

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

928 WRIT PETITION NO.3645 OF 2014

JAVRILAL SHANTILAL KOTHARI AND ANOTHER
VERSUS
MAHAVIR NAGARI SAHAKARI PATSANSTHA LTD. AND OTHERS

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Advocate for Petitioners : Mr. Patil Vinod Prakash
Advocate for Respondent 1 : Mr. S.B. Yawalkar
Advocate for Respondents 2 & 3 : Mr. Shrirang Varma h/f. Mr.
B.R. Warma

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CORAM : T.V. NALAWADE, J.
DATED : 14/02/2019.

ORDER :

1. The petition is filed to challenge the order made by the learned Civil Judge, Junior Division, Amalner at Exh. 61 in Regular Darkhast No. 21/2012. The said application was filed by decree holder, Cooperative Bank for selling the property of judgment debtor which is house property. The submissions made show that at the relevant time, the decree holder was entitled to recover the amount of Rs.3.25 lakh, but the amount is increased up to Rs.19 lakh now. The submissions made show that not only the decree holder, there are other banks who are claiming to be mortgagee and they are entitled to get share in the sale proceeds of the property. To the application filed by the decree holder, no objection was given by judgment debtor, the

mortgagor and so, the order of auction sale is made by the Executing Court.

2. The learned counsel for petitioners submitted that the owner had agreement of sale in favour of the petitioners and the petitioners have been in possession of some portion of the house for many years as tenants of the owner and in view of this circumstance, it was necessary for the Court to see that the rights of the present petitioners are protected. He submitted that the Executing Court could have made such order due to which the rights of the petitioners could have been protected and only portion of the house could have been sold to discharge the liability of the judgment debtor.

3. The aforesaid submissions made for the petitioners is not at all acceptable. Firstly, if the petitioners prove that they are occupying some premises as tenants there will be no need to them that they will loose the possession because the purchaser will take symbolic possession of that portion. Secondly, there was agreement of sale with them, in that case also in view of the provision of section 54 of Transfer of Property Act, it cannot be said that the petitioners had any vested

interest in the property. They could not have prevented the sale of any portion of the property including the portion which is in their possession. It appears that Special Civil Suit filed by tenants, petitioners for specific performance of the aforesaid contract is partly decreed and the Court has directed to return the consideration amount and appeal is filed against the decision. In any case, it is not disputed that the property was already mortgaged by the owner to the decree holder, bank and to other banks. In view of these circumstances, the Court could not have taken into consideration the objection of the present petitioners. In view of these circumstances, this Court sees no reason to interfere in the order made by the Executing Court. The petition is dismissed. There is no question of continuation of any statement made by the learned counsel for Banks in future.

[T.V. NALAWADE, J.]

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