

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

36 WRIT PETITION NO. 4406 OF 2019
WITH
CIVIL APPLICATION NO. 5080 OF 2019
WITH
CIVIL APPLICATION NO. 5081 OF 2019

THE JALGAON PEOPLES CO-OPERATIVE BANK LIMITED
VERSUS
THE DIVISIONAL JOINT REGISTRAR CO OPERATIVE
SOCIETIES NASHIK AND OTHERS

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Advocate for Petitioner : Mr. V.D. Hon (Senior Counsel)
h/f. Mr. A.V. Hon.
Advocate for Respondent Nos. 4 & 5 : Mr. B.S. Deshmukh.

CORAM : P.R. BORA, J.
Dated : 15.04.2019

PER COURT :

1. Heard Shri Hon, the learned Senior Counsel appearing for the petitioner and Shri Deshmukh, appearing for respondent Nos. 4 and 5. Petitioner is a multi-state Co-operative scheduled Bank. Petitioner-Bank had advanced the term loan to respondent No. 3. Since the loan was not repaid by respondent No. 3 within the stipulated period and defaults were committed, the petitioner-Bank approached the Assistant Registrar of Co-operative Societies and obtained the certificate under Section 101 of the Maharashtra Co-Operative Societies, Act. It is not in dispute that till this date the said certificate has not been challenged either by APMC or by any other person.

2. After obtaining the aforesaid recovery certificate the Bank has initiated execution proceedings. While advancing loan, the Bank had got mortgaged some properties belonging to APMC, which were subsequently attached by the recovery officer against the arrears of loan and one of such properties is now decided to be auctioned for recovery of the said amount. Since the provisions under the Co-operative Societies Acts and Rules mandate that before putting any property to auction, the offset price of the property is to be fixed and the said is to be fixed by the District Deputy Registrar (DDR), the petitioner-Bank had requested the DDR to fix such price. As is revealing from the material on record, the offset price initially fixed on 25.01.2017 was challenged and during pendency of the said proceeding since the period of six months elapsed, the petitioner-Bank was again required to approach the DDR to fix the offset price prevailing on the said date. Accordingly the DDR has fixed the price on 03.11.2018. The said offset price is to remain operative for next six months i.e. till 03.05.2019.

3. In the meanwhile, present respondent Nos. 4 to 9, approached the Divisional Joint Registrar, who vide the impugned order passed on 31.12.2018, has directed to maintain status quo. Aggrieved by the petitioner-Bank has approached this Court by filing the present Writ Petition.

4. It is the contention of the learned Senior Counsel Shri V.D. Hon, that a huge amount of more than Rs. 5 Crores is to be recovered from respondent No. 3, which is in arrears since last several years. It is further contended that the ratio as about the arrears vis-a-vis deposits is crossing the limits which has affected the credibility of the Bank. The Reserve Bank is insisting for the said recovery and the petitioner-Bank may also be subjected to face the action if the recovery process is not expedited. In the circumstances, according to the learned counsel, the Bank needs to be permitted to proceed with the proposed process of auction. The order passed by the Divisional Joint Registrar is therefore sought to be quashed and set aside.

5. The submission so made by the learned senior counsel is strongly opposed by Shri Deshmukh, appearing on behalf of respondent Nos. 4 to 7. It is the contention of the learned counsel for respondents that these respondents have interest in the affairs of APMC and the offset price fixed by the DDR is much less than the market price and ultimately it would be loss of members of APMC. The learned counsel brought to my notice that before the Divisional Joint Registrar, the respondents have submitted the valuation of the subject property which is about Rs. 7 Crores as against Rs. 5 Crores as has been fixed by the DDR as the offset price. The learned counsel

submits that if the property is sold at such a rate, serious prejudice would be caused to APMC and subsequently to the members of the APMC.

6. The learned Senior Counsel has challenged the very locus of the respondents to file such petition and to challenge the offset price fixed by the DDR. However, it appears to me that without going into the said aspect, if the Divisional Joint Registrar is directed to decide the Revision filed by these respondents on/or before 30.04.2019, no prejudice is likely to be caused to either side. As was revealed through the arguments advanced by the learned Senior Counsel, the anxiety is that the petitioner shall not be required to again get fixed the offset price. It is informed by the learned Senior Counsel that in response to the auction notice published, tenders are already received to the Bank, however, they are not yet open.

7. In the result, the following order is passed :

ORDER

(i) The learned Divisional Joint Registrar Co-Operative Societies, Nashik, shall decide the Revision Application Nos. 237/2018 to 239/2018 on/or before 30.04.2019, by giving due opportunity of

hearing to the parties to the said Revision Applications.

(ii) If the Revision Applications are dismissed, the petitioner-Bank shall be at liberty to proceed with the process of auction already initiated by it on the basis of the offset price as has been fixed by the DDR on 03.11.2018.

(iii) In the event, the learned Divisional Joint Registrar finds that the offset price as has been fixed by the DDR on 03.11.2018, is unsustainable, he shall direct the DDR to re-fix the offset price afresh within two weeks from the date of his order. In such a case the petitioner-Bank shall not open the bids until the offset price is re-fixed by the DDR. After the offset price is re-fixed the bids may be opened and if any bid is found to be in consonance with or better than the offset price fixed, it would be open for the petitioner-Bank to accept the said bid. However, if the bids are found of the amount lower than the offset price re-fixed, either the petitioner-Bank shall call upon the bidders to enhance their offers or may invite fresh offers in accordance with law.

(iv) Parties to the present petition and Civil Applications shall appear before the Divisional Joint Registrar on 25.04.2019 at 12:00 noon, so that no further formal notice may be required in the said

matters before the Divisional Joint Registrar.

(v) Authenticated copies be issued of the present orders to the parties on request.

(P.R. BORA, J)

S.P.C.