

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.6934 OF 2017

M/s.Amir Nooruddin Shaikh Foundation
and Ors.

.. Petitioners

V/s.

The State of Maharashtra and Anr.

.. Respondents

Mr.Abhirajdas K. i/b M/s.Vishwakarma and Associates for the
Petitioner

Mr.A.P.Vanarase, A.G.P. for the Respondent no.1

Mr.A.R.Gole with Ms.Dimple Tejani i/b Ms.Medha Rane for the
Respondent no.2

**CORAM: K.K. TATED &
N. J. JAMADAR, JJ.**

DATED : OCTOBER 30, 2018

P.C. :

1 Heard the learned counsel for the parties.

2 By this petition under Article 226 and 227 of the Constitution of India the Petitioner is seeking declaration that demand notice, possession notice, auction sale proceedings and the recovery proceeding initiated by the Respondent bank in the loan account no.LMN 34 of the Petitioners with the Respondent bank are invalid for lack of compliance of mandatory statutory provisions.

3 During the course of argument, the learned counsel for the petitioners submits that they are restricting their prayers in the petition only to the extent that the Respondent bank may be directed to dispose of their property by plotting according to law.

4 It is to be noted that in the present proceedings, Petitioner already filed Securitisation Application No.58 of 2014 before the Debts Recovery Tribunal at Pune. Same was dismissed for default. Hence, Petitioner preferred Application for restoration. During the pendency of the decision on the Application for Restoration, Petitioner also preferred Interim Application No... of 2016 on 29.2.2016 (Exhibit-'V' at page 385 of the petition). In that Application, Petitioner claimed following reliefs:

“13. That under the present facts and circumstances the Applicants are making the present Application for the following amongst other such grounds;

a. That this Hon'ble Tribunal be pleased to direct the Respondent Bank to freeze the Outstanding Loan amount to the Principal Loan amount by waiving the interest levied thereupon after classification of the said loan account as NPA; and

b. That the Hon'ble Tribunal be pleased to direct the Respondent Bank to allow the Applicants to cause the individual prospective Plot purchasers to deposit the sale value of the Plot into the Lien Account with the NKGSB Bank Kothrud Branch, Pune; and

c. That the Hon'ble Tribunal be pleased to direct the Respondent Bank to issue Sale Certificate directly to the Individual prospective plot purchasers against the respective plot value; and

d. That the Hon'ble Tribunal be pleased to direct the Respondent Bank to release its charge upon the property No. c, d & herein being excess in valuation to the outstanding loan; and

e. That the Hon'ble Tribunal be pleased to direct the Respondent Bank to refund the excess amount received under auction sale proceeding of the Plots; and / or

a. Because the Respondent Bank has committed illegality by not observing the RBI guidelines of not charging interest on the principal amount once the account becomes NPA.

b. Because the Respondent Bank has not appreciated that fact that the secured property being trust property requires permission from Charity Commissioner under section 36 of the Bombay Public Trust Act, 1950 prior to its sale or alienation.

c. Because despite the adverse market conditions the said secured properties can be sold at a good rate by considering the proposal of the Applicants.

d. Because the recovery rules and Securitisation Act is a special statute to protect the interest and welfare of both the bank and the borrower."

"14. Therefore, the Applicants herewith pray before the Hon'ble Tribunal as under:

a. That this Hon'ble Tribunal by an interim/ad-interim order be pleased to stay the auction sale of the prime secured property being schedule by the Respondent Bank on 5th March, 2016; and

b. Any other and further such other and further relief may deem fit in the interest of Justice equity & law be prayed."

5 Bare reading of the Interim Application shows that same reliefs are claimed by the Petitioner in the present Writ Petition.

6 As the Petitioner already filed appropriate Application for the same relief, we do not find any reason to entertain the present Writ Petition. Hence, Writ Petition stands rejected.

(N. J. JAMADAR, J)

(K.K. TATED, J.)