

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3941 OF 2016**

M/s Shubh Trading Company

..Petitioner

Vs.

The Special Recovery & Sales Officer & Ors

..Respondents

**WITH
WRIT PETITION NO.3942 OF 2016**

M/s Shubh Trading Company

..Petitioner

Vs.

The Special Recovery & Sales Officer & Ors

..Respondents

Mr. Uday Bobade i/b Mr. P. P. Kulkarni for the Petitioner

Mr. K. S.Dewal i/b Mr. J. M. Joshi for the Respondent Nos.1 and 2

Mr. P. S. Dani Senior Advocate, i/b Ms Jui Nerurkar for the Respondent No.5

Mrs. M. S. Bane "B" panel counsel for the Respondent Nos.3 and 4

CORAM : R. M. SAVANT, J.

DATE : 16th JANUARY, 2017

P.C.

1 The above Writ Petitions take exception to the order dated 18-3-2016 passed by the Divisional Joint Registrar, Co-operative Societies Mumbai, by which order, the Revision Applications No.46 of 2016 and 47 of 2016 filed by the Petitioner herein came to be dismissed.

2 The genesis of the present proceedings lie in the certificate issued under Section 101 of the Maharashtra Co-operative Societies Act in favour of the Respondent No.1 in the sum of Rs.2,20,75,361/- with further interest

thereon @ 14% p.a. Pursuant to the said recovery certificate dated 30-5-2014, a notice of attachment dated 22-9-2015 came to be issued against the property of the Petitioner herein being Gala No.C-47, APMC, Onion-Potato Market, Plot No.02, Sector No.18 Navi Mumbai 400 703. It seems that the possession of the said property was taken on 5-10-2015. In view of the fact that the said property was to be auctioned that a upset price came to be fixed for the said property by the District Deputy Registrar was communicated to the Respondent No.1 by letter dated 12-3-2015 of the Deputy District Registrar that the upset price fixed was Rs.98,25,000/-. It seems that the auction which was fixed earlier was cancelled and thereafter a fresh process was initiated. However, it seems that prior thereto the Petitioner had filed applications challenging the attachment as also the manner in which the auction was being proceeded with under Rule 107(19)(1) and 107(14) of the Maharashtra Co-operative Societies Rules.

3 In so far as Rule 107(19(a) is concerned, the Recovery and Sales Officer in the order passed on 30-10-2015 recorded that the issue of the upset price fixed could not be considered by him as the application seeking extension for fixing the upset price was pending before the District Deputy Registrar. He further held that the prayer for the possession being reinstated to the Petitioner could not be acceded to and accordingly disposed of the said application.

In so far as the application under Section 107(14) is concerned, since the said provision can be invoked in respect of any material irregularity which occurs in the auction process and since the Petitioner was not able to demonstrate that there was any such material irregularity in the auction process, the said application came to be rejected. It seems that immediately thereafter on 2-11-2015 an auction was held wherein the Respondent No.5 herein was amongst the bidders who participated in the said auction. The Respondents offer @ Rs.1,00,00,080/- (Rupees One Crore Eighty) being the highest was accepted. It seems that the Respondent No.5 in terms of the mandate of the concerned rule deposited an amount equivalent to 25% of the offer amount immediately and thereafter has on 17-11-2015 deposited the entire amount of the consideration payable in terms of the auction price in respect of the said property being Gala No.C-47.

4 The Petitioner herein filed two Revision Applications being Nos.46 of 2016 and 47 of 2016, challenging the orders passed by the Special Recovery Officer on the applications filed under Rules 107(19)(a) and 107 (14). Suffice it would be to state that the Revisionary Authority did not find any merit in the said Revision Applications and accordingly dismissed the same by the impugned order dated 18-3-2016. The Revisionary Authority prior thereto has satisfied itself that the auction has been held in terms of the requirement envisaged by the Rules.

5 The Learned Counsel Mr. Bobade appearing for the Petitioner would seek to reiterate the case of the Petitioner as urged before the Special Recovery Officer and the Revisionary Authority, in so far as the auction is concerned. The Learned Counsel would contend that the auction on 2-11-2015 has taken place without the exercise of fixing a new upset price being carried out. The Learned Counsel would draw this courts attention to the fact that only 3 bidders participated in the auction which took place on 2-11-2015 out of which the offer of the Respondent No.5 being highest has been accepted.

6 Per contra the Learned Counsel Mr. Dewal appearing for the Respondent No.1 and the Learned Senior Counsel Mr. Dani appearing for the Respondent No.5 would support the impugned order. The Learned Counsel would draw this courts attention to the correspondence on record to submit that extension of time was granted in respect of the upset price. The Learned Counsel would also contend that the Petitioner was very much present on 2-11-2015 when the auction took place but did not take any objection to the said auction being conducted. In so far as the Respondent No.5 is concerned, the Learned Senior Counsel would submit that pursuant to the acceptance of the bid of the Respondent No.5 the Gala No.C-47 has been transferred to the name of the Respondent No.5 by the APMC for which the Respondent No.5 has

deposited an amount of Rs.2 lacs. The Learned Senior Counsel would also submit that a registered document in the nature of an Assignment Deed of the said gala has been executed on 29-3-2016 wherein the APMC is a Confirming Party.

7 Having heard the Learned Counsel for the parties, I have considered the rival contentions. In the conspectus of facts as narrated above, the case of the Petitioner that there is material irregularity in the conduct of the auction cannot be accepted. As indicated above, the Respondent No.5 has paid the entire amount as also the gala in question has been transferred to the Respondent No.5 and the document by way of a Deed of Assignment has been registered in that regard. In so far as the contention as regards the upset price is concerned, the document on record indicates that an extension was granted by the authorities. Assuming that there is some minor irregularity in the conduct of the auction the same would not entitle the Petitioner to the exercise of the Writ Jurisdiction of this Court as to interfere with the said auction process which has been cemented as long back as in November 2015.

8 In that view of the matter, no case for interference in the Writ Jurisdiction of this Court is made out. The Writ Petitions are accordingly dismissed.

[R.M.SAVANT, J]