IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE CIVIL JURISDICTION

WRIT PETITION NO. 9723 OF 2017

...

Ajit Subhash Mande And Anr. ....Petitioners

V/S

Bank Of Maharashtra Through Its Branch Office And Ors. ....Respondents

...

Mr.R.D.Soni i/by Ram And Company for the Petitioners.
Mr.Deepakar Livingston a/w D.Y. Wani for the Respondent No.1.
Mrs.K.R.Kulkarni, AGP for the State-Respondent No.3.
Dr.Parineeta Sunil Shete, Respondent No.2 in person.

...

CORAM : A.A. SAYED &
MANISH PITALE, JJ.

DATED : 14 DECEMBER 2017

P.C.:

1. By this Petition under Articles 226 and 227 of the Constitution, the Petitioner sought the following relief:

> "(a) That this Hon'ble Court be pleased to issue a Writ of Certiorari or any other appropriate writ, order or direction in the nature of Writ of Certiorari thereby quashing and/or setting aside the impugned order dated 09th February 2017 passed by the Presiding Officer of the DRT, Pune below original Application No.407 of 2014 and quashing and/or setting aside the E-Auction Sale Notice dated 17-01-2017 issued by Respondent No.1-Bank and further all consequential transactions shall be cancelled of the e-auction sale of mortgage property of term loan."

2. The operative part of the order dated 9-02-2017 passed by the Debt Recovery Tribunal (DRT) reads as follows:

"ORDER

(A) By consent of parties OA No.407/2014 is allowed with costs.

(B) Defendants are ordered and directed to pay to the Applicant the sum of Rs.27,91,581/- (Rupees twenty-seven lakhs ninety-one thousand five hundred eighty-one only) with respect to the term loan and the sum of Rs.91,56,378/- (Rupees ninety-one lakhs fifty-six thousand three hundred seventy-eight only)with respect to the housing loan aggregating in all to a sum of Rs.1,19,47,959/- (Rupees one crore nineteen lakhs forty-seven thousand nine hundred fifty-nine only) with interest @ 12% per annum from 6th May 2016 till payment/realization.

(C) The aforesaid adjudicated amount is secured by the valid and subsisting mortgage of the immovable property i.e. (A) all that piece and parcel of property bearing survey No.55, Hissa No.2/57, having admeasuring area about 00-HQ., 04.65-R 5000 sq.ft., sutuate at Mouje Kharadi, Nagar Road, Pune and coming within the limits of Sub-Registrar, haveli No.VII, Pune. (B) all that piece and parcel of the Row House No.33, admeasuring about 123.14 sq.mtrs, i.e. 1325 sq.ft. Carpet and open space admeasuring about 139.40 sq.mtrs. i.e.

1500 sq.ft. Situate at survey No.32-A, Hissa No.4, Plot No.337/1 at village Ghorpadi, 32/479, Dr.S.R.Machave Road, (north main road to Bhairoba pumping station), Tal.Haveli, Dist: Pune within the local limits of Pune Municipal Corporation, Pune.

(D) Defendants are granted liberty to redeem the mortgage within the period of 3 months from the date hereof failing which the applicant shall become entitle to put the mortgage property for sale and appropriate the sale proceeds towards its claim in accordance with law.

(E) The applicants are granted liberty to withdraw the sum of Rs.30 lakhs deposited by defendants and appropriate the same towards its claim in accordance with law.

(F) Issue recovery certificate.

(G) The Registrar to send the copy of Recovery Certificate to the applicant and defendants." (emphasis supplied)

3. Inasmuch as it is an admitted position that the impugned order dated 9-02-2017 of the DRT was an order passed `by consent', the learned Counsel for the Petitioner has canvassed argument essentially questioning the e-auction sale notice dated 17-01-2017. So far as e-auction sale notice dated 17-01-2017 is concerned, the same was issued prior to the

impugned order dated 9-02-2017 of the DRT. Despite that the Petitioner had consented to the order dated 9-02-2017 being passed. In these circumstances, there is no merit in the challenge to e-auction sale notice dated 17-01-2017.

4. As stated in clause (D) of the operative part of the order dated 9-02-2017, the Petitioners were granted liberty to redeem the mortgage within a period of three months from the date of the order i.e. 9-02-2017, failing which the Respondent No.1-Bank was entitled to put up the mortgage property for sale and appropriate the sale-proceeds towards its claim in accordance with law. The said period of three months expired on 8-05-2017. It is an admitted position that till this deadline of 8-05-2017 the Petitioners have not redeemed the mortgage. In these circumstances, on this count itself the Petition is liable to be dismissed. Moreover, the Petition was filed only on 5-06-2017 and seeks further one month of time to deposit the balance amount. It is averred in the Petition that the Petitioners tried to clear the amount within three months, however due to certain unforeseen difficulties in the business and the general slow down of the economy during the relevant period and some financial and health problem the Petitioners are praying for further one month for depositing the balance amount. The Petition itself proceeds on the basis that the Respondent No.2

is the auction purchaser and the Petitioners are well aware that the property has been sold to the Respondent No.2.

5. Learned Counsel for the Petitioners submitted that the auction is bad in law, inasmuch as, the Respondent No.1-Bank has varied the terms of the auction sale. He submitted that under clause (9) of the Conditions of Sale, the sale price ought to have been paid within 15 days of sale. We are unable to agree. Under clause (9), the Respondent No.1-Bank has a discretion to extend the period for depositing the balance of the sale price.

6. Learned Counsel for the Respondent No.1 Bank has rightly pointed out that the Petitioners have not moved the DRT for modification of the order dated 9-02-2017 and sought extension of time, nor have the Petitioners obtained any order restraining the Respondent No.1-Bank with going ahead with auction. Learned Counsel for the Respondent No.1-Bank has adverted to the Affidavit in Reply of the Respondent No.1 Bank and pointed out that the Respondent No.1-Bank had made a paper publication of the E-auction Sale Notice dated 17-01-2017 in two leading newspapers viz. `Financial Express' in English and `Loksatta' in Marathi on 18-01-2017, wherein the date of e-auction sale was given as 20-02-2017. The Respondent No.1-Bank received the bid from the Respondent No.2-auction

purchaser on 23-01-2017, and since in the meanwhile the order dated 9-02-2017 was passed, a decision was taken to go ahead with the e-auction fixed on 20-02-2017. In the Respondent No.1-Bank's acceptance letter dated 20-02-2017 to the Respondent No.2-auction purchaser it was stated in para (4) that the confirmation of sale shall be subject to judgment and order dated 9-02-2017 passed by the DRT in A.O.No.407 of 2014. Had the borrower made payment in terms of the order dated 9-02-2017 within the time period of 3 months given by DRT, the e-auction would automatically stand cancelled. It is only on 23-05-2017 the Respondent No.1-Bank has issued a final acceptance and confirmation of the sale to the Respondent No.2-auction purchaser directing to make the balance payment of Rs.1,08,75,750/- within 5 working days after acceptance of letter of confirmation and accordingly the Respondent No.2-auction purchaser has made payment to the Respondent No.1-Bank amounting to Rs.1,45,01,000/- upto 3-08-2017, out of which Rs.1,08,75,750/- was paid after 25-05-2017 i.e. after the period of three months of the date of the DRT order. It is further pointed out that on 4-08-2017, the Respondent No.1-Bank has issued the Sale Certificate and under the Sale Deed dated 4 August 2017 the mortgage property was sold by the Respondent No.1-Bank to the Respondent No.2-auction purchaser. The Sale Deed was registered on 4-08-2017 and the stamp duty of Rs.8,75,100/- was paid.

7. In the Affidavit-in-Reply filed by the Respondent No.2-auction purchaser, a reference is also made to the acceptance letter dated 20-02-2017 of the Respondent No.1-Bank to the Respondent No.2-auction purchaser wherein it is clarified that the confirmation of sale shall be subject to judgment and order dated 9-02-2017 passed by the DRT in A.O.No.407 of 2014 and the Respondent No.1-Bank issued the final acceptance and confirmation of the sale only on 23-05-2017 after the Petitioners failed to make payment to the Bank as per the order dated 9-02-2017. It is pointed out that as a prudent purchaser she had made paper publication of "Public Notice" in two leading newspapers viz. `Financial Express' in English and and `Loksatta' in Marathi through her Advocate calling for any objection, claim, right, title or interest in the property from any person, and no objections were received in pursuance of the said paper publication. It is pointed out that the Petitioners neither redeemed the mortgage nor procured any order from the Court restraining the Respondent No.1-Bank from confirming the auction sale.

8. Learned Counsel for the Respondent No.1-Bank and the Respondent No.2-Dr.Parineeta Sunil Shete, who is appearing in person, have relied upon the Sale Deed dated 4 August 2017 as well as the Possession Receipt in respect of the property in question. The contention of the

Petitioners that the Petitioners in the covering letter dated 5-06-2017 had offered to pay an amount of Rs.88 lakh which was the balance amount due and payable by the Petitioners, but the same was not accepted, cannot be countenanced. Firstly, the said letter was only offer and secondly, admittedly the amount was sought to be offered only after the cut off period of three months from 9-02-2017. Though it is sought to be contended in the Affidavit-in-Rejoinder that the value of the property was Rs.2.52 crores and it was sold in the auction only for consideration of Rs.1.45 crores, the same is only an afterthought, as no such ground has been taken in the Petition itself.

9. In the circumstances, no case is made out to grant any relief to the Petitioners in the exercise of writ jurisdiction of this Court. The Petition is dismissed. No order as to costs.

(MANISH PITALE J.) **(A.A.SAYED, J.)**