year 1987. In my view, the facts as above disclose a substantial compliance with the said Rules. The Revisionary Authority having held so, in my view the said order does not merit any interference in the Writ Jurisdiction of Court under Article 227 of the Constitution of India. The Writ Petition is accordingly dismissed.

7. At this stage, the Learned Counsel appearing for the Petitioner prays for continuation of the statement made on behalf of the Respondent No.1 as recorded in the order dated 08.06.2015 passed in the above Petition. The Learned Senior Counsel appearing for the Respondent No.1 opposes the continuation of the said statement. In the facts and circumstances of the case, where the auctioned property is a residential house the Respondent No.1 Bank is directed not to take precipitative steps for a period of four weeks from date.

[R.M. SAVANT, J]