IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 14071 OF 2018

Vinod Atmaram Kareer .. Petitioner
Versus
Special Recovery Officer Janseva Sahakari Bank & Ors. .. Respondents

Mr. S.P. Kadam I/b Prashant P. Raul for the Petitioner.
Mr. Ramnath Ravi for Respondent No.1
Mr. A.A. Alaspurkar, AGP for Respondent Nos.2 and 3.

CORAM : K.K. TATED AND
N.J. JAMADAR, JJ.

DATE : 13 DECEMBER 2018.

P.C:-

. Heard learned Counsel for the parties.

2. By this Writ Petition under Article 226 and 227 of the Constitution of India, petitioner/original borrower is challenging the order dated 25.09.2018 passed by the learned District Magistrate, Palghar in Case No.31/MCS/2018, on an application filed by respondent-bank under Rule 107 (11) (d-1) (vi) (A) of the Maharashtra Co-operative Societies Rules, 1961 allowing the respondent-Bank to take possession of the suit property for recovery of loan account around Rs. 24,00,000/-.

3. When this Court declined to entertain the present Writ Petition, the learned Counsel Mr. S.P. Kadam, after taking instructions from his client, who is present in Court, makes a statement that

petitioner is ready and willing to pay a sum of Rs.1,00,000/- towards the cost of Auction process, Rs.6,00,000/- towards the repayment of the loan amount on or before 21.12.2018, Rs.6,00,000/- towards the repayment of part loan amount on or before 05.01.2019. He further submits that remaining amount will be cleared by the petitioner within two months from the date of this order. To that effect, he has filed affidavit-cum-undertaking of petitioner-Vinod Atmaram Kareer dated 13.12.2018.

Paragraph 1 and 2 of the said affidavit-cum-undertaking reads thus :-

> *"1.I State that I have filed above referred Civil Writ Petition before this Hon'ble Court after the Ld. District Magistrate, Palghar was pleased to allow the Application made by the Respondent Bank under Rule 107(11) (d-1) (vi) (A), 1961 of the Maharashtra Co-operative Societies Rules. The Ld. Magistrate was pleased to allow the said Application and directed the Respondent Bank to take possession of the property vide order dated 25.09.2018.*
>
> *2. I further state that I undertake to pay a sum of Rs.1,00,000 towards the cost of the Auction process. I also agree to make a payment of Rs.6,00,000 on or before the 21st of December, 2018. I undertake to make a payment of Rs. 6,00,000 on or before the 5th of January, 2019. I also do hereby undertake to make a payment of the balance dues so remaining within a period of 2 months from this date of order."*

4. At this stage, learned Counsel Mr. Ramnath Ravi appearing on behalf of respondent-Bank submits that they have no objection, if

time is granted to the petitioner for repayment of entire loan amount as stated by them in the affidavit-cum-undertaking dated 13.12.2018. He further submits that they will not take any steps to dispose of the petitioner's property till 31.03.2019, if installments are paid by the petitioner on time. He submits that if there is any default of any installment they will dispose of the petitioner's property by following due process of law.

5. In view of the statement made by learned Counsel for the respondent-Bank, the learned Counsel for the petitioner submits that petitioner may be permitted to withdraw the present Writ Petition with liberty to clear the respondent-bank's loan amount as stated in their affidavit-cum-undertaking dated 13.12.2018. To that effect, he has given in writing. Same is taken on record and marked 'X' for identification. Same is accepted. Hence, following order :-

a) Affidavit-cum-undertaking dated 13.12.2018 duly affirmed by the petitioner-Vinod Atmaram Kareer who is present in Court is taken on record and accepted and marked 'X-1' for identification.

b) Petitioner to pay sum of Rs. 1,00,000/- towards the cost of Auction process and Rs.6,00,000/- towards the part payment of loan amount to the respondent-Bank on or before 21.12.2018.

c) Petitioner to pay the second installment of Rs.6,00,000/- towards the part payment of loan amount to the respondent-bank on or before 05.01.2019.

d) Petitioner to repay the remaining amount of loan to the respondent-bank within period of two months from the date of this order.

e) Respondent-bank to provide the statement of account showing how much amount is due and payable by the petitioner towards his loan amount within one month from today.

f) If any default on the part of petitioner, in payment, in that case, respondent-Bank is enable to dispose off property by following due process of law.

g) Petition stands disposed of as withdrawn. No order as to costs.

(N.J. JAMADAR, J.) **(K.K. TATED, J.)**