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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION (STAMP) NO.23086 OF 2018

M/s.Arya Wines Pvt. Ltd. & Anr.	...Petitioners
V/s.	
Special Recovery & Sales Officer & Ors.	...Respondents

Mr.Tejesh Dande with Mr.Bharat Gadhavi, Mr.Krupanshu Nandu, Mr.Niranjan Bhavake and Mr.Vishal Navale I/b Tejesh Dande & Associates for the Petitioners.

Mr.Kunal Bhanage with Mr.Akshay Pawar for the Respondent Nos.1 and 2.

Mr.Y.K. Tiwari with Mr.Manoj Sonavane I/b K.P. Tiwari & Co. for the Respondent No.3.

Ms.Nutan Moily for the Respondent No.4.

Mr.S.D. Rayrikar, A.G.P. for the State – Respondent Nos.5 and 6.

CORAM : R.D. DHANUKA, J.
DATE : 14TH AUGUST, 2018.

P.C. :-

1. By this petition filed under Article 227 of the Constitution of India, the petitioners have impugned the auction sale dated 6th June, 2018 conducted at the instance of the respondent no.2 bank. The respondent no.2 bank had given various loans to the petitioners. The petitioners had mortgaged various properties in favour of the respondent no.2 bank. Since the default was committed by the

petitioners, the respondent no.2 bank initiated the proceedings under section 101 of the Maharashtra Co-operative Societies Act, 1960 (for short "the said MCS Act") against the petitioners and also the respondent no.3. The respondent no.3 had mortgaged his properties to the respondent no.2. The respondent no.1 was appointed for execution of the certificate issued by the Assistant Registrar under section 101 of the MCS Act.

2. The petitioners filed a civil suit for impugning the recovery certificate issued under section 101 of the MCS Act before the Civil Court and gave an undertaking to deposit a sum of Rs.1,00,00,000/-. The petitioners committed default in complying with the said undertaking before the Civil Court.

3. In the Writ Petition (Lodging) No.14786 of 2018 appeared before this Court which was filed by the petitioners impugning the order passed by the Divisional Joint Registrar, the petitioners undertook before this Court to deposit an amount of Rs.1,00,00,000/-. The said undertaking is also breached by the petitioners.

4. In view of the default committed by the petitioners in complying with the undertakings rendered before this Court, the respondent no.1 took various action and auctioned the properties of the petitioners. The auction purchaser has already deposited the entire amount with the respondent no.1. The auction sale is already

confirmed by a sale certificate by the authority. In the pending revision application if the mandatory requirement of section 154(2A) of the MCS Act is complied with by the petitioners, the authority shall hear the said revision application thereafter on its own merits.

5. It is the grievance of the petitioners that the loan was obtained by one of the Director of the petitioners company without the knowledge of the other Directors of the petitioner company. I am not inclined to accept this submission made by the learned counsel for the petitioners. The amount was deposited admittedly in the bank account of the petitioners and thereafter was used by the petitioners. The petitioners have committed default in making repayment of the loan obtained from the respondent no.2.

6. I am therefore, not inclined to interfere with the impugned order passed by the Divisional Joint Registrar. The writ petition is totally misconceived and is accordingly dismissed with costs quantified at Rs.50,000/- which shall be paid to the respondent no.2 within one week from today.

(R.D. DHANUKA, J.)