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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4910 OF 2018

Anil G. Tupte)
Age : 55 years, Occ. Service,)
R/o. Sungandha Bungalow No.2,))
Vaishali CHS Ltd., Lane No.4,)
Rajaji Path, Dombivali – East,)
Pin : 4210201, Dist.Thane) ...Petitioner

V/s.

1. State of Maharashtra)
Through the department of)
Co-operation Mantralaya)
at Mumbai)
2. Commissioner of Co-operation))
@ Registrar of Co-operative)
Societies at Pune)
3. Ld. District Collector of Thane)
4. Ld. Tahesildar of Kalyan)
Dist.Thane)
5. Ld.Circle Officer of Thakurli,)
Tal. Kalyan, Dist. Thane)
6. Sahyadri Sahakari Bank Ltd.)
446, Jagannath Shankar Sheth)
Road, Chira Bazar, Mumbai)
7. Sahyadri Sahakari Bank Ltd.)
446, Jagannath Shankar Sheth)
Road, Chira Bazar, Mumbai)
Through its Recovery Officer) ...Respondents

Mr. Manoj A. Patil for the Petitioner.

Mr. S.D. Rayrikar, A.G.P. for the State – Respondent Nos. 1 to 4.

Mr. Sanjeev P. Kadam for the Respondent Nos. 6 and 7.

CORAM : R.D. DHANUKA, J.
DATE : 25TH APRIL, 2018.

JUDGMENT :-

1. By this petition filed under Article 227 of the Constitution of India, the petitioner has impugned the order dated 16th March, 2017 passed by the learned District Magistrate, Thane under Rule 107(11) (d-1)(vi)(a) of the Maharashtra Co-operative Societies Rules, 1961. It is not in dispute that the recovery certificate was issued against the petitioner by the learned Assistant Registrar in the application filed by the respondent no. 6. The said recovery certificate has not been impugned by the petitioner admittedly. Since the petitioner had committed default in compliance with the recovery certificate, the respondent no. 6 bank initiated the proceedings under Rule 107(11) of the Maharashtra Co-operative Societies Rules, 1961.

2. The possession of the property was obtained by the Recovery Officer from the petitioner on 8th December, 2016 under Rule 107(11)(d-1) of the Maharashtra Co-operative Societies Rules, 1961. It is the case of the petitioner that the petitioner was handed over possession of the property once again on 8th December, 2016 by the Special Recovery Officer.

3. Mr.Patil, learned counsel appearing for the petitioner invited my attention to the documents annexed to the petition and would submit that since the petitioner was handed over possession of the property under Rule 107(11)(d-1)(iv), till the property is actually auctioned by the the respondent no.6, the possession of the property cannot be demanded from the petitioner. He submits that all these documents annexed to the petition were not considered by the learned District Magistrate, Thane in the impugned order dated 16th March, 2017. He submits that the respondent no.6 bank has not even issued the public notice for undertaking an auction for the said property in respect of which the possession is handed over to the petitioner.

4. Learned counsel appearing for the respondent no.6 bank on the other hand submits that the bank has already issued a public notice for auction of the property. He submits that even under the said Panchanama dated 8th December, 2016, the possession was temporarily given to the petitioner, the petitioner cannot refuse to hand over possession of the said property since the respondent no.6 bank has to auction the said property pursuant to the recovery certificate, which has attained finality. He also invited my attention to the correspondence exchanged between the Tahsildar and the Circle Officer recording that the petitioner has refused to hand over

possession of the property and that the wife of the petitioner has been threatening the Tahsildar for demanding possession of the property. It is submitted by the learned counsel that the wife of the petitioner threatening the officers of the Bank that if possession is taken from the petitioner, she will commit suicide.

5. It is submitted that since the possession is with the petitioner, though he has lost in the recovery proceedings, the respondent no.6 bank would not be able to show the flat to the prospective purchaser and would not be able to auction the property. He submits that the petitioner has thus no right to continue with possession of the property, which is required to be auctioned pursuant to an order passed by the Recovery Officer.

6. A perusal of Rule Rule 107(11)(d-1) indicates that in the event of possession of the immovable property is taken by the Recovery Officer, such property shall be kept in his own custody or in the custody of any person authorized or appointed by him, who shall take as much care of the property in his custody as an owner of ordinary prudence. In my view, no right is created in favour of the petitioner to continue in possession of the suit property since the possession of the property is given to him for taking care of the property till such property is auctioned. The petitioner cannot insist that the possession of the property cannot be demanded by the

landlord and/or by the Special Recovery Officer till such property is auctioned. The possession of the property is required for the purpose of auction. Considering the behavior of the family members of the petitioner as reflected in the letter dated 17th January, 2018 from the Tahsildar to the learned Circle Officer, I am not inclined to permit the petitioner to continue in possession of the flat which is required to be auctioned. Even otherwise, the petitioner cannot insist to continue to hold the property which is required to be sold by the respondent no.6 bank pursuant to the order passed by the Special Recovery Officer and for execution of the recovery certificate issued by the learned Assistant Registrar.

7. I do not find any infirmity in the order passed by the learned District Magistrate, Thane on 16th March, 2017. The petition is devoid of merit and is accordingly dismissed. Learned Tahsildar is directed to execute the said order passed by the learned District Magistrate, Thane on 16th March, 2017. If possession of the property described in the said order is not handed over by the petitioner and his family members to the learned Tahsildar within one week from today, the said order shall be executed in the manner provided in the said order.

8. The writ petition is accordingly dismissed. No order as to costs. *Ad-interim* relief if any, to stand vacated.

9. Mr.Patil, learned counsel for the petitioner prays for stay of this order, which is vehemently opposed by the learned counsel for the respondent no.6 bank. The application for stay of the operation of this order is rejected.

10. All the parties, including the concerned Authorities to act on the authenticated copy of this order.

(R.D. DHANUKA, J.)