

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

PUBLIC INTEREST LITIGATION NO.177 OF 2012

Swapnil A. Bagul and another	Petitioners
versus	
Shishu Vikas Sanstha, Ambernath	
and others	Respondents

Mr.Indrajeet R. Kulkarni for Respondent nos.1 and 2 and for Applicant in Civil Application No.49 of 2013.

Mr.Subodh Joshi with Ms.Purvi Joshi i/by Lokhandwala & Co. for Respondent no.4.

Mr.A.I.Patel, AGP for State.

Me.N.R.Prajapati for Union Government.

Ms.Ashwini Selukar holding for Anamika Malhotra for Respondent no.6.

CORAM : MOHIT S. SHAH, C.J. AND
B.P.COLABAWALLA, J.

DATE : 26 February 2015

PC :

In this Public Interest Litigation, the petitioners have challenged the consequences of the orders passed by Debts Recovery Tribunal, Mumbai (`DRT') in the proceedings instituted by Respondent no.3 Oriental Bank of Commerce for recovery of its dues advanced to respondent no.1 Shishu Vikas Sanstha, an educational trust. On account of the default committed by respondent no.1 (respondent no.2 is one of the trustees of respondent no.1), respondent no.3 bank initiated

proceedings before DRT, Mumbai. Respondent no.3 filed Original Application No.287 of 2007 before DRT, Mumbai on 16 October 2007 against respondent no.1 and four others (trustees and Principal of the school). DRT, Mumbai allowed the Original Application on 1 September 2009 and decreed the application with interest and costs in favour of respondent no.3 bank. The defendants were directed to pay jointly and severally a sum of Rs.18,61,071/-. The recovery certificate dated 16 September 2012 was issued to that effect and in the course of recovery proceedings, the property of respondent no.1 trust being the leasehold land on which school building stands, was put to auction. Respondent no.4 herein purchased the property at the said auction and registered sale deed was executed by the Recovery Officer of DRT in favour of respondent no.4.

2. The Recovery Officer put seal and lock on the school building. When respondent no.4 was about to be put in possession of the property by the Receiver, the present Public Interest Litigation came to be filed by two residents of Village Ambarnath contending that there are two schools being run by respondent nos.1 and 2 and about 875 students of backward class are studying up to 10th standard. It was submitted on behalf of petitioners that as respondent nos.1 and 2 have committed default in paying the dues of respondent no.3 bank, all 875 students will suffer serious prejudice. The PIL contained the following prayers :

"(a) Rule may be issued on this petition;

(b) By an appropriate Writ, Order or Direction, this Hon'ble Court may be pleased to pass such order or give such directions that all the consequences of the recovery, execution and other proceedings resulted/resulting in the closure of the schools, initiated against the respondent nos.1 and 2 by the respondent no.3 come into force/be effective and operative only after 31 July 2013 and this Hon'ble Court may also be pleased by an appropriate Writ, Order or Direction to order or direct the respondents also to re-open the seal and lock put on the premises of the Schools at the earliest possibility;

(c) Ad-interim and interim reliefs in terms of prayer clause (b) may be granted to the petitioners."

3. At the first hearing of this PIL on 4 December 2012, the respondent no.1 school management stated that without prejudice to their rights and contentions before DRT, the trustees are ready to pay the amount due and payable to respondent no.3 bank. They agreed to deposit Rs.15.90 lakhs with DRT, Mumbai immediately and submitted that the balance amount of Rs.16.10 lakhs and odd will be deposited later on. In view of the above statements made on behalf of respondent nos.1 and 2, this Court issued notice on the PIL and granted ad-interim relief so that the Court Receiver appointed by DRT shall

continue to retain the symbolic possession of the property in question, but the Court Receiver appointed by DRT was to remove the seal and lock placed on the premises of the school.

4. Thereafter, this Court granted several opportunities to respondent no.1 to deposit the balance amount but respondent nos.1 and 2 kept on dragging the proceedings and deposited some amounts from time to time. In the mean time, when respondent no.4 made serious grievance that amount of Rs.1.27 crores deposited by respondent no.4 with DRT in the auction was blocked without respondent no.4 getting the actual benefit of having purchased the property at the public auction, the learned counsel for respondent nos.1 and 2 stated on 10 January 2013 that differential interest @ 16% p.a. less the interest earned on fixed deposit on the amount of 1.35 crores (Rs.1.27 crores being purchase price deposited by respondent no.4 with DRT + Rs.8 lakhs being stamp duty and registration charges) will be deposited within eight weeks. It was further submitted that upon deposit of the amount of interest, when the registered sale deed in favour of respondent no.4 will be cancelled, the stamp duty paid on the said instrument, will be refunded and therefore, the amount equivalent to the stamp duty and registration charges will be deducted from the interest payable by respondent no.1 to respondent no.4. Unfortunately, respondent nos.1 and 2 have miserably failed in paying to respondent no.4 or even in depositing, the differential amount

of interest payable @ 16% p.a., as referred above. At the hearing today, learned counsel for respondent no.4 states that the said differential amount of interest now works out to around Rs.29.77 lakhs.

5. Learned counsel for respondent nos.1 and 2 states that his clients are not able to pay the above amount of interest. Learned counsel for respondent no.4 has submitted that respondent no.4 had taken a loan from another bank for financing the purchase of the property at the public auction @ 14% p.a. on monthly basis, and, therefore, differential interest be paid at least at the rate of 14% p.a. less the interest earned on fixed deposit.

6. In view of the above, we called upon the learned advocate for respondent nos.1 and 2 to indicate whether his clients are ready to pay the differential amount of interest i.e. between 14% p.a. compounded on annual basis less the amount of interest earned on the fixed deposit as aforesaid. Learned counsel for respondent nos.1 and 2 is, however, not ready to make any statement to that effect and pleads helplessness on the part of respondent nos.1 and 2 in not paying any such differential amount of interest.

7. In the above set of circumstances, we are left with no other alternative but to dismiss this PIL with liberty to

respondent nos.1 and 2 and respondent no.4 to raise all available contentions before DRT, Mumbai. Respondent nos.1 and 2 shall serve copies of all applications and pleadings on respondent no.4 in DRT proceedings, in case such copies are not served so far. The DRT shall pass appropriate orders after hearing the learned counsel for the parties and make an endeavour to resolve the disputes between the parties amicably, as respondent no.3 bank appears to have considered the proposal of respondent no.1 school management with some sympathy and in case the disputes are not amicably resolved, then pass appropriate orders regarding the amounts deposited by respondent no.4-auction purchaser as well as by or on behalf of, on for the benefit of, respondent no.1.

8. We also relieve respondent nos.1 and 2 from the statements made before this Court in this PIL.

9. We make it clear that notwithstanding dismissal of this PIL and irrespective of the outcome of the proceedings before DRT, the Court Receiver and respondent no.4 herein shall permit respondent no.1 to run the two schools being Gokhale Rahalkar Primary School and Gokhale Rahalkar Secondary School till 30 June 2015. After 30 June 2015, DRT will be at liberty to pass further orders. It will be open to respondent nos.1 and 2 to move DRT for such reliefs as respondent nos.1 and 2 or other defendants may chose to pray for. So also, it will

be open to respondent no.3 bank and respondent no.4 auction purchaser to move the DRT for reliefs which they consider appropriate to pray for.

10. DRT, Mumbai will be at liberty to pass appropriate orders regarding the amounts deposited by respondent no.4-auction purchaser as well as by or on behalf of, or for the benefit of, respondent no.1.

11. Subject to the observations made in paragraphs 7 to 10 hereinabove, Public Interest Litigation No.177 of 2012 is dismissed. In view of dismissal of PIL, Civil Application Nos.49 of 2013, 2 of 2014 and 179 of 2014 do not survive and stand disposed of.

(CHIEF JUSTICE)

(B.P.COLABAWALLA, J.)