IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11228 OF 2017

FIBROCAST
Through its Partners
Laxmi Anawadia and ors : Petitioners.
Versus
The Pen Co-operative Urban Bank Ltd.
Through its Administrative Board : Respondent.

Mr. Vishal Kanade a/w Mr. Akshay Udeshi i/by M/s. Sanjay Udeshi & Co. for the Petitioners.
Mr. Kirit J Hakani a/w Ms. Niyati Hakani for the Respondent.

CORAM : R. M. SAVANT &
SARANG V KOTWAL, JJ.
DATE : 30th November 2017

P.C.

1 The above Petition takes exception to the letter dated 22/02/2017 addressed by the Chief Executive Officer, the Pen Co-operative Urban Bank Ltd. to the Petitioners herein. By the said letter the Petitioners were informed that since the Petitioners have failed to make the payment of the balance consideration of Rs.3,05,00,000/- in respect of the property in question which was the subject matter of the auction, the earnest money deposit of Rs.54,00,000/- made by the Petitioners stands forfeited.

2 The genesis of the said auction lies in the Consent Award which was passed in three Disputes in the Co-operative Court being Case Nos.

CC/II/394/2002, CC/II/395/2002 and CC/II/396/2002 against the borrower Ameer Khan Lodhi and his business concerns for recovery of three loan accounts. The said Consent Award was passed on 31/12/2002 by the Co-operative Court-II, Mumbai. The said Consent Award specifically mentions the properties mentioned in Exhibit A to the Dispute Applications amongst which is the instant property amongst the other properties. It is also mentioned in the said Consent Award that the Co-operative Court to deliver the said property and execute the necessary documents for conveying the said property in favour of the Bank. It seems that on 23/01/2003 the borrowers have executed the power of attorney and also the possession letter. In view of the fact that the Bank was not in position to find a buyer for the said property, the Bank made an application under Section 100 of the Maharashtra Co-operative Societies Act (for short herein after referred to as “the said Act”) to the Divisional Joint Registrar, Co-operative Societies, Konkan Division, Navi Mumbai to transfer the suit property which included the property in question in favour of the Bank. The said application was allowed and the certificate came to be issued under Section 100 of the said Act on 05/02/2003 transferring the said property to the Bank. Thereafter on 24/09/2010 the Reserve Bank of India issued directions upon which the Commissioner of Co-operation and the Registrar of Co-operative Societies, superseded the Board of Directions and appointed the Administrators taking recourse to Section 110 of the said Act. It seems that the heirs /family members of the original borrower were creating obstruction in so far as the possession of the said property is concerned. It seems that the heirs/family members had filed Writ Petitions in this Court being Writ Petition Nos. 7720/2016, 7721/2016 and 7722/2016. The said Writ Petitions were allowed to be withdrawn and dismissed as such by the Division Bench of this Court by order dated 07/07/2016 read with the order dated 25/07/2016 to enable the said heirs/family members to take appropriate recourse in law. The heirs/family members thereafter filed Disputes being Nos.CC/II/80/2016, CC/II/81/2016 and CC/II/82/2016 in the Co-operative Court. The said Disputes have been dismissed by the learned Judge of the Co-operative Court on 23/12/2016. This is in so far as the proceedings adopted by the heirs/family members of the original borrowers are concerned.

3 The auction in question pursuant to which bid/offer of the Petitioners was accepted was the auction held on 22/12/2016 as per the public notice dated 10/12/2016. The Petitioners herein were undisputedly the highest bidder who had offered the amount of Rs.3,59,00,000/- and in terms of the Co-operative Societies Rules applicable had deposited 15% of the amount as EMD i.e. the amount of Rs.54,00,000/- upfront.

4 In view of the fact that the balance consideration was not paid by the Petitioners within the stipulated schedule, that the letter dated 22/02/2017 came to be addressed to the Petitioners thereby cancelling the allotment made

to the Petitioners and also forfeiting the earnest money deposit of Rs.54,00,000/-. As indicated above it is the said letter dated 22/02/2017 which is taken exception to by way of the above Writ Petition.

5 The principal ground on which the balance consideration was not deposited by the Petitioners was the ground or fact that the possession of the plot was not likely to be handed over to the Petitioners as a result of which the Petitioners were under the bonafide apprehension that though they would be paying the entire consideration, they would be left in lurch in so far as the possession of the plot is concerned.

6 Upon this, this learned counsel appearing on behalf of the Respondent Bank Shri K J Hakani had submitted that there is no difficulty in handing over the possession and that is is the heirs/family members of the original borrowers who are creating obstacles in handing over the possession and that the same can be taken care of if the appropriate directions are issued.

7 In the light of the aforesaid submission of the learned counsel for the Respondent Bank, that the learned counsel for the Petitioners had on the previous occasion i.e. on 12/10/2017 had sought time to deposit the balance consideration with 11% interest. This was on the basis that for the earlier extension of 30 days which the Petitioners had sought the same was granted on

the payment of 11% interest on the outstanding amount till the date of payment. The approval to the said rate of interest has been granted by the office of the Commissioner of Cooperation and the Registrar of the Co-operative Societies vide letter dated 19/01/2017 which decision in turn was communicated to the Petitioners vide letter dated 20/01/2017 by the Chief Executive Officer of the Respondent Bank. In view thereof the Petitioners were agreeable to pay the outstanding amount with 11% interest till the date of deposit. Hence though the balance consideration remaining to be paid by the Petitioners was Rs.3,05,00,000/-, the aggregate amount payable by the Petitioners was therefore calculated to be the sum of Rs.3,29,17,438/- as on 12/10/2017. The learned counsel appearing for the Petitioners had made a statement that the said amount of Rs.3,29,17,438/- would be deposited in three installments viz. (i) Rs.1,00,00,000/- to be deposited on or before 24/10/2017; (ii) Rs.1,00,00,000/- to be deposited on or before 30/10/2017 and (iii) the balance amount of Rs.1,29,17,438/- to be deposited on or before 10/11/2017. There is no dispute about the fact that all the three installments have now been deposited in this Court and resultantly the amount of Rs.3,29,17,438/- is lying in deposit in this Court. The Petitioners have accordingly shown their bonafides by abiding with their statement which was made before this Court on 12/10/2017.

8 In our view, since the Petitioners are admittedly the highest

bidders whose bid has been accepted and since the Petitioners had already paid the earnest money deposit of Rs.54,00,000/- and since the balance consideration along with interest at 11% up to 12/10/2017 has been deposited by the Petitioners in this Court, it would be just and proper that the Respondent Bank is now directed to complete the formalities of executing the Sale Deed in favour of the Petitioners and handing over the possession to the Petitioners. The learned counsel appearing for the Respondent Bank has no objection to the said course of action being followed. Hence the following directions :-

1] The letter dated 22/02/2017 of the Chief Executive Officer of the Respondent Bank addressed to the Petitioners is set aside. Resultantly the allotment of the plot of land in question to the Petitioners stands restored.

2] The Respondent Bank to execute the Sale Deed in favour of the Petitioners within two weeks from date and simultaneously hand over possession of the plot in question to the Petitioners.

3] On the possession being handed over, the Respondent Bank would be simultaneously be entitled to withdraw the amount of Rs.3,29,17,438/- lying in deposit in this Court by producing possession receipt executed by the Petitioners evidencing that the possession has been handed over to the Petitioners.

4] The Senior Inspector of Police, Rasayani Police Station is directed to provide adequate police force on the day the possession is to be handed over to the Petitioners and ensure that no untoward incident takes place as the said possession is to be handed over pursuant to the directions issued by the instant order.

5] With the directions as aforesaid, the above Writ Petition is disposed of.

6] All concerned parties to act upon an ordinary copy of the instant order duly authenticated by the Court Associate/Sheristedar.

[SARANG V KOTWAL, J] **[R.M.SAVANT, J]**