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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13651 OF 2017

Kalyani R. Sapkal & Ors. ...Petitioners
V/s.
The District Deputy Registrar, Nashik & Ors. ...Respondents

Mr.A.Y. Sakhare, Senior Counsel i/b Mr.Rameshwar Gite for the Petitioners.

Mr.S. H. Kankal, A.G.P. for the State – Respondent Nos.1, 3 and 4.

Mr.Suresh Sabrad for the Respondent No.2.

CORAM : R.D. DHANUKA, J.
DATE : 18TH JANUARY, 2018.

P.C. :-

1. By this petition filed under Article 226 and 227 of the Constitution of India, the petitioners have impugned the order dated 23rd October, 2017 passed by the learned District Deputy Registrar, fixing upset price and also the order dated 29th November, 2017 passed by the learned Divisional Joint Registrar, dismissing the revision filed by the petitioners.

2. The petitioners had taken loan from the respondent no.2 society and had committed default. The certificate under section 101 of the Maharashtra Co-operative Societies Act, 1960 was issued

which has attained finality. The properties of the petitioners were put to auction after obtaining valuation reports mentioned in the order date 5th August, 2017. The said order indicates that the ready reckoner rates were lower than the valuation provided in the other four valuation reports submitted by the respondent i.e. of Sameer Bele, A.R. Rohit V. Dadra, Sumatilal Surana and Anilkumar Chavan.

3. The Deputy Registrar fixed the upset price and put the properties in auction. The auction price was fixed considering the highest valuation report produced by the Bank out of the three reports before the District Deputy Registrar.

4. Mr.Sakhare, learned senior counsel appearing for the petitioners invited my attention to the order passed by the authority fixing the upset price and also placed reliance on Rule 107 (11) (f) of the Maharashtra Co-operative Societies Rules and would submit that the Registrar while approving the upset price was required to obtain the valuation report from the approved valuer within one month from the date of receipt of the proposal from the Recovery Officer after hearing the parties. He submits that the learned Registrar however, did not consider the valuation report submitted by the petitioners and erroneously approved the highest valuation amount from the three reports submitted by the Bank. He submits that the order passed by the Registrar was thus in violation of Rule 107 (11)(f)

of the MCS Rules.

5. It is lastly submitted that the Divisional Joint Registrar also did not consider the submissions of the petitioners and passed an erroneous order.

6. A perusal of the record clearly indicates that the petitioners have committed default in making repayments of the loan to the respondent no.2 society. The properties of the petitioners were thus put to auction. The Recovery Officer considered three valuation reports and also the ready reckoner rates. On the basis of such reports, the Recovery Officer applied to the Registrar under section 107(11)(f) of the MCS Rules for approval of the upset price. A perusal of the order passed by the Registrar approving upset price clearly indicates that the learned Registrar had considered the submissions including the valuation reports submitted by the petitioners and has approved the highest amount of valuation recommended by one of the valuer. Though the amount approved was more than Rs.5.00 crores, it is not in dispute that in the last auction held by the Recovery Officer, the bid amount was about Rs.3.00 crores only. The Recovery Officer has thus proposed to hold fresh auction of the property in question for the second time which is proposed to be held tomorrow i.e. 19th January, 2018.

7. This Court repeatedly called upon the learned senior

counsel for the petitioners to take instructions from his client whether his client is ready to participate in the auction before the Recovery officer or to bring a bidder to participate in the auction proposed to be held tomorrow. To test the *bona-fides* of the petitioners, this Court also called upon the petitioners to deposit the amount equivalent to the valuation amount disclosed in the valuation report submitted by the petitioners. The petitioners however, are not agreeable to any of the suggestions and would submit that since the impugned order passed by the Registrar fixing upset price is in violation of section 107(f) of the MCS Rules, the said order deserves to be set aside.

8. A perusal of the order passed by the Registrar approving the upset price clearly indicates that the valuation reports produced by the either party have been considered by the Registrar and has rightly approved the upset price being the highest mentioned in those four reports submitted by the Bank. It is not in dispute that inspite of the fact that the valuation fixed was more than Rs.5.00 crores, the last bid received was less than Rs.3.00 crores. The auction is now proposed to be held tomorrow.

9. Insofar as the order of the Divisional Joint Registrar is concerned, a perusal of the order indicates that the learned Divisional Joint Registrar also considered all the submissions and material produced by the parties and has passed a reasoned order. The

findings rendered by the Divisional Joint Registrar are not perverse and thus cannot be interfered with by this Court in this writ petition filed under Article 227 of the Constitution of India. I am thus not inclined to interfere with the impugned orders passed by the authorities in this writ petition. The petition is devoid of merits. The writ petition is accordingly dismissed.

10. It is made clear that the petitioners shall be permitted to participate in the auction proposed to be held tomorrow or in future insofar as the properties in question are concerned. If the offer of the petitioners or of the other bidder as may be introduced by the petitioners is the highest and is in compliance with the terms and conditions, the Recovery Officer shall accept such offer of the highest bidder.

11. All the parties to act on the authenticated copy of this order. No order as to costs.

(R.D. DHANUKA, J.)