

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.2544 OF 2014

[M/s. Kamdhenu Dairy, Nagpur and others .vs. State Bank of India and one]

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Office Notes, Office Memoranda of Coram,  
appearances, Court's orders of directions  
and Registrar's orders  
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Court's or Judge's orders

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Shri R.H. Agrawal, counsel for the petitioners,  
Shri A.V. Khare, counsel for respondent no.1.  
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CORAM : SMT. VASANTI A NAIK AND  
MRS. SWAPNA JOSHI, JJ.

DATED : AUGUST 09, 2016.

By this writ petition, the petitioners seek a declaration that the auction sale conducted by the respondent-bank on 18.2.2014 is arbitrary and illegal and is liable to be set aside. The petitioners also seek a direction against the respondent-bank not to take coercive steps of enforcing physical warrant of possession of the property of the petitioners.

It is the case of the petitioners that the petitioners had sought an agricultural loan from the respondent-State Bank of India and was not able to repay the same. The proceedings were initiated by the respondent-bank before the Debts Recovery Tribunal, Nagpur. The matter was placed before the Lok Adalat and the parties settled the matter by repayment of Rs.16 Lacs, though according to the bank, the claim was to the extent of Rs.22 Lacs and odd. At the time of settlement, the petitioners handed over some post-dated cheques to the respondent-bank. The cheques were admittedly dishonoured. The respondent-bank, therefore, published an auction notice for auction of the property on 18.2.2014. The warrant of possession was issued against the petitioners and since the Debts Recovery Tribunal was not functioning at Nagpur in view of the vacancy in the post

of Presiding Officer, the petitioners had filed this writ petition. The petitioners have challenged the warrant of possession and as also the auction proceedings.

Shri Agrawal, the learned counsel for the petitioners states that the petitioners have no ground to raise and the petitioners only pray that the case of the petitioners be considered leniently and sympathetically. It is stated that the petitioners did not have the finances to repay the debts and though there was a settlement in the Lok Adalat, the cheques submitted by the petitioners got dis-honoured. It is stated that in the circumstances of the case, by considering this writ petition to be a mercy petition, the auction sale and warrant of possession should be set aside.

Shri Khare, the learned counsel for the respondent-bank, has strongly opposed the prayer made in the writ petition. It is stated that though the writ petition was filed at a time when the Debts Recovery Tribunal was not functioning, the petitioners continued to pursue the writ petition, with absolute negligence, even after the Presiding Officer in the Debts Recovery Tribunal was available at Nagpur. It is stated that this court had, by the order dated 27.5.2014 , granted ad-interim relief in favour of the petitioners only on the condition that the petitioner deposits an amount of Rs.10 Lacs in this court within three weeks. It is stated that the amount of Rs.10 Lacs was not deposited and hence certain observations are made against the petitioners in some of the interim orders. It is stated that the order dated 16.7.2014 was challenged before the Hon'ble Supreme Court and though the order was stayed for sometime, ultimately the Special Leave Petition was dismissed, with the result that the petitioners were required to deposit a sum of Rs.10 Lacs. It is stated that the petitioners have deposited the sum of Rs.10 Lacs, after the petitioners filed the Miscellaneous Civil Application for

restoration of the writ petition that was dismissed for want of prosecution, by the order dated 3.11.2014.

We see no bona-fides on the part of the petitioners in paying the dues of the bank. Also no legal grounds are raised by the petitioners in the instant petition. When the debts of the banks are not paid, the matter cannot be considered only sympathetically, as if it is so considered, the object of the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 would get frustrated. Even otherwise the petitioners have an alternate remedy of challenging the auction proceedings, as also the issuance of the warrant of possession. The petitioners did not do so. The auction purchaser is not joined as a party respondent though this court had directed on the first date of hearing that is on 27.5.2014 that the petitioners should implead the auction purchaser as a party respondent. Though the demand draft for the sum of Rs.7 Lacs was sought to be tendered in the office in terms of the order dated 27.5.2014, the office has rightly not accepted the same, as we had directed the petitioners to deposit a sum of Rs.10 Lacs and not Rs.7 Lacs. Merely because the petitioners have deposited a sum of Rs.10 Lacs just a couple of days back, the petitioners would not be entitled to any relief. We are inclined to dismiss the petition on merits in the absence of any substantial grounds for challenging the action on the part of the respondent-bank.

Hence, the writ petition is dismissed, with no order as to costs. The petitioners are permitted to withdraw the amount of Rs.10 Lacs deposited in this court. Order accordingly.

JUDGE

JUDGE

CERTIFICATE

“I certify that this order uploaded is a true and correct copy of original signed order.”

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