

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO.11410 OF 2014

Ujwalla Mukund Geet,  
Age-60 years, Occu-Retired Teacher,  
R/o Subhadra Nagar,  
Kopergaon,  
Tq.Kopergaon, Dist. Ahmednagar – PETITIONER

VERSUS

1. Narayan s/o Rangnath Sasane,  
Age-Major, Occu-Business,  
R/o Vivekanand Nagar,  
Kopergaon, Tq.Kopergaon,  
Dist.Ahmednagar
2. Gautam Co-operative Bank Ltd.,  
Kolpewadi Branch at Kopergaon,  
Tq.Kopergaon, Dist.Ahmednagar – RESPONDENTS

Mr.A.S.Gandhi, Advocate for the petitioner.  
Mr.Ajinkya Deshmukh h/f Mr.A.V.Hon, Advocate for respondent  
No.1.  
Mr.V.R.Dhorde, Advocate for respondent No.2.

( CORAM : Ravindra V.Ghuge, J.)

DATE : 07/09/2018

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. After this Court had heard the extensive submissions of all the

litigating sides on 27/06/2017, the following detailed order was passed :-

*"1 The petitioner is aggrieved by the order dated 24.11.2014 passed below Exh.50 in Miscellaneous Application No.40/2011 as well as the order dated 24.11.2014 passed below Exh.1 in Miscellaneous Application No.40/2011.*

*2 This is the third round of litigation between the litigating parties before this Court.*

*3 I have considered the strenuous submissions of Shri P.V. Mandlik, Senior Advocate appearing on behalf of the petitioner, Shri V.D. Hon Senior Advocate appearing on behalf of respondent No.1 auction purchaser and Shri R.N. Dhorde, learned Senior Advocate appearing on behalf of the respondent No.2 bank.*

*4 The issue involved in this petition finds its origin in the loan transaction between the petitioner and respondent No.2 bank. The petitioner is a teacher and had opted for loan for constructing her house. Respondent No.2 bank had granted her loan of Rs.3 lakhs. Case of the petitioner is that Rs.1 lakh were retained by respondent No.2 bank and invested in FDR. After the period of repayment was over, respondent No.2 initiated recovery proceedings against the petitioner, claiming an amount of Rs.3.71 lakhs plus 18% interest. Dispute No.637/2000 for recovery of the amount was initiated. Same was allowed and an amount of Rs.3,71,665 with 19% interest was granted by the Cooperative Court.*

5      Respondent No.2 initiated execution proceedings No.24/2000 before the competent Court. During pendency of the proceedings, the house property of the petitioner was put up for auction sale on 4.2.2004. Contention of the petitioner is that the auction of the house was formalized on 26.9.2006 though 25% of the amount was not promptly deposited by respondent No.1 auction purchaser. He deposited the amount on 29.9.2006. Full amount was paid on 16.10.2006, which is beyond 15 days period for remittance of the auction price. Moreover, the respondent No.2 did not pay the remaining amount, but one Mr. Arun Daulatrao Aher paid the amount on his behalf.

6      The petitioner, therefore, moved enquiry application No.42/2007, challenging the auction proceedings, which was rejected by order dated 10.7.2007. The petitioner moved Writ Petition No.4917/2007 before this Court. During the pendency of the petition, the petitioner i.e. the Judgment debtor and respondent No.1 auction purchaser Viz. Narayan R. Sasane, who is respondent No.1 in this petition, arrived at a compromise and submitted their minutes of the order dated 6.8.2010 before this Court.

7      It would be appropriate to reproduce the contents of the minutes of the order verbatim as under:-

“ 1.      The petitioner, Smt. Ujwalla Mukund Geet, undertakes to pay/deposit in Executing Court, / Respondent No.4 Narayan Rangnath Sasane the entire

*amount of consideration of Rs.4,11,000/- plus poundage fees of Rs.5,763/- and Rs.16,500/- towards the Stamp duty i.e. total amount of Rs.4,33,263/- including the amount lying in Executing Court with interest 9% from September, 2006 onwards till realization of entire amount within six months from the date of order i.e. on or before 6.2.2011.*

*2 On depositing the above said amount in the Executing Court the order of auction sale and order of attachment of the suit property of the petitioner shall stand set aside forthwith and property of the petitioner shall release from all encumbrances.*

*3 In case the petitioner fails to make payment as mentioned above, within a period of six months from the date of order, the petitioner would hand over peaceful possession of the non agricultural plot No.66 admeasuring 273.78 sq. Mtr. with R.C.C. construction situated in survey No.204/2-A near Niwara Road at Kopargaon, Dist. Ahmednagar to respondent No.4. The petitioner undertakes not to alinate or create any third party interest in the above mentioned suit property and maintain the property free from all encumbrances.*

*4 Writ petition may kindly be disposed of in terms of the minutes of the order at mentioned above.*

*8 Based on the minutes of the order, this Court passed an order*

on 6.8.2010 indicating that the writ petition is being disposed of in terms of the minutes of the order. This Court, thereafter has specifically observed in paragraph No.2 as under:-

*“ 2. The counsel for the parties have filed Minutes of the Order, which are taken on record (marked “X”). The petition is, therefore, disposed of in terms of the Minutes of the Order. The petitioner will be at liberty to withdraw the money which is deposited in the executing Court and is yet unpaid, without any formal order by the executing Court. The petitioner will be entitled to receive the remaining part of the amount along with the interest as stated in paragraph No.1 of the Minutes of the Order. The calculations of interest has been made by the parties to the extent of payment by the auction purchaser to the respondents and be submitted to the executing Court for such purpose. The executing Court may certify satisfaction of the decree in case the entire amount is found to have been paid by the J.D. to the D.H. - Bank. The interest to be calculated on the amount deposited by the auction purchaser and is payable to the auction purchaser as per the terms. The petition is accordingly disposed of. ”*

9 Pursuant to the above, all the parties were before the Executing Court. As the claim of the bank respondent No.2 herein was satisfied, the executing proceedings were disposed of.

10 Considering the minutes of the order and the directions of this Court dated 6.8.2010, respondent No.1 moved an application in Miscellaneous Application No.40/2011, so as to ensure that the dispute between the petitioner - Judgment debtor and respondent No.1 - auction purchaser is concluded. After the application was filed on 17.4.2013 and after considering the 'Say' of the petitioner, the Trial Court had passed the order on 31.12.2013, thereby issuing possession warrant so as to put the auction purchaser in possession of the plot No.66 admeasuring 273.78 sq. meters with RCC construction in Survey No.204/2-A at Kopargaon.

11 The petitioner approached this Court in Writ Petition No.1691/2014. The contention of the petitioner of having deposited certain amount was recorded in paragraph No.6 of the order dated 27.8.2014 as under:-

“ 6. The petitioner deposited Rs.4,00,000/- on 5<sup>th</sup> February, 2011 and Rs.61,007/- on 7<sup>th</sup> February, 2011 before the executing Court. The due date as agreed between the parties was 6<sup>th</sup> February, 2011. The petitioner while depositing the amount has taken into account the amount of Rs.1,01,603/- which was kept in F.D.R., Rs.16,500/- towards stamp and Rs.5,763/- towards poundage. The Respondent No.2 did not withdraw the said amount on the plea that the entire amount was not deposited and therefore the terms agreed between the parties at “X” were not fulfilled. ”

12 The Circumstances in which the petitioner moved Miscellaneous

*Application No.40/2011 before the Trial Court, have been recorded in paragraphs No.8 and 9 as under:-*

*“ 8. The petitioner moved Misc. Application No.40 of 2011 before the Civil Judge Senior Division, Kopargaon. By the said proceedings, it was sought to be impressed upon the Court that as the terms of compromise “X” read with the order of this Court dated 6<sup>th</sup> August, 2010 were not satisfied, the possession of the property owned by the petitioner, which was purchased by auction proceedings, be handed over. By an order dated 31<sup>st</sup> December, 2013, the said application came to be allowed and the possession warrant was issued.*

*9. According to the petitioner, calculations made by her were placed before the executing Court. Respondent No.2 did not submit the calculations. Issue is only of about Rs.42,000/- as on 6<sup>th</sup> February, 2011 that remained outstanding, if at all, the calculations of the respondent No.2 are accepted. The petitioner therefore advances two fold submissions. Firstly; that the terms of settlement “X” should be given a liberal meaning and secondly; entire amount in accordance with the said terms has been deposited and the terms of settlement have been fully satisfied. It is further submitted that the calculations made by the Chartered Accountant of respondent no.2 are dated 11<sup>th</sup> February, 2012 and were not either before the Executing Court and/or do not form a part of the proceedings of the respondent No.2 in its Misc. Application No.40 of 2011. It is therefore prayed that the impugned order be set aside. ”*

13     *The petitioner had prayed before this Court in the earlier petition No.1691/2014 that, though the petitioner had agreed to surrender the house property, if the compromise minutes of the order were not complied with, this Court may look at the said case liberally and may rescue the petitioner from surrendering the house property. Finally, considering that the calculations were not properly made by the Court, dealing with MA No.40/2011, this Court by order dated 27.8.2014 disposed of the writ Petition by setting aside the order and by remanding the matter back to the trial Court, considering the contentions of the petitioner and the respondents, which were summarized in paragraph No.11 and 12 of the order, which read thus:-*

*“ 11. He therefore submits that there is no scope for interpreting the said terms at this stage. Whether a strict meaning should be accorded to “X” or whether it should be considered liberally to mean substantial compliance on the part of the petitioner while depositing the amount in the Court, is not open for review. He further submits that the order of this Court dated 6<sup>th</sup> August, 2010, considers the minutes of order “X” and based on t he same, certain clarificatory directions are issued. He has therefore prayed for dismissal of the petition.*

12     *In the backdrop of these facts, both the learned Advocates have agreed to appear before the Civil Judge, Senior Division, Kopargaon in Misc. Application No.40 of*

*2011 for a reconsideration all the above aspects. In light thereof, the impugned order dated 31<sup>st</sup> December, 2013 is quashed and set aside and Misc. Application No.40 of 2011 is restored to the file of the Civil Judge, Senior Division, Kopargaon. ”*

*14 In this backdrop, a direction was given in paragraph No.12 to the Trial Court to reconsider MA No.40/2011 filed by the petitioner on the aspects with regard to the contentions of the parties. For clarity, this Court summarized the directions set out in paragraph Nos.11 and 12, which are reproduced above in paragraph No.13 of the order which are reproduced as under:-*

*“ 13. This Writ Petition is therefore partly allowed with the following directions:-*

*(a) Misc. Application No.40 of 2011 is restored to the file of the Civil Judge Senior Division, Kopargaon.*

*(b) Both the litigating parties shall appear before the Court on 15<sup>th</sup> September, 2014.*

*(c) The respective calculations of the petitioner as well as respondent No.2 may be placed before the learned Court and the litigating parties are at liberty to adopt such steps as are permissible in law and would assist the Court in the proper adjudication of the proceedings.*

*(d) The learned trial Court shall accord sufficient opportunity to both the parties and consider the calculations with supporting proof if any as this entire proceeding revolves around the calculations of the money to be paid and the minutes of order “X” read with the*

order of this Court dated 6<sup>th</sup> August, 2010.

(e) All the contentions of the litigating parties as advanced in this petition are kept open and they are at liberty to address the mind of the trial Court on the same.

(f) Since the issue involves only calculations of money and the consequences that would flow therefrom, the trial Court is directed to decide Misc. Application No.40 of 2011 as expeditiously as possible and preferably on or before 29<sup>th</sup> November, 2014. "  
(Emphasis supplied)

15 After the matter was sent back to the Court for dealing with MA No.40/2011, an application Exhibit 50 was filed by the petitioner herself, praying for possession of the house property. Considering the calculations of both the sides, the trial Court has rejected the application Exhibit 50 that was filed by the petitioner herein and passed an order issuing possession warrant against the petitioner.

16 Mr. P.V. Mandlik learned senior advocate has contended that, MA No.40/2011 filed by respondent No.1 is not maintainable. He submits that the maintainability of the said proceedings was raised in the Writ Petition No.1691/2014. He states that this point of objection with regard to maintainability was argued by him in this Court and this Court (Coram: myself), after considering the said point passed order on 27.8.2014. I find from the order dated 27.8.2014 that, while remitting MA No.40/2011 for rehearing, I had noted the

*submissions of the learned Senior advocates for both the sides in paragraph No.9 and 11, which are reproduced above. Based on the same, I had issued directions to the trial court to reconsider “all the above aspects” in paragraph No.12 which is also reproduced above.*

*17 Mr. P.V. Mandlik submits that clause 13-E, which is a summary of the directions indicates that, the petitioner was permitted to challenge the maintainability of MA No.40/2011 on the ground that the Code of Civil Procedure does not permit filing of such an application. In my view, the summary of the directions in paragraph No.13 will have to be read in tandem with paragraph Nos.11 and 12, as well as clause ‘F’ paragraph Exh.13, which indicate that it was specifically directed that, “since the issue involves only calculations of money and the consequences that would follow therefrom, the Appeal Court is directed to decide MA No.40/2011 as expeditiously as possible and preferably on or before 29.11.2014.”*

*18 In my view, this would leave no room of doubt that the petitioner was not at liberty to question the maintainability of the Miscellaneous Application No.40/2011. Had that been so done with all seriousness, that issue could have been taken for adjudication in Writ Petition No.1691/2014 itself. It cannot be ignored that no review was filed by the petitioner, suggesting that a ground was argued but not taken-up in the order dated 27.8.2014.*

*19 Despite the above, Shri P.V. Mandlik has canvassed that MA*

No.40/2011 is not maintainable, when the petitioner himself filed Exhibit 50 in M.A. No.40/2011, which is dated 1.10.2014 and placed on record at page Nos.83 to 88. No where, in Exhibit 50, which is a cause of the impugned order as well as this petition, has the petitioner even whispered that MA No.40/2011 is not maintainable. The petitioner had accepted the minutes of the order and had got her first writ petition disposed of by order dated 6.8.2010 and appeared before the Trial Court pursuant to the order of this Court dated 27.8.2014. Notwithstanding the above, it is canvassed by the petitioner that the maintainability of the application should have been considered by the Trial Court.

20 Mr. P.V. Mandlik has canvassed that paragraph No.2 in the Marathi document appearing as the 'Say' of the petitioner dated 15.9.2012 indicates that a specific ground was raised that MA No.40/2011 was not maintainable under the CPC and the law did not permit the filing of such application. When I perused the said Say, which is at pages 68 and 69 of the petition paper book, I do not find that the petitioner has specifically averred that MA No.40/2011 was not tenable as the Civil Procedure Code does not permit filing of such application. Clause 2 as is pointed out by Mr. P.V. Mandlik, precisely would mean that respondent no.1 applicant, has no reason to file the application, as no such events have occurred for filing the same. This would be different from raising a specific contention that MA No.40/2011 was not maintainable under the CPC.

21 I find it not only unconscionable on the part of the petitioner, but also an attempt to abuse the process of law, by first settling the

*dispute with the auction purchaser before this Court and agreeing to hand over the property, if the payment as mentioned in the minutes of the order dated 6.8.2010 are not made and then canvassing that the proceedings itself are not maintainable.*

*22 It is apparent from the facts as recorded above that after settling before this Court to either pay the entire amount or hand over the property, having been party to the term, on which the matter was referred to the Trial Court by order of this Court dated 27.8.2014, yet, the petitioner is now attempting to take up the ground of maintainability, which the petitioner never posed in the application or before the Trial Court.*

*23 In so far as the calculations of the amount are concerned, minutes of the order reproduced above indicate the amount as being Rs.4,11,000 + poundage fees Rs.5,763/- + Rs.16,500/- towards stamp duty = Rs.4,33,263/- including the amount lying in the executing Court with interest @ 9% from September, 2006 till realisation of entire amount, within six months till 6.2.2011. This was the amount that the petitioner had agreed to pay, failing which the petitioner had agreed to hand over the peaceful possession of the house property. Upon hearing Shri P.V. Mandlik in Writ Petition No.1691/2014, I had entertained his submission that as the house property is at issue, whether a liberal view can be taken by the trial Court and accordingly, I had observed in paragraph No.12 that this aspect as to whether there is substantial compliance by the petitioner, should be seen.*

24 The Trial Court in its impugned order below Exhibit 50 has observed that the amount of interest @ 9% would be about Rs.1,72,222 which will have to be added to the undisputed amount of Rs.4,33,263/-. The Trial Court has observed in the impugned order that, even if the calculations of the petitioner are accepted, by including the amount deposited in the trial Court which is Rs.1,01,603/-, the total payment that she has paid towards the auction purchaser would amount to Rs.5,62,610/-, which is deficit by Rs.42,875/-. The petitioner raised an issue before the Trial Court that respondent No.2 bank has taken away excess amount and that should be recovered and paid to the auction purchaser. In my view the Trial Court has rightly rejected this request, since the execution proceedings were already disposed of by recording that the decree is satisfied and it would be too late for the petitioner now to canvass that excess amount has been taken away by decree holder.

25 Shri Hon, learned senior Advocate submits, on instructions that, the issue is only as to whether there is a shortfall of Rs.42,875/- or not. He submits that the petitioner entered into a settlement voluntarily and the same was converted into minutes of the order dated 6.8.2010, which is a part of the order passed by this Court on 6.8.2010, by which the petitioner has agreed to hand over the peaceful possession of the non-agricultural plot which is at issue. The respondent No.1, therefore expects that, this Court cannot dilute the minutes of the orders, else, it would amount to reviewing the order. He further submits that the auction purchaser is in need of a house and the petitioner desires to dispose of the said property looking at the sky touching prices today, whereby she is likely to receive a huge

*amount from the said property.*

*26 Mr. P.V. Mandlik submits that, the petitioner is now a retired school teacher and is residing in the said house. She is likely to be thrown on the street, if the house is taken away only because of a shortfall of a very small amount of Rs.42,875/-. He further submits that notwithstanding the conduct of the petitioner, this is a fit case for showing sympathy towards the petitioner as she will be dispossessed and would be on the street for a minor deficit when the minutes of the order have been substantially complied with.*

*27 Mr. P.V. Mandlik further submits, on instructions that the amount lying in the Trial Court is about Rs.12,00,000/- and the petitioner does not object to the auction-purchaser, taking the entire amount. Even so far as deficit amount of Rs.42,000/- as in November, 2014 is concerned, the petitioner is willing to deposit another Rs.1 lakh in this Court, inclusive of interest for the deficit amount so as to satisfy the auction purchaser.*

*28 Considering the peculiarity of this case and keeping in view that the minutes of the order were substantially complied with, I deem it proper to permit respondent No.1 auction-purchaser to withdraw the entire amount lying in the Trial Court, without prejudice to his rights. Similarly, I deem it proper to direct the petitioner to deposit an amount of Rs.1 lakh in this Court within a period of six weeks from today and the auction-purchaser respondent No.1 will be at liberty to withdraw the said amount.*

29 *Stand over to 18.8.2017 for further consideration. Interim relief granted earlier to continue.*

30 *Parties may note that this petition would be heard finally on the next date and keeping the peculiar facts as above, in view, the only issue that the learned Advocates can now address the Court, would be as to whether there is a shortfall and whether owing to the said shortfall, the petitioner deserves to be dispossessed of the house property or not.*

31 *Needless to state that the amount which respondent No.1 auction-purchaser would withdraw from this Court, as well as from the trial Court, will be without prejudice to his rights in this petition and would not create any equity in the petitioner.*

32 *If the amount is not deposited in this Court within the time frame directed as above, the interim protection granted by this court on 16.12.2014 shall stand vacated and the impugned order dated 24.11.2014 granting possession warrant to the auction purchaser would be executed.”*

3. In view of the directions issued in paragraph Nos.28, 30 and 31 and the statement of the petitioner recorded in paragraph No.27, it is submitted by the learned Advocate for the petitioner that the said directions have been complied with. An amount of Rs.1,00,000/- was deposited in this Court on 02/08/2017 and pursuant to the

further directions dated 17/11/2017, an amount of Rs.60,000/- was deposited by the petitioner in this Court.

4. It is undisputed by the litigating sides in view of the above that respondent No.1 / Auction Purchaser had purchased the property for Rs.4,11,000/- in 2006. The petitioner, who was liable to pay Rs.3,71,000/- alongwith 18% interest, has deposited the amount as recorded in the order dated 27/06/2017, before the Trial Court and the total amount accumulated before the Trial Court as on date is Rs.9,86,963/-. Under the orders of this Court, the petitioner has deposited Rs.1,60,000/- (Rs.One lac in August 2017 and Rs.Sixty thousand in November 2017). Without computing further interest that may have accrued on these deposited amounts, a total amount of Rs.11,46,963/- is now lying in the Trial Court and this Court.

5. Learned Advocate for the auction purchaser submits that as he has purchased the property, he is not interested in the amount deposited by the petitioner. He is interested in taking the possession of the property even if the default on the part of the petitioner in depositing the amount before the Trial Court may be for a very minor amount. Learned Advocate for the petitioner submits that the petitioner is about 65 years of age, is a retired teacher and has no

other shelter except the suit property. She still retains the possession of the house. She has no other shelter. Merely because she may have fallen short of depositing about Rs.40,000/- before the Trial Court on account of erroneous calculations or an improper legal advice, should not result in dispossessing her and practically throwing her on the streets, when she has now deposited another Rs.1,60,000/- over and above Rs.9,86,963/-.

6. Having given an anxious thought to the peculiar fact situation before me, I find it appropriate to adopt a pragmatic approach in view of the statement of the learned Advocate for the bank that they have received their entire amount and the total amount deposited in the Trial Court and this Court, which would now be about Rs.11,50,000/- with interest, can be given to the auction purchaser. Learned Advocate for the petitioner submits that, as against the auction purchase amount of Rs.4,11,000/- deposited by the auction purchaser, he would now take the entire amount of Rs. 11,50,000/- deposited in the trial Court and this Court.

7. Considering the above, this petition is allowed partly in terms of prayer clause B, which reads as under :-

“The order dated 24/11/2014 below Exh.1 and Exh.50 in

Misc.Appl.No.40/11 passed by the learned Civil Judge, Senior Division, Kopergaon may be quashed and set aside, and the application filed by the petitioner below Exh.50 may be allowed and Misc.Appl.No.40/2011 filed by the respondent be rejected.”

8. Consequentially, application Exh.50, filed by the petitioner before the Trial Court stands allowed and Misc.Appl.No.40/2011 stands rejected. The auction purchaser / respondent No.1 is at liberty to withdraw the amount of Rs.9,86,963/- alongwith accrued interest from the Trial Court and the amount of Rs.1,60,000/- alongwith accrued interest from this Court, subject to identification by an Advocate and a recent photograph alongwith Election Commission Voter ID / Aadhar Card accompanying the application for withdrawal.

9. Rule is made absolute in the above terms.

( Ravindra V.Ghuge, J.)

**Kranti  
Hansraj  
Shekatkar** Digitally signed  
by Kranti  
Hansraj  
Shekatkar  
Date: 2018.09.12  
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