IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1494 OF 2014

Uday Ramchandra Dange ...Petitioner
Versus
Shri Kalleshwar Nagari Bigar & Ors. ...Respondents

Mr.Dhairyasheel Sutar, for the petitioner.
Mr.kTushar L. Pimple,for the respondent No.1.

CORAM : SMT. SADHANA S.JADHAV, J.
DATE :21st November, 2017.

P.C. :

1. Heard. Rule. Rule made returnable forthwith with consent of the parties.

2. The learned counsel for the petitioner, pursuant to the order dated 15.11.2017, has taken instructions and submits that the petitioner herein is the auction-purchaser of the property. The auction proceedings were held on 30.12.2013. The present petitioner had participated in the said auction and had succeeded. He was declared as purchaser of the suit property of the judgment debtor. The total consideration was Rs.6 lakhs. On 8.1.2014, the purchaser had deposited 25% of the total value of the property i.e.

Rs.1,50,000/-. The auction purchaser was unable to pay the rest of the amount on or before 13.1.2014. However, the petitioner had filed an application seeking permission to deposit an amount to the tune of Rs.2,50,000/- out of the total remaining purchase amount. A further request was made to extend time for depositing the amount till 15.1.2014.

3. The auction purchaser had filed the said application on 13.1.2014. The said application was filed below Exhibit 1 in Regular Darkhast No.41 of 2012 (Special Darkhast No.8/2009). The learned Executing Court i.e. Civil Judge, Junior Division, Kurundwad by an order dated 15.1.2014, was pleased to reject the application on the ground that as per the statute, the Court was not empowered to extend the limitation for depositing the rest of the amount and that it was incumbent upon the auction purchaser to deposit the remainder amount within 15 days from the date of being declared as an auction purchaser and from the date of depositing the first amount. The contention of the auction purchaser i.e. the present petitioner that the date 30.12.2013 must be excluded as per Section 12 clause 1 and Section 15 sub-section (1) of the Limitation Act, 1963 for the purpose of computing 15 days time was not accepted by the learned Judge and rightly so, since the Law of Limitation contemplates that 15 days

would include bot the days i.e. 30.12.2013 and 13.1.2014. The learned Judge has placed implicit reliance on Order XXI Rule 85 of the Code of Civil Procedure. It reads as under :-

> *"Order XXI Rule 85, "Time for payment in full of purchase money – The full amount of purchase money payable shall be paid by the purchaser into Court before the Court closes on the fifteenth day from the sale of the property;*
>
> *Provided that in calculating the amount to be so paid into Court, the purchaser shall have the advantage of any set-off to which he may be entitled under rule 72."*

Hon'ble Bombay High Court amendment as under :

> *"Order XXI rule 85 – Time for payment in full of purchase money :- The full amount of purchase money payable, together with the amount required for the general stamp paper of the certificate under Rule 94, shall be paid by the purchaser into Court before the Court closes on the 15th day from the date of the sale of the property:*
>
> *Provided that, in respect of the purchase money, the purchaser shall have the advantage of any set-off to which he may be entitled under rule 72 :*
>
> *Provided further that, if as a result of some bona fide mistake or miscalculation the amount deposited falls short of the full amount of the purchase money, the Court*

may in its discretion, allow the shortfall to be made up after fifteen days of sale, and if the full amount of the purchase-money is deposited within such time as the Court may allow, the Court may condone the delay, if it considers it just and proper to do so.

Explanation :- When an amount is tendered in Court on any day after 1 p.m. but is not accepted by the Court and is paid into Court on the next working day between 11 a.m. and 1 p.m. the payment shall be deemed to have been made on the day on which the tender is made."

4. In view of the abovementioned provisionis, when this petition came up for hearing, the learned counsel for the petitioner submitted that the petitioner, who is original auction purchaser, is ready and willing to deposit the entire amount along with interest accrued upon the remainder amount at the rate of 8% per annum. The said rate of interest to be calculated from 30.12.2013.

5. The learned counsel for the petitioner submits that the petitioner would deposit Rs.4,50,000/- along with interest accrued upon it at the rate of 8% on or before 20.12.2017. In the eventuality that the said amount is not deposited on or before 20.12.2017, the order dated 15.1.2014

passed by the Executing Court would automatically stand revived and confirmed.

6. The learned counsel for the respondent No.1 fairly submits that without prejudice to the rights of the Credit Society, since the amount is being recovered with interest, he has no objection to accept the said proposal provided that the amount is paid on or before 20.12.2017. In view of this settlement, the order dated 15.1.2014 passed by the Civil Judge, Junior Division, Kurundwad, is hereby quashed and set aside. It is made clear that the property does not stand forfeited in view of the submissions of the learned counsel. The Petition is disposed of. Rule is made absolute in the above terms.

(SMT. SADHANA S.JADHAV, J.)