

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**APPEAL FROM ORDER (St.) No. 20943 OF 2014
WITH
CIVIL APPLICATION No. 1052 OF 2014
IN
APPEAL FROM ORDER (St.) No. 20943 OF 2014**

The Kapol Cooperative Bank Ltd. ... Appellant
Vs.
Atulkumar P. Sakhidas & Anr. ... Respondents

Mr. R.M. Haridas, Advocate for the appellant.

CORAM: MRS.MRIDULA BHATKAR, J.
DATE: 29th January, 2018.

P.C.:

This Appeal from Order is directed against the order dated 27th March, 2014 passed by the learned Judge of the City Civil Court in Notice of Motion No. 3541 of 2011. The Notice of Motion was taken out for modification of the order dated 19th October, 2010 passed by the High Court in earlier Notice of Motion by which the High Court has directed that the goods, which were hypothecated, to be auctioned by public auction. However, from 2010 to 2011, two unsuccessful attempts of public auction were made and therefore, Notice of Motion No. 3541 of 2011 was taken out in 2011 seeking permission that instead of public auction, private auction be allowed. The original plaintiff/respondent No. 1 opposed the Notice of Motion

only on the ground that earlier order was passed by the High Court and the said order was not challenged by the bank in Appeal. The trial Court while dismissing the said Motion took the same view and hence this Appeal.

2. The learned counsel for the appellant, on query, submitted that till today, no public auction is successful in respect of goods which are subject matter of the suit. He submitted that the appellant/bank be allowed to go for private auction.

3. Considering the submissions. Perused the earlier order of the High Court and the order of the trial Court. Till today, there is no progress in the public auction and hence, I modify the earlier order of the High Court and allow the appellant/bank to go for private auction of the goods. However, this order is first to be placed before the trial Court and the other party is to be intimated. Then, the next date is to be intimated to the Court and the other party and the goods can be auctioned privately.

4. Appeal from order is allowed. Civil Application is also accordingly disposed of.

(MRIDULA BHATKAR, J.)