

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10871 OF 2018
(Vimal Meghashyam Mahajan and another Vs. The Divisional Joint
Registrar and others)

Mr.A.V.Hon, Advocate for the petitioners.
Mr.S.R.Yadav, AGP for respondent Nos. 1 and 2.
Mr.N.B.Suryawanshi h/f Mr.S.N.Suryawanshi, Advocate for
respondent Nos. 3 and 4.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 25/10/2018

PER COURT :

1. Mr.Hon, learned Advocate appearing on behalf of the petitioners submits that the petitioners are tendering their apology and seek liberty to withdraw this petition.

2. Mr.Suryawanshi, learned Advocate and the learned AGP submit that these two petitioners have been systematically abusing the process of Law. Their conduct is exposed in the order dated 07/03/2018 IN WP Nos.2009/2018, 2010/2018 and 2011/2018 passed by this Court. Mr.Hon submits that considering the apology of the petitioners, costs may not be imposed.

3. I have perused the order passed by this Court (Coram : Myself)

on 07/03/2018. Paragraph Nos.1 to 6 of the said order read as under :-

“1. In these 3 writ petitions, petitioner No.1 is Vimalbai w/o Meghshyam and petitioner No.2 is the married daughter Vasundhara Prakash. In all these 3 matters, the petitioners are aggrieved by the impugned orders all dated 12/12/2017 with regard to 3 properties which were pledged as securities to the financial institution / respondent No.3 by Meghshyam, with regard to 3 loan accounts.

2. There is no dispute that two loan accounts were in the name of the 2 sons of deceased Meghshyam namely Vikas and Yashwant and one loan account was in the name of his daughter-in-law Varsha Vikas. By rotation, the sons are guarantors in each other's loans and the house property of Meghshyam is pledged as a security in the said loan accounts. Recovery certificates u/s 101 of the Maharashtra Co-operative Societies Act with regard to these 3 loan accounts have been issued in 2004 and neither the borrower nor the guarantor has challenged these certificates.

3. Grievance of the petitioners is that before deciding the upset price, the wife (Now widow of deceased Meghshyam) and the daughter should have been heard. A meager upset price has been fixed by the competent authority without considering the objections of these petitioners and without bringing them on record as LR's of Meghshyam.

4. I find from Rule 107 (11)(f) of the Maharashtra Co-operative Societies Rules, 1961 that it provides for sale of immovable properties, the sale would be subject to prior encumbrances and certain conditions set out therein. The third proviso there below indicates that the upset price shall be approved by the Registrar by considering the comparative prevailing prices in the market, the ready reckoner rates, by obtaining valuation from the approved valuer within one month from the date of receipt of the proposal from the Recovery Officer and after hearing the judgment debtor.

5. In all these matters, the upset price has been fixed on 12/12/2017. Meghshyam has passed away on 11/04/2016. Vikas and Yashwant are the LR's of Meghshyam who were before the competent authority while deciding the upset price. As noted above, Vikas and Yashwant are guarantors or borrowers in these 3 loan accounts. They have been heard while fixing the upset price, in as much as, the ready reckoner rates have been taken into account and a valuation report from the approved valuer has also been obtained based on the ready reckoner rates and thereafter the upset price has been fixed.

6. Considering the above, I do not find that the impugned order in these 3 matters could be termed as being perverse or erroneous when the 2 sons of deceased Meghshyam have been heard and the procedure prescribed under the proviso noted above, has been followed."

4. It appears that the very same two petitioners approached the Divisional Joint Registrar for the same cause of action in Revision Application No.R-29/2018. Alongwith the grievance as against the fixing of upset price, the auction notice was also challenged. They succeeded in getting an ad-interim stay to the public auction proclamation dated 12/03/2018 by order dated 22/03/2018, which is after this Court passed an order on 07/03/2018. By the impugned order of the Divisional Joint Registrar dated 20/08/2018, the revision proceedings have been dismissed.

5. I do not find from the said order that these petitioners have disclosed to the Revisional Authority about the order dated 07/03/2018, in which the issue of fixing of upset price was considered by this Court.

6. Considering the above and the conduct of the petitioners, this case is squarely covered by the judgment of the Hon'ble Apex Court delivered in Kishore Samrite Vs. State of UP and others, (2013) 2 SCC 398 and Bhaskar Laxman Jadhav and others Vs. Karamveer Kakasaheb Wagh Education Society and others [AIR 2013 SC 523]. As such, imposition of costs of Rs.1,00,000/- on each of these

petitioners would be justified. However, Mr.Hon submits that these petitioners are aged 73 and 52 years, both are ladies and and hence costs may not be imposed. The learned AGP and Mr.Suryawanshi, learned Advocate submit that the costs may be donated for the treatment of poor patients.

7. In view of the above, this petition is dismissed and each of these petitioners shall deposit an amount of Rs.25,000/- (Rs.Twenty five thousand only) as costs. Said amount shall be deposited with the Government Medical College and Hospital, Aurangabad, **through Medical Officer, High Court Dispensary, Aurangabad**, either in cash or by Demand Draft (Demand Draft be drawn in the name of **“Dean, Government Medical College and Hospital, Aurangabad Dengi Samiti”**) on or before 30/11/2018 and the receipt of the deposit shall be placed before the learned Registrar (Judicial) of this Court on or before 07/12/2018, failing which, this matter shall be put up for further orders by the learned Registrar.

(Ravindra V.Ghuge, J.)