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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 8209 OF 2015

Milind Agnihotri & Anr. ... Petitioner
Vs.
M/s. Pratap Co-Op. Bank Ltd. & Ors. ... Respondents

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Mr. Prathmesh Kamat a/w Yashodhan Gavankar i/b Niteen Kamat, for the Petitioner.

Mr. S. N. Fadia, for Respondent No. 1.

Mr. R. K. Singh, for Respondent Nos. 2 and 3.

Ms. Priya Baliga, for Respondent No. 4 – ICICI Bank

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CORAM : V. M. KANADE, &
B. P. COLABAWALLA, JJ.

DATE : AUGUST 14, 2015

PC.

1. The grievance of the Petitioner is that despite the Petitioner, who is an auction purchaser who has purchased the property in auction which had taken place pursuant to the directions given by the DRT under the SARFAESI Act, the sale-certificate is not being issued because there is *inter se* dispute between the Banks claiming to be having prior rights over the suit property. In our view, so far as *inter se* rights between the banks are concerned, that should

not be an impediment in issuance of the sale-certificate to the Petitioner because *inter se* rights would be decided and whoever finally succeeds, can claim the sale-proceeds of the said auction sale. It is not in dispute that the property which was sold in auction which had taken place, and the bid which was given by the Petitioner was not below the market-price or the price was not inadequate. This being the position, we direct Respondent Nos. 2 and 3 to issue the sale-certificate in favour of the Petitioner and get it registered, and also hand over vacant possession of the property forthwith and in any case within a period of one week to the Petitioner.

2. It is clarified that pendency of securitisation application filed by Respondent Nos. 1 and 4 has nothing to do with the sale-certificate since there is no charge over the suit property but the charge will have to be on the sale-proceeds of the auction sale.

3. We must note here that in several cases which have come before us, the auction purchaser has to wait some times indefinitely, even after paying the entire amount of sale consideration and for one reason or the other the sale-certificate is not issued. This results in erosion of trust of the public at large in the auctions which are held by

the Recovery Officers pursuant to the orders passed by the DRT. We hope and trust the DRT will do needful and ensure that no auction purchaser has to wait after he bids and deposits sale-consideration while purchasing the property which is auctioned.

4. It is further clarified that in the event Respondent No. 1 finally succeeds in establishing its claim as a prior mortgagee over the suit property, the sale-certificate would stand modified and the sale-certificate would be deemed to be issued by Respondent No. 1. Hearing of the Securitisation Application before the DRT is expedited. Impugned order passed by the DRT restraining the Bank from issuing sale-certificate is set aside. Writ petition is disposed of in the aforesaid terms.

Sd/-
[B. P. COLABAWALLA, J.]

Sd/-
[V. M. KANADE, J.]

Vinayak Halemath