IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5472 OF 2015

The Liquidator,
The Miraj Urban Co-operative Bank Ltd.
Sangli, Miraj (Under Liquidation), the liquidator
Dr. Sadashiv Nivrutti Jadhav : Petitioner.
Versus
The State of Maharashtra
Through the Collector, Sangli and ors. : Respondents.

Mr. S G Deshmukh i/by Mr. Ramdas A Shelke for the Petitioner.
Mrs. R A Salunkhe, AGP for the Respondent Nos.1 and 2.
Mrs. Anjali R Shiledar-Baxi for the Respondent No.3.

CORAM : R. M. SAVANT &
SARANG V KOTWAL, JJ.
DATE : 02nd November 2017

P.C.

1 The above Writ Petition has been filed challenging the Public Notice dated 21/05/2015 issued by the Respondent No.2 as also a challenge is raised to the auction which is to be held pursuant to the said public notice, and by amendment the subsequent public notice dated 07/07/2016 and pursuant thereto the public auction to be held on 30/07/2016 is also challenged.

2 The subject matter of the public notice is the property of the Petitioner being land admeasuring 1050 sq.meters comprised in City Survey No.337 situated at Station Road, Miraj. The Petitioner is a bank in liquidation and the final order of liquidation has been passed on 28/08/2008. However, prior thereto the Reserve Bank of India by its order dated 26/08/2008 has

cancelled the banking license of the Petitioner. The Respondent No.3 herein was holding various fixed deposit receipts amongst which was the fixed deposit in the sum of Rs.2,00,000/-. In view of the fact that the Petitioner bank was not making payment though the fixed deposit receipts had matured, the Respondent No.3 approached the Consumer Disputes Redressal Forum, Sangli by filing Complaint No.255 of 2006. Suffice it would be to state that the said complaint came to be allowed by the Consumer Forum, Sangli by order dated 04/12/2006 and directions came to be issued by the Consumer Forum to make payment in respect of the F.D.R. Nos.1291, 1292, 1293 and 003318 as also the amount lying in Saving Account No.16073 of Market Yard Branch and Laxmi Market Main Branch, Miraj to the complaint. The said decree passed by the Consumer Forum was put in execution by the Respondent No.3 and the instant public notice has been issued in the said execution proceedings in furtherance of recovering the amount.

3 In view of the banking license of the Petitioner being cancelled by the Reserve Bank of India by order dated 26/08/2008 and since the final order of liquidation was passed by the authorities under the Maharashtra Co-operative Societies Act, the Deposit Insurance and Credit Guarantee Corporation i.e. the DICGC stepped in and issued directions which are contained in its letter dated 29/05/2015 addressed to the Manager, Miraj Urban Co-operative Bank Ltd. i.e. the Petitioner herein. The sum and

substance of the directions is that a moratorium came to be fixed viz that an amount of Rs.1.00 lakh was fixed as liability of the Petitioner to any depositor and it was made clear that the payments of any amount over Rs.1.00 lakh to any depositor would be in contravention of the provisions of the DICGC Act, 1961. In so far as the Respondent No.3 is concerned, there is no dispute about the fact that in terms of the directions of the DICGC she has been paid the amount of Rs.1.00 lakh towards the said fixed deposit of Rs.2.00 lakhs, and the balance of Rs.1.00 lakh has been deposited in the Consumer Forum, Sangli.

4 The notice of auction dated 07/07/2016 is challenged principally on the ground that since the moratorium has been fixed, the liquidator cannot pay any amount in excess of Rs.1.00 lakh and therefore the auction of property as contemplated by the notice cannot be carried out.

5 The learned counsel appearing on behalf of the Petitioner Shri S G Deshmukh drew our attention to the letter dated 29/12/2010 wherein the amounts kept as fixed deposits by the Respondent No.3 and her son have been reproduced as also the amounts paid to the Petitioner amongst which was the amount of Rs.1.00 lakh paid to the Petitioner and her son qua the fixed deposit of Rs.2 lakhs in keeping with directions of the DICGC. It was therefore the submission of the learned counsel that the liquidator has carried out his obligation in terms of the directions of the DICGC.

6 Per contra, the learned counsel appearing on behalf of the Respondent No.3 Mrs. Anjali Baxi would conted that the decree passed by the Consumer Forum, Sangli was prior to the banking license of the Petitioner being cancelled, and therefore, prior to the Society going in liquidation. It was therefore the submission of the learned counsel that the Respondent No.3 would not be bound by moratorium that has been fixed by the DICGC and would be entitled to the payment of the amounts covered under the Fixed Deposit No.5582 with interest up to date.

7 Having heard the learned counsel for the parties, we have considered the rival contentions. In our view, it is not possible to accept the contention urged by the learned counsel for the Respondent No.3. Though it is true that the decree passed by the Consumer Forum, Sangli is prior to the cancellation of the banking license of the Petitioner by the Reserve Bank of India and therefore prior to the initiation of the liquidation proceedings, the fact remains that as on the date when the auction notice was issued, the Petitioner is a society in liquidation and the moratorium fixed by the DICGC is in operation. Hence the directions issued by the DICGC fixing the moratorium casts a shadow on the claim of the Respondent No.3, and resultantly, the Respondent No.3 would only be entitled to the amount fixed by the DICGC under the moratorium. In our view, the auction which proposed to be held

pursuant to the impugned notice cannot be permitted to be proceeded in view of the fact that the same would militate against the directions issued by the the DICGC as also the liquidation proceedings. Resultantly the impugned notices would have to be quashed and set aside.

8 The learned counsel for the parties have drawn our attention to the order dated 19/01/2010 passed by a learned Single Judge of this Court in Writ Petition No.351 of 2010. The issue in the said Writ Petition was identical to the issue as raised in the instant Writ Petition. The learned Single Judge after referring to the antecedent facts as above allowed the said Writ Petition and issued the directions which are contained in the operative part of the said order dated 19/01/2010. The operative part of the said order dated 19/01/2010 reads thus :-

> "The Petitioner shall deposit a sum of Rs.5,40,000/- in the District Consumer Forum at Sangali within 2 weeks from today. Respondent Nos.3 to 10 shall be entitled to make whatever application they choose to make to the Reserve Bank of India to allow them to withdraw that amount, which the Reserve Bank may consider in its discretion.
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> Consequently, the auction sale of the properties of the Bank, which has been fixed for tomorrow in the Execution Application take out by Respondent Nos.3 to 10 under Section 25 of the Consumer Protection Act, shall not be proceeded with.
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> Rule is made absolute. The Writ Petition is disposed of accordingly."

9 In our view the interest of justice would be served if the following directions are issued :-

A] Since the amount of Rs.1.00 lakh is lying in deposit in the Consumer Forum, Sangli, qua the fixed deposit of Rs.2 lakhs, it would be open for the Respondent No.3 to make an application to the Reserve Bank of India for being permitted to withdraw the said amount of Rs.1.00 lakh. If any such application is made, needless to state that the same would be considered by the Reserve Bank of India in accordance with law.

B] If it is the case of the Respondent No.3 that on the said fixed deposit she is entitled to interest up to date which would result in the total amount claimed from the Petitioner being to the tune of Rs.6,78,361, then it would be open for the Respondent No.3 to lodge a claim with the liquidator. If any such claim is lodged by the Respondent No.3, needless to state that the same would be considered by the liquidator in accordance with law having due regard to the priority etc.

C] The impugned notices are accordingly quashed and set aside. The Respondent No.2 is restrained from issuing any further notice for public auction of the property of the Petitioner i.e. a land admeasuring 1050 sq.meters comprised in City Survey No.337 situated at Station Road, Miraj.

D] The Writ Petition is allowed in terms of the aforesaid directions and is disposed of.

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