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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION No. 1077 OF 2016

Mahesh Manek & Anr. ... Petitioners
Vs.
Union Bank of India & Ors. ... Respondents

Mr. Chetan Kapadia i/b Sunil A. Humbre, for the Petitioners.
Dr. Birendra Saraf a/w T. N. Tripathi, Ms. Sapana Rachure i/b T. N. Tripathi & Co., for Respondent No. 3.
Mr. Prathamesh Kamat a/w Ms. Noor Iyas Bakali, for Respondent No. 1.

CORAM : V. M. KANADE, &
M. S. SONAK, JJ.
DATE : AUGUST 9, 2016

PC.

1. Heard Mr. Chetan Kapadia, learned counsel appearing for the Petitioners, Mr. Prathamesh Kamat, learned counsel appearing for Respondent No. 1 Bank, and Dr. Biren Saraf, learned counsel appearing for Respondent No. 3. The grievance of the Petitioners is that, though they are purchasers and the sale has been in their favour way back in 2008, they have not received possession of the subject

property because Respondent No. 3 now claims that he is 50% owner of the said property. It is also not in dispute that the Petitioners have paid the entire amount towards purchase price of the property i.e. rupees one crore, ten lakhs way back in 2008. The said amount is now lying with the Recovery Officer since last 8 years. The DRAT in the impugned order though has not set aside the sale of the property and confirmation of the auction sale, has now held that since Respondent No. 3 claims to be 50% owner of the subject property, possession of the property should not be handed over. Mr. Kapadia, learned counsel appearing for the Petitioners submitted that if the sale is confirmed, Petitioners are entitled to get possession, and the DRAT could not, on the basis of orders passed in some collateral proceedings in the Apex Court, give a finding that Respondent No. 3 has some interest in the subject property, though he is not a borrower or guarantor.

2. On the other hand, learned counsel Mr. Kamat, appearing for Respondent No. 1 Bank submitted that the Petitioners have purchased the property on “as is and where is” basis. It is further submitted that they are residing in some Society and they ought to have been aware that Respondent No. 3 was in possession of the

property. He further submitted that the Bank proposes to challenge the order passed by the DRAT by filing the petition in this Court. It is further submitted that in the event amount is directed to be refunded, then the Petitioners be asked to give security to the satisfaction of the DRAT or the Recovery Officer.

3. We do not propose to go into the merits of the impugned order. We are of the view that the Bank or Respondent No. 3 cannot take advantage of the fact that the purchase amount has been deposited, and at the same time possession is not handed over to the auction purchasers. Under these circumstances, therefore, we direct the Recovery Officer to refund the entire amount which is deposited by the Petitioners alongwith interest, which is accrued thereon. In the event final order is passed in favour of the Petitioners and possession is to be handed over, then they may deposit the said amount, which they have withdrawn without interest. The impugned order is modified in the aforesaid terms and the petition is accordingly disposed of. All contentions of the Bank and Respondent No. 3 are kept open.

Sd/-
[M. S. SONAK, J.]

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