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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 5130 OF 2014

**SHRIRAM KASHINATH PATIL
VERSUS
THE MAHARASHTRA STATE CO-OPERATIVE BANK LTD. AND
OTHERS**

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**Advocate for Petitioner : Thombre S.S.
AGP for Respondents: Mr.A.S.Shinde
Advocate for Respondents : Mr.R.N.Dhorde,Sr.Counsel h/f
Mr.V.R.Dhorde for R.1 and 2.
Adv.Mr.S.B.Borde for R.4.**

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**CORAM : T.V.NALAWADE AND
SANGITRAO S. PATIL,JJ.**

DATE : 08/02/2017

PER COURT :-

The Petition is filed for direction to respondents to return the earnest amount paid by the petitioner i.e. Rs.1,90,00,000/- alongwith 18% p.a. interest from the date of payment till the date of realization. Both sides are heard.

2] It appears that in a public auction which was published by respondents for auction sale of some property of starch factory, the petitioner participated and he had given offer of Rs.11 crores. As per

the notice of public auction, 25% of the amount of offer was to be deposited within 48 hours of giving of the offer. That was not done. The amount of Rs.1.9 crores was paid but the remaining amount of Rs.85,00,000/- was not paid even after the expiry of that period. It appears that subsequently second advertisement was published and the property is sold by auction. It appears that the second notice of advertisement was also challenged. After 48 hours, some amount was accepted to make total amount as Rs.1.9 crore. When the second advertisement was challenged, the petitioner failed in that. It appears that Writ Petition No,3530/2008 was filed for present relief also and the relief which was specifically claimed is as under :

“J] In alternatively, the amount of purchase price paid by the petitioner to the respondents No.2 and forfeited by it be refunded to the petitioner alongwith interest thereon @ 18% per annum from the date of its payment till the realization of the entire amount.”

3] The said proceeding was withdrawn on instructions and due to submissions, following order was made :

“On instructions, learned counsel for the petitioner seeks leave to withdraw the petition

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with liberty to take appropriate remedy which he may be entitled. The petition is dismissed as withdrawn with liberty as prayed for.

We make it clear that we have not decided the matter on merit and therefore, all issues are kept open for the petitioner.”

4] Thus, this Court had already expressed that the remedy of refund cannot be claimed before this Court and the petitioner needs to approach appropriate forum for appropriate relief. In spite of this present proceeding is filed. Learned counsel for petitioner placed reliance on some observations made by other Division Bench of this Court (**Coram : B.P.Dharmadhikari & Ravindra V. Ghuge, JJ.**) on **10/12/2013 in Writ Petition No.6331/2013 (Umang Sugars Private Limited Versus The State of Maharashtra and another)**. The observations and the order were made in altogether different situation and facts were totally different. In the present matter, it was made clear in the notice of auction that if the remaining amount was not deposited, the first amount of 25% if any, deposited was liable to be forfeited.

5] In any case, this Court is not expected to go into merits on the entitlement of both sides. This point needs to be considered in view of the conditions expressed in the public notice and the rights of the

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parties under Contract Act. With the aforesaid observations, Petition is dismissed.

(SANGITRAO S. PATIL,J.) (T.V.NALAWADE,J.)

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