

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL APPLICATION NO.695 OF 2015

IN

WRIT PETITION NO.2093 OF 2014

Niwas Baburao Sarnaik

.. Applicant

IN THE MATTER BETWEEN

Atul Vijaykant Moog

.. Petitioner

Versus

Niwas Baburao Sarnaik and others

.. Respondents

AND

CIVIL APPLICATION NO.2358 OF 2015

IN

WRIT PETITION NO.2828 OF 2014

Dr. Annasaheb Chougule Urban

Co-operative Bank Ltd. and another

.. Applicants

Versus

Niwas Baburao Sarnaik and others

.. Respondents

Shri. R. V. Govilkar a/w Shri. S. B. Khurjekar, for the Applicant in Civil Application No.695 of 2015.

Shri. U. R. Mankapure, for the Applicant in Civil Application No.2358 of 2015.

Shri. S. S. Patwardhan, for the original Petitioner in Writ Petition No.2093 of 2014.

Ms. Aparna Vhatkar, AGP for Respondent Nos.3 & 4 in Civil Application No.695 of 2015 & in Civil Application No.2358 of 2015.

CORAM : R.M. SAVANT, J.
DATE : 11th APRIL 2016

PC.

1. The above Civil Application No.695 of 2015 has been filed by the Applicant who is the original Respondent No.1 to the above Petition. The principal relief sought in the said Civil Application No.695 of 2015 is to the following effect :-

“(a) The applicant herein/original Respondent no.1, respondent in Writ Petition No.2093 of 2014, be permitted to withdraw the said sum of Rs.36,76,205/-, with the interest accrued thereon deposited by him before the Divisional Joint Registrar C. S. (Co-op. Societies) Kolhapur on such terms and conditions including the direction to redeposit the amount as this Hon'ble Court thinks fit and proper;”

2. The Respondent No.1 is therefore seeking permission to withdraw the sum of Rs.36,76,205/- with the interest accrued thereon from the office of the Divisional Joint Registrar, Co-operative Societies, Kolhapur.

3. In so far as Civil Application No.2358 of 2015 is concerned, the same has been filed by the Applicants who are the original Petitioners in Writ Petition No.2828 of 2014. The above Writ Petition No.2093 of 2014 and Writ Petition No.2828 of 2014 impugn the order dated

03.02.2014 passed by the Divisional Joint Registrar, Co-operative Societies, Kolhapur Division, Kolhapur, by which order, the Revision Application filed by the Respondent No.1 i.e. the Applicant in Civil Application No.695 of 2015 came to be allowed and resultantly, the auction sale dated 07.07.2008 in respect of the property in question as also the Sale Certificate dated 06.09.2008 issued pursuant thereto came to be set aside.

4. The above Writ Petition No.2093 of 2014 came to be admitted by a Learned Single Judge of this Court on 06.05.2014. The Learned Single Judge whilst admitting the above Petition has adverted to the fact that the said auction sale and the Sale Certificate was challenged after a period of five years on 08.08.2013 when the auction sale was conducted on 07.07.2008. The Learned Single Judge has also adverted to the fact that the Petitioner in the said Writ Petition has developed the property purchased by him in the auction, as a result of which buildings have been constructed and the flats therein have been sold to the various persons under the provisions of the Maharashtra Ownership of Flats Act. The Learned Judge has adverted to the finding recorded by the Revisionary Authority that the identity and the description of the property in auction were not properly given. The Learned Judge observed that the perusal of the Revision Application does not disclose any such ground of challenge.

The Learned Judge has further observed that as the Petitioner has developed the property after obtaining sanction from the Municipal Authority, the question of the identity and description of the property being not proper would not survive. The Learned Judge also did not find any merit in the challenge on the ground that the Sale Certificate has not been issued by the Recovery Officer, but by the District Deputy Registrar of Co-operative Societies. This was on the basis that the said officer was much higher in rank than the Recovery Officer. The Learned Judge further held that arguable issues arise in the Writ Petition and therefore admitted the said Petition and granted interim reliefs in terms of prayer clause (d).

5. The filing of the Revision Application in which the impugned order dated 03.02.2014 came to be passed by the Learned Judge was preceded by the fact that the Applicant in Civil Application No.695 of 2015 i.e. original borrower had not deposited the pre-deposit as mandated by Section 154(2A). He had approached this Court by way of Writ Petition No.6999 of 2013. A Learned Single Judge of this Court had directed the Applicant to deposit the said amount of Rs.36,76,205/- with the Divisional Joint Registrar as a precondition for hearing the Revision. The Applicant has accordingly deposited the amount with the office of the Divisional Joint Registrar, refund of which amount is now sought by the instant Civil Application No.695 of 2015.

6. In so far as the Civil Application No.2358 of 2015 filed by the Petitioner in Writ Petition No.2828 of 2014 is concerned, the relief therein is sought on the ground that the pre-deposit is required to be made with the Bank or the society in question in whose favour a certificate under Section 101 of the Maharashtra Co-operative Societies Act is issued. As indicated above, the above Writ Petition No.2093 of 2014 has been admitted, which Petition as indicated above has been filed by the auction purchaser, Atul Vijaykant Moog. The Petition filed by the Bank in question i.e. Dr. Annasaheb Chougule Urban Co-operative Bank Ltd. has also been admitted since the companion Petition filed by the auction purchaser is admitted. In so far as Civil Application No.695 of 2015 is concerned, it is required to be noted that the certificate under Section 101 of the Maharashtra Co-operative Societies Act has been issued on 02.05.2003. The said certificate is in the sum of Rs.39,08,622/- and the same is to carry interest at 17% till the date of payment. In the affidavit in reply filed to the above Civil Application by the Bank in paragraph 9 it is stated that an amount of Rs.1,02,25,288/- is due and payable by the Respondent No.1 till date. The affidavit therefore seems to proceed on the basis that the amount which has been recovered from the auction purchaser has not been taken into consideration whilst computing the amount of Rs.1,02,25,288/- as outstanding till date. Be that as it may, even if the said

amount of Rs.36,76,205/- is taken into consideration and deducted an amount upwards of Rs.50 lakhs may be due and payable by the Applicant. In my view therefore relief sought vide the said Civil Application No.695 of 2015 cannot be granted. The same is accordingly rejected.

7. In so far as the Civil Application No.2358 of 2015 is concerned, since the pre-deposit is to be made with the Bank or society in question though at the time of hearing of the said Writ Petition No.6999 of 2013 the amount was directed to be deposited with the office of the Divisional Joint Registrar and since the proceedings have now come to an end and the order passed is subject matter of the challenge in the above two Petitions, in my view, it would be just and proper to allow the said Civil Application No.2358 of 2015 and permit the Bank to withdraw the said amount from the office of the Divisional Joint Registrar, Kolhapur. The said amount would be kept in a fixed deposit in the Bank i.e. the Dr. Annasaheb Chougule Urban Co-operative Bank Ltd. The said amount would lie with the Bank subject to the final orders that would be passed in the above Petitions including one for payment of interest on the said amount. The Civil Application No.2358 of 2015 is accordingly disposed of

[R.M. SAVANT, J]