

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10489 OF 2016

M/s.Shishu Vikas Sanstha and another. ... Petitioners.
V/s.
Oriental Bank of Commerce and others. ... Respondents.

Indrajeet Kulkarni with Jayesh Gawde for the petitioners.
Prathamesh Kamat i/b. Nitin Kamat for respondent No.1.
Pankaj Sutar i/b. M/s.Jayakar & Partners for respondent No.2.

**CORAM : DR.MANJULA CHELLUR, C.J.
AND M.S.SONAK, J.**

DATE : 16th September 2016.

PC. :

The entire issue relates to quantum of interest that is to be paid on sale consideration deposited by the auction purchaser before the Debt Recovery Tribunal (DRT). Since the borrowers are running a school, this Court intervened for about four years in trying to settle the issues amicably between the parties. Thereafter it was left to the DRT to decide how much interest the auction purchaser would be entitled to receive on the sale consideration and also to decide the rights of the parties. This Court, by order dated 26th February 2015, issued directions as under:

“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.”

Subsequently, the DRT dismissed the appeal filed by the borrowers on 24th July 2015. Aggrieved by the same, the borrowers approached the Debt Recovery Appellate Tribunal (DRAT) by filing Appeal No.249/2015. However, no stay was granted and no interim order of any nature was passed.

2. Meanwhile, since the auction purchaser approached the Recovery Officer for taking possession of the property, the present writ petitioners i.e. the borrowers are before us seeking intervention of the Court contending that with the intervention of the Court entire dues to the respondent- bank were paid and, therefore, they should not be dispossessed from the property since the school is being run in the said property.

3. At this stage, we find that the calculation made by the respondent- bank in pursuance of our direction is placed on record. The total maturity value of the fixed deposit (sale proceeds deposited by the auction purchaser) would be Rs.1,71,74,410 as on 30th June 2016. This is so far as fixed deposit of principal amount and the interest accrued thereon. If the amount is calculated at 16% simple interest from different dates of deposit of amounts, it would come to Rs.1,99,09,424.66 as on 30th June 2016. The difference of amount would be Rs.27,35,014.66.

4. The writ petitioners- borrowers contend that they are not liable to pay this money even if they want to buy peace in the matter. Since this Court in the PIL left it open to the DRT to consider the rights of the parties, in absence of any consent by both the parties trying to amicably settle the issue, we are of the opinion

that we should not intervene before the DRAT decides the issue. Therefore, we pass the following order:

5. The parties are directed to maintain status-quo, so far as possession of the property, for a period of four weeks. In the meanwhile, the DRAT to decide the stay application pending before it. If the writ petitioners fail to take interest in prosecuting the stay application pending before DRAT, they shall not have benefit of this order beyond four weeks.

Writ petition is disposed of.

(M.S.SONAK, J.)

CHIEF JUSTICE