IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 44 OF 2015

Suyog Vasudev Dahiwadkar & anr. .. Petitioners
vs.
The Vita Merchants Co-op. Bank Ltd. & ors. .. Respondents

Mr. S.A. Sawant for the Petitioners.
Mr. S.S. Patwardhan for Respondent No.1.
Mr. S.D. Rayrikar, AGP for Respondent Nos. 4 to 6.
Ms Deepa Kamathi for Respondent Nos. 7 to 14.

CORAM : M. S. SONAK, J.
DATE : 20 JUNE 2016.

P.C. :-

1] Rule. Rule is made returnable forthwith, with the consent of and at the request of learned counsel for the parties.

2] The challenge in this petition is to the order dated 25 November 2014 made by the Divisional Joint Registrar Cooperative Societies, Kolhapur Division, Kolhapur, allowing the revision application instituted by respondent Nos.7 and 8 herein and setting aside the sale confirmation certificate dated 29 May 2012, earlier issued in favour of the petitioners herein.

3] Mr. Sawant, learned counsel for the petitioners, has submitted that there was no delay as such on the part of the petitioners in depositing 85% of amount in pursuance of the auction purchase, since, the amount was deposited, no sooner the same was demanded by respondent No.1 bank. In any case, Mr. Sawant submitted that since respondent Nos.7 and 8 did not apply for setting aside the sale within thirty days, the sale was confirmed and the authorities clearly exceeded jurisdiction in entertaining the application for setting aside of the sale after the period of thirty days, as prescribed. Mr. Sawant, without prejudice, submitted that in any case, there is no justification on the part of respondent No.1 bank in insisting upon deduction of an amount of Rs.10 Lacs, since, in the present case, the petitioners did deposit the entire amount, no sooner the same was demanded by the respondent-bank.

4] Ms Deepa Kamathi, learned counsel for respondent Nos.7 to 14 defended the impugned order by pointing out that the authorities had no power to condone the delay in depositing of balance 85% of the amount beyond the prescribed period of fifteen days. She submitted that the sale certificate in such a circumstance was not merely irregular, but rather, the same was null and void and therefore, the same was rightly set aside by the impugned order. She submitted that the respondents had already deposited 50% of the amount as required under Section 154(2A) of the Maharashtra Cooperative Societies Act, 1960 (said Act) and further, the petitioners have also paid additional amounts to the respondent No.1 bank. She submitted that the total amount paid by the respondents-borrowers to the banks is in the range of approximately Rs.70 Lacs. She submitted that the borrowers have already applied for one time settlement facility (OTS), but the respondent- banks are not considering such proposal on account of pendency of present petition. For all these reasons, she submitted that the impugned order may not be interfered with. Rather, she submitted that the directions be issued to the respondent-banks for considering the borrowers' proposal for grant of OTS after giving due credit to the amounts already deposited by the borrowers.

5] Mr. S.S. Patwardhan, learned counsel for the respondent No.1-bank, submitted that the deduction of 10% is in pursuance of certain directives issued by the authorities, in matters where auction purchaser fails to pay the balance purchase price. Mr. Patwardhan stated that respondent No.1 bank will refund an amount of approximately Rs.60,30,000/- to the petitioners, in case, the impugned order dated 25 November 2014 is upheld by this Court.

Mr. Patwardhan further submitted that there is no case made out for award of any interest, particularly as the petitioners failed to pay the balance amount of purchase price, within the prescribed period, as mandated by the statute/rules.

6] The rival contentions now fall for determination.

7] In this case, there is no dispute that the petitioners were required to deposit 85% of the purchase price within fifteen days from the date of sale and the petitioners failed to deposit the said amount within fifteen days. The record indicates that there was delay of about fifteen days in the matter of such deposit. The Hon'ble Supreme Court in case of ***M/s. Shilpa Share and Securitites & ors. Vs. National Co-operative Bank Ltd & ors -AIR 2007 Supreme Court 1874,*** has held that the compliance with the provisions with regard to deposit of balance 85% of purchase price within fifteen days from the date of sale is mandatory and non-compliance with the rule, which provides for the same, renders the sale a nullity and not a mere irregularity. Considering this position, it cannot be said that there is any illegality or jurisdictional error in making of the impugned order dated 25 November 2014.

Accordingly, no case is made out to interfere with the impugned order.

8] There is no case made out by the petitioners for award of any interest on the amounts, which, the respondent bank is required to be refund to the petitioners, consequent upon setting aside of the sale. In this case, the petitioners have failed to comply with the rule, which, as noted earlier, has been held to be mandatory by the Hon'ble Supreme Court. In these circumstances, there is no case made out by the petitioners for award of any interest.

9] However, insofar as, the proposed deduction of Rs.10 Lacs by respondent No.1 bank is concerned, in the peculiar facts and circumstances of the present case, the same does not appear to be justified. In the first place, there is no rule or regulation, which, warrants such deduction. Such deduction is made in pursuance of certain directions issued by the authorities. No doubt, such directions are required to be complied by the respondent bank. However, in the facts and circumstances of the present case, it would be inequitable to permit respondent No.1 bank to make such a deduction. Although, the petitioners cannot seek any relaxation from the rigors of the statutory rules, the record does indicate that the petitioners have paid 85% of the auction purchase price, no sooner they received the intimation from respondent no.1 bank. In terms of the rule, such amount was required to be deposited within fifteen days from the date of sale. No intimation was really necessary for this purpose. However, since the intimation was ultimately given, it cannot be ruled out that there was some genuine confusion in the minds of the petitioners, in the matter of payment of balance auction purchase price. The petitioners have suffered substantially on account of such confusion, since, the sale has been set aside and further, the respondent bank has retained the amount of Rs.70,30,000/- for over last four years. Considering these peculiar circumstance, it would not be just and equitable to permit respondent no.1 bank to further deduct Rs.10 Lac from out of the amount deposited by the petitioners and retained by the bank for the last four years. That apart, the borrowers have admittedly paid an amount of Rs. 35 Lacs with the respondent bank, with which they seek to adjust their loan liabilities. Learned counsel for the borrowers has submitted that further amounts have already been paid, thereby taking this amount to approximately Rs.70 Lacs. Upon cumulative consideration of all these aspects, it will not be appropriate to permit the respondent bank to retain Rs.10 Lacs from out of amount of Rs.70,30,000/-, which they have now required to refund the petitioners.

10] Accordingly, whilst the challenge to the impugned order dated 25 November 2014 is dismissed, respondent No.1 bank is directed to refund the petitioners an amount of Rs.70,30,000/- without any interest thereon, within a period of three weeks from today.

11] Rule is partly made absolute to the aforesaid extent only. There shall however, be no order as to costs.

(M. S. SONAK, J.)

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