

BDPSPS

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.2448 OF 2013

Goldie Sud	..Petitioner
Versus	
The Presiding Officer of Debt Recovery Tribunal III, Mumbai and others	..Respondents

**ALONGWITH
NOTICE OF MOTION NO.191 OF 2017
IN
WRIT PETITION NO.2448 OF 2013**

Goldie Sud	..Applicant
------------	-------------

IN THE MATTER OF

Goldie Sud	..Petitioner
Versus	
The Presiding Officer of Debt Recovery Tribunal III, Mumbai and others	..Respondents

**ALONGWITH
NOTICE OF MOTION NO.480 OF 2017
IN
WRIT PETITION NO.2448 OF 2013**

Goldie Sud	..Applicant
------------	-------------

IN THE MATTER OF

Goldie Sud	..Petitioner
Versus	
The Presiding Officer of Debt Recovery Tribunal III, Mumbai and others	..Respondents

ALONGWITH
NOTICE OF MOTION (L) NO.783 OF 2017
(Not on board. Taken on board on mentioning)
IN
WRIT PETITION NO.2448 OF 2013

Goldie Sud ..Applicant

IN THE MATTER OF

Goldie Sud ..Petitioner

Versus

The Presiding Officer of Debt Recovery
Tribunal III, Mumbai and others

..Respondents

Mr. M. N. Ramalingaiah, Advocate for the Petitioner/Applicant.

Mr. Vikrant Makhare i/by M/s. Negandhi Shah & Himayatullah,
Advocate for Respondent Nos.2, 3, 7, 9 to 11.

Mr. Cyrus Ardesir a/w Mr. Ravi Gandhi, Mr. Rashmin Jain i/by M/s.
Kanga & Co., Advocate for Respondent No.8.

Mr. Milind More, AGP for Respondent Nos.17 and 18 – State.

**CORAM: B. R. GAVAI &
MANISH PITALE, JJ.**

DATE: 5th DECEMBER, 2017

P.C.:-

1] Present Petition is nothing else but an abuse of process of law.
Challenging the very same auction proceedings, which are challenged

before this Court, Petitioner had approached this Court by way of Writ Petition No.2218 of 2010. The said Petition was heard by Division Bench of this Court presided over by Dr. D.Y. Chandrachud, J. (as His Lordship then was). After considering all the submissions, which were made before the said Division Bench (Coram: Dr. D.Y. Chandrachud & Anoop V. Mohta, JJ.) and which submissions are also sought to be pressed now, the said Division Bench observed thus :-

“14. Above all, this Court must be guided by the principle that a party who seeks equitable relief in the exercise of the extra ordinary jurisdiction under Article 226, should not be dis-entitled to reliefs on the ground of its conduct. In this case, as the record before the Court shows, the conduct of the Petitioner was not bonafide. Even on the first occasion the Petitioner sought and was granted time by the Debts Recovery Appellate Tribunal by its order dated 14 May 2010, to come forward with a settlement of the dues of the bank. On a statement made by the Petitioner, the auction that was scheduled was stayed. Subsequently, on 17th May 2010, the Appellate Tribunal noted that the request made before the Tribunal on the previous date, was not honest and was made only to secure a stay. The interim order staying the auction was vacated. The Petitioner participated in the first auction and was unable to pay the remaining balance of the purchase price upon which the auction had to be cancelled and the property was readvertised. Despite having knowledge of the fact that the reserve price was Rs 14.62 crores, below which the property would not be sold, and having quoted a price of Rs 15.05 crores in the first auction, the Petitioner submitted a bid only of Rs 5 crores, on the second occasion.”

“15. The Petitioner has taken a chance on a

speculative assumption that bids at the auction would be below the reserve price. In fact, the submission of the Petitioner is that this was a part of a strategy. The bank having received bids in excess of the reserve price and having confirmed the highest bid, we have not found any merit in the grievance of the Petitioner.”

“16. For all these reasons, we do not find any reason to entertain the grievances of the Petitioner in the exercise of the extra ordinary jurisdiction under Article 226 of the Constitution. The Petition shall stand dismissed. No costs.”

2] Petitioner, again, sought review of the said order. The said Division Bench dismissed the review Petition as withdrawn vide order dated 08/02/2011. Again, an attempt was made for speaking to the minutes of the order dated 08/02/2011. However, the application for speaking to the minutes of the order dated 08/02/2011 was dismissed by the said Division Bench on 01/04/2011.

3] Petitioner challenged the order passed by the Division Bench of this Court before Their Lordships of the Apex Court. The Special Leave Petition (Civil) No. 1383 of 2011 was heard by Their Lordships and after hearing the parties, Their Lordships were pleased to pass the following order :-

“ Permission to file SLP is granted.

We do not find any reason to interfere with the well considered order passed by the High Court. The special leave petition is, accordingly, dismissed.”

4] Not only this, the Petitioner also filed Criminal Writ Petition No.821 of 2013 before this Court. Certain allegations were made regarding fraud and prayer for directing investigations to be transferred. After hearing the Petitioner, Division Bench (Coram: Naresh H. Patil and Smt. Anuja Prabhudessai, JJ.), observed vide order dated 21/4/2014 as under:-

“16. We have heard the petitioner in person and the learned counsel appearing for the respondents.”

“17. After considering the facts of the case and after perusing voluminous documents and various orders passed by this Court as also the Apex Court, we are of the view that no interference is warranted in exercise of writ jurisdiction of this Court. The issue in respect of purchase and sale of subject property is being litigated in proper statutory forums. Investigation was initiated and it is left to the investigating agency to take proper steps. Even if, in future further material is brought to the notice of the investigating agency by the petitioner, the agency is not precluded from taking proper steps in accordance with law. In the facts and circumstances of the case, it would not be proper to express any opinion regarding issues which are being litigated in various forums. Expression of views by this Court on the merits of the litigation pending between the contesting parties would cause prejudice to either of them. The issues raised by the petitioner are required to be addressed and considered in proper alternate forums. Such forums are already seized with the issues. Therefore, we are of the view that no further interference is warranted in exercise of writ jurisdiction of this Court.”

“18. On perusal of the order passed by the Division Bench as referred to above, we are of the view that the issues in respect of the proceedings of auction

sale, purchase and acceptance of bid, are not open for consideration by this Court. The matter has gone upto the Apex Court and the orders passed by the Apex Court are already placed on record.”

“19. The petitioner has detailed out facts of the case by referring to various documents. But in the proceeding of this nature, it would not be appropriate to determine finally in respect of claim of the petitioner which has been seriously disputed by the respondents. Therefore, we are not inclined to entertain this petition.”

“20. We are disturbed to observe that the petitioner has made certain allegations against learned lawyers of this Court who have been made respondents in this petition. We do not find any basis or justification to initiate any action against the lawyers/ advocates who were discharging their professional duty.”

“21. We have perused the judgment cited supra by the petitioner and considered the submissions of the petitioner in respect of case-laws cited. We have also perused the order dated 29th April 2010 passed by the Division Bench of this Court (J.N.Patel and S.C.Dharmadhikari, JJ) in PIL No.138/2009. In paras- 3 and 4 of the said order the Division Bench has observed as under:

3. We are more than satisfied that this is nothing less than the abuse of the process of the Court, as it is without any basis and foundation that the petitioner has made these allegations.

4. We, therefore, dismiss this petition with costs, which we quantify at Rs.5,00,000/ (Rupees Five Lakhs). The petitioner is directed to deposit the costs of Rs.5,00,000/with the Collector, Suburban District, Mumbai, within a period of four

weeks. On the failure of the petitioner to deposit costs as directed, the Collector, Suburban District, Mumbai, shall recover the same as fine by resorting to provisions of the Maharashtra Land Revenue Code.”

“22. The petitioner has submitted an application addressed to the Joint Director/ SP, C.B.I. dated 9th March 2014 which is placed on record. In the said communication, the petitioner in person submitted that without prejudice he unconditionally withdraws his request/complaint vide his telegram dated 7th September 2012 against two Hon'ble Judges of this Court whose names are mentioned in the said communication. The petitioner has submitted that he has no grievance against the Hon'ble Judges as the said request/complaint was made by him as he was in disturbed mind at that time. The petitioner has tendered unconditional apology for the inconvenience caused to this Court. The communication is made without any prejudice to the rights of the petitioner in respect of contentions raised against other persons. The said communication is marked as Exh.A and be kept in sealed cover by the registry.”

“23. In the facts of the case and considering the material placed on record, we are not inclined to direct compensation to the petitioner, as several questions of disputed facts are raised which need not be traversed in exercise of writ jurisdiction of this Court. The petition is, accordingly, dismissed.”

“24. It is clarified that we have not expressed any conclusive opinion on the merits of the issues pending before the other statutory forums or the investigation concluded or pending.”

5] Mr. Ardeshir, learned Counsel appearing on behalf of Respondent No.8, submits that, not only this, but the Petitioner had

set up various other litigants who had approached this Court by way of various Writ Petitions, challenging the very same proceedings. However, this Court did not entertain the said Writ Petitions. We do not find it necessary to refer to the said contention inasmuch as the aforesaid two orders passed by two Division Benches of this Court clearly spell out the conduct of the present Petitioner.

6] The order passed by the Division Bench presided over by Dr. D.Y. Chandrachud, J. (as His Lordship then was), would clearly show that the conduct of the Petitioner is such which would disentitle a litigant to claim any equitable relief in the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. Not only that, the observations of the Division Bench, would clearly reveal that the conduct of the Petitioner is such, which would amount to taking a chance on speculative assumption that bids and auctions would be below the reserved price. The Division Bench, presided over by N.H. Patil, J., has found that challenges which were raised by the Petitioner with regard to auction sale could not be re-opened as they had reached finality upto the Apex Court. The Court further found that the Petitioner had made certain allegations against the lawyers of this Court and had made them Respondents in the Petition. The Court found that there was no justification of any sort to initiate action against the lawyers/advocates, who are discharging their professional duty. Not only this, it would reveal that the Petitioner had also made allegations against two Hon'ble Judges of this Court, which were subsequently withdrawn by him. Petitioner had also

tendered his unconditional apology for the same.

7] In view of specific findings of two Division Benches of this Court, we do not find that the Petitioner is entitled to any equitable relief in extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

8] Petition is therefore dismissed with costs, quantified at Rs 1 lakh.

9] At this stage, learned Counsel for Respondent No.8 submits that Respondent No.8 is not interested in the costs and the same be treated as donation on the part of Respondent No.8 to the Tata Memorial Hospital for cancer patients.

10] Petitioner shall pay an amount of Rs 1 lakh by cross Demand Draft to Tata Memorial Hospital within two weeks from today and produce a receipt thereof in the present proceedings.

11] In view of disposal of the Petition, no orders are necessary in the pending Notices of Motion and the same are also disposed of.

(MANISH PITALE, J.)

(B. R. GAVAI, J.)