

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 5666 OF 2018
IN
WRIT PETITION NO. 5498 OF 2017

INDRAJIT DAGADULAL PAREKH
VERSUS
ABHINAV NAGARI SAHAKARI PATSANSTHA LTD THROUGH
ITS RECOVERY OFFICER AND OTHERS

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Advocate for Applicant : Mr. S. S. Manale
Advocate for Respondent No. 1 : Mr. Gholap A. M.
Advocate for Respondent No. 3 : Mr. S. R. Deshpande
Advocate for Respondent No. 4 : Mr. Girish Nagori

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CORAM : V. K. JADHAV, J.
DATED : 26th APRIL, 2018

PER COURT:-

1. The learned counsel for the applicant submits that in terms of the provisions of Order 21 Rules 71 and 86 of the Code of Civil Procedure, 1908 (CPC), the applicant being the judgment debtor, is entitled to recover all the expenses attending such re-sale from the defaulting purchaser under the provisions relating to the execution of the decree for payment of money. The learned counsel submits that in terms of Order 21 Rule 86 of CPC, in default of payment within the period mentioned in the last preceding rule, the deposit may, if the Court thinks fit, after

defraying the expenses of sale, be forfeited to the Government. The learned counsel submits that the trial court has released the entire amount and since the petitioner/decreed holder is seeking leave to withdraw the Writ Petition, the question of defraying expenses and all the expenses attending such re-sale would remain unanswered.

2. In the instant case, the purchaser, on the very date of the bid, has submitted an application about his reluctance to proceed with the entire process for the reason that objections have been raised by third parties and in that way he would not be in a position to enjoy fruits of the property sought to be purchased by him in the auction sale. Consequently, the authority has not declared him as purchaser as contemplated under Order 21 Rule 84 and further, the Court has also passed an order permitting the purchaser to deposit the said amount under protest. In view of the same, I hardly find any circumstance which can help the applicant to transpose him as a petitioner in this Writ Petition. The learned counsel for respondent no.4-purchaser submits that now the bank has submitted an application for re-auction before the Court.

3. In view of the above, I find no substance in this Civil Application. The Civil Application is accordingly rejected.

(V. K. JADHAV, J.)

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