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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5472 OF 2017

Umesh Ramvilas Joshi PETITIONER
Age - 44 years, Occ - Business,
R/o 15, Jai Nagar, Jalgaon

VERSUS

1. Mahavir Urban Co-operative RESPONDENTS
Credit Society Ltd.,
16, Vardhaman Chambers,
Navi Peth, Jalgaon,
Through its Manager

2. Central Bank of India,
Jalgaon Branch,
Navi Peth, Jalgaon

3. Shri. Sharad Santoshkumar Kabra
Age - 45 years, Occ - Business
R/o Adarsh Nagar, Jalgaon

4. Mrs. Sushiladevi S. Kabra,
Age - 48 years, Occ - Business
R/o D-83, MIDC, Jalgaon

5. Jalgaon Janta Sahkari Bank Ltd.,
"Seva", 117/119, Navi Peth
Jalgaon, Through its Manager

6. Atul Subhashchand Sanghavi,
Age - 42 years, Occ - Profession,
R/o Plot No. 28, Adarsh Nagar,
Jalgaon, Taluka and District - Jalgaon

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Mr. Anand P. Bhandari, Advocate for the petitioner
Mr. Abasaheb D. Shinde, Advocate for respondent No.1
Mr. N. T. Tribhuwan h/f Mr. K. B. Deshpande, Advocate for R-2
Mr. V. J. Dixit, Senior Advocate a/w Mr. A. N. Nagargoje, for R-5
Mr. Umesh Gite h/f Mahesh Deshmukh, Adv for respondent No. 6

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[CORAM : SUNIL P. DESHMUKH AND
S. M. GAVHANE, JJ.]

DATE : 4th SEPTEMBER, 2019

ORAL JUDGMENT (PER SUNIL P. DESHMUKH, J.):

1. Rule. Rule made returnable forthwith and heard finally with consent of learned advocates for the parties.

2. The petition questions propriety, legality and validity of orders dated 10th July, 2010 and 10th April, 2017, passed in Appeals No. 7 of 2010 and 19 of 2014 respectively by Debts Recovery Tribunal, Aurangabad and Debts Recovery Appellate Tribunal, Mumbai.

3. Genesis of aforesaid orders appears to lie in following transactions.

A. In 1999, respondents No. 3 and 4 - Mr. Sharad S. Kabra and Mrs. Sushiladevi S. Kabra, respectively, (*'the Kabras'*) had approached respondent No. 1 – Mahavir Credit Co-operative Society (MCCS) requesting for a loan. Loan of Rs. 30 lac had been advanced to them by MCCS and a registered mortgage deed of their property bearing plot No. 30 – CTS No. 5787, situated at Mehrun, Jalgaon had been executed in security.

B. Thereafter, *the Kabras* had also approached respondent No. 5 – Jalgaon Janata Sahakari Bank Ltd. (JJSB) for loan. Loan was advanced by JJSB to them creating second charge of said bank on 9th June, 2000 over aforesaid property bearing plot No. 30.

C. Subsequently, *the Kabras* also approached respondent No. 2 - Central Bank of India (CBI) for loan. Loan was advanced by CBI to them.

4. Since repayment of the loans had been defaulted, there appears to have been spate of litigations. Brief reference as under to various proceedings would be necessary in order to facilitate appreciation of the matter in proper perspective.

PROCEEDING - I

a.	18-04-2001	MCCS published notice about its security interest in the mortgaged property as it apprehended its dealing with by the *Kabras*
b.	–- –- 2001	MCCS had preferred proceedings before co-operative court bearing dispute No. 629 of 2001 for recovery of Rs.47,35,098/- with interest against defendants – the *Kabras*
c.	20-10-2005	Co-operative court allowed the dispute filed

		by MCCS directing recovery of amount along with interest @ 21 %

PROCEEDING – II

a.	13-09-2001	CBI had initiated proceeding for recovery before Debts Recovery Tribunal, Aurangabad (DRT) under original application No. 412 of 2001
b.	10-04-2002	Property was attached
c.	22-10-2003	DRT had issued recovery certificate in favour of CBI against present respondents No. 3 and 4 – *the Kabras*
d.	-- -- 2003	CBI filed recovery proceeding bearing RP No. 111 of 2003 before recovery officer, DRT, Aurangabad
e.	28-07-2008	JJSB filed objection Exhibit-31 in RP 111 of 2003
f.	11-07-2009	Auction notice by Recovery officer
g.	01-02-2010	MCCS filed objection, to recovery pursuant to certificate issued in favour of CBI, bearing

		Exhibit No. 64, in RP No. 111 of 2003
h.	09-02-2010	Interim order was passed by recovery officer letting sale of plot No. 30 by CBI in public auction with stipulation that release of sale proceeds would be subject to adjudication of Exhibit- 64
i.	02/03-05-2010	Under order dated 3rd May, 2010 of recovery officer bid of present petitioner of Rs. 57 lac had been accepted and the order was subject to decision of high court in writ petition No. 1975 of 2010 and sale certificate was to be issued only after confirmation of sale
j.	03-06-2010	MCCS filed appeal No. 7 of 2010 before DRT against aforesaid order of Recovery Officer
k.		It appears, there had been an attempt by *the Kabras* - the borrowers to pose a challenge to aforesaid auction

PROCEEDING - III

a.	30-08-2004	JJSB took action under the Securitization and

		Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (Securitization Act)
b.		MCCS challenged said action by filing securitization application (SA) No. 6 of 2005 before DRT, Aurangabad
c.	03-09-2009	Aforesaid SA No. 6 of 2005 filed by MCCS came to be allowed by DRT
d.		JJSB had preferred appeal against aforesaid decision of DRT in SA No. 6 of 2005 before the Debts Recovery Appellate Tribunal (DRAT) with delay condonation application
e.	23-02-2010	Delay condonation application was rejected by DRAT
f.		JJSB preferred writ petition No. 1975 of 2010 against aforesaid order of DRAT Petitioner had been respondent No. 8 in aforesaid writ petition [According learned advocate for JJSB, restraint

had been sought in said writ petition on dealing with mortgaged property pursuant to orders in RP No. 111 of 2003 of Recovery Officer, as publication of auction of property had been issued and had also been one of the subject matters of aforesaid writ petition]

g. 04-03-2010 In said writ petition, High Court, by way of interim order, had let the sale to proceed with, save its finalization

h. 03-03-2011 High Court condoned the delay, consequently, maintaining appeal by JJSB before DRAT directing its expeditious disposal and under clause 5 had observed, thus -

" 5. We have perused the order dated 4/3/2010. Keeping that in view, learned counsel for the parties have agreed for directions to the Recovery Officer, Debt Recovery Appellate Tribunal, Aurangabad, not to confirm the auction till the disposal of the Appeal. Order accordingly. "

i. Upon aforesaid order of High Court, appeal by JJSB was registered as Appeal No. 42 of

		2010
j.	08-06-2011	Appeal No. 42 of 2010 decided by DRAT passing order to the effect - (i) SA 6 of 2005 was dismissed (ii) JJSB has taken possession of secured asset and it may proceed with its sale (iii) limiting claim of MCCS to rupees ten lac and interest, with further stipulation that the same be satisfied first and (iv) balance amount was to be given to JJSB – appellant therein * While JJSB had requested to not let confirmation of auction sale pursuant to order in RP No. 111 of 2003, DRAT had expressed that it would be appropriate to approach recovery officer or Presiding Officer, DRT, Aurangabad

PROCEEDING - IV

a.		Writ petition No. 5998 of 2011 by MCCS against order of DRAT dated 8th June, 2011 (i) On 20th August, 2011 initially this court had granted *status quo*, (ii) On 27th November, 2012, the writ

petition came to be withdrawn unconditionally by MCCS

PROCEEDING - V

a.	02-12-2012	JJSB had published auction notice [as a consequence and incident of order dated 8th June, 2011 of DRAT and aforesaid proceeding before High Court in writ petition]
b.		It appears, objections were raised to aforesaid public auction notice before DRT, (i) one by present petitioner by filing Securitization Application No. 112 of 2012 and (ii) the other by CBI, bearing Securitization Application No. 113 of 2012
c.	10-07-2013	Presiding officer, DRT, decided by common order aforesaid applications No.112 of 2012 and 113 of 2012 and Appeal No. 7 of 2010 whereunder i) Order dated 3rd May, 2010 below Exhibit-1 in RP No. 113 of 2003 passed by Recovery Officer, DRT is set aside, cancelling sale of secured property without touching attachment entitling the petitioner for refund of amount with accrued interest

ii) Sale of secured property was directed by public auction by JJSB and Recovery Officer jointly

iii) The action of JJSB initiated under the Securitization Act was set aside and liberty was given to the petitioner to participate in auction

iv) Alongside directing apportionment of sale proceeds among MCCS, JJSB and if balance remains for debt of CBI

PROCEEDING - VI

a.	10-11-2013	Present petitioner had preferred appeal No. 19 of 2014 before DRAT against aforesaid order dated 10th July, 2013 of DRT
b.	21-10-2016	Notice had been issued by JJSB for public auction of plot No. 30, after decision by DRT dated 10th July, 2013
c.	26-11-2016	Auction sale took place accepting bid of present respondent No. 6
d.		*SUB PROCEEDING*

(i) 16-01-2017 Aggrieved by aforesaid auction, present petitioner preferred writ petition bearing No.1232 of 2017 seeking restraint on DRT from confirmation of sale as well as proceeding further with RP No. 111 of 2003 till disposal of appeal No. 19 of 2014 which had been closed for orders by the Debts Recovery Appellate Tribunal in November, 2016 with a further prayer that sale should not be concluded till disposal of the appeal.

(ii) 01-02-2017 Order in writ petition No. 1232 of 2017 not to decide objection to auction at the instance of petitioner till pronouncement of judgment by DRT in the appeal.

e. 10-04-2017 Eventually, appeal No. 19 of 2014 came to be finally decided and dismissed by the Debts Recovery Appellate Tribunal

5. Against aforesaid order dated 10th April, 2017 in appeal No. 19 of 2014 and the one passed by DRT in Appeal No. 7 of 2010 dated 10th July, 2013, present writ petition has been preferred.

6. Learned advocate for the petitioner, Mr. Anand Bhandari purports to highlight, claiming matter involves various facets

which would have to be given regard to.

While auction had been allowed in recovery proceedings under the Recovery of Debts and Bankruptcy Act, 1993 (DRT Act) and while the same had been proceeded with according to provisions thereof, and property had been auctioned on 3rd May, 2010, having regard to section 29 of DRT Act and having regard to Rules 60 to 63 of the Income Tax Rules, particularly rule 63, it is incumbent that the sale be confirmed and would be deemed to have become final and absolute especially while the period during 8th June, 2011 to 20th August, 2011, being not covered by any order of the court and such an effect would not be undermined by pending litigations.

Learned advocate for the petitioner, during the course of his submissions, has referred to supreme court decision in the case of *"Janakraj V/s Gurudial Singh and Another"* reported in *1966 STPL 2225 SC : AIR 1967 SC 608.* Referring to paragraphs No. 5, 6, 7 and 24 thereunder, stating, ratio that would descend therefrom is that an auction purchaser would be entitled to confirmation of sale notwithstanding the subsequent legal proceedings and even reversal of the decision pursuant to which the auction had taken place. He submits that the auction purchaser is considered to be protected against the vicissitudes of fortunes of the litigation, lest the executions would not attract customers and that would be to the detriment of interest of borrowers and creditors alike if sales were allowed to be disturbed by subsequent decision in litigation.

7. The other aspect, according to him, which shall weigh in present matter is, going by the judgment rendered in appeal No. 7 of 2010, while the reasons referred to are against JJSB yet, the ultimate operative order astonishingly tends to reverse the observations under the reasons. According to him, similar, rather unpredictable, inappreciable and intriguing character is carried in appeal by Debts Recovery Appellate Tribunal in the sense, while the matter had been closed for orders on 21st November, 2016, judgment came to be delivered almost six months later, on 10th April, 2017.

8. The next limb of his submissions is, the sale in favour of petitioner under auction is of 2010 and the subsequent auction proceedings have culminated in sale in 2017. The difference in figures of proceeds from sale in these two auctions may not enamor the court, since there is a time gap of almost six and half year between the two auctions, and with interest as would have accrued on the amount of proceeds of 2010 auction would

match with the proceeds of assailed subsequent auction sale.

In order to support his submissions, he refers to the case of *"Pravin Gada and Another V/s Central Bank of India and Others"* reported in *AIR 2013 SC 4* and urges, the court may consider, since the amount has been deposited six and half year back, that taking into account interest component over the amount deposited pursuant to auction sale in petitioner's favour, would match bid of present respondent No. 6 and the petitioner's request may be given similar treatment as in that case.

9. On the other hand, Mr. Abasaheb Shinde, learned advocate appearing on behalf of MCCS, submits that the matter will have to be viewed from an angle whereunder property under auction had been a security towards loan advanced by MCCS to *the Kabras*, way back in 1999. While the property had been mortgaged under a registered deed and *the Kabras* failed to repay borrowed amount, proceedings ensued under Maharashtra Co-operative Societies Act before co-operative court in which award in favour MCCS had been passed in 2005. Learned advocate submits that it is security for MCCS and MCCS has first charge over the property. An award had accordingly been passed. He refers to that the proceedings were initiated by CBI

for recovery of amount before Debts Recovery Tribunal as an unsecured creditor *vis-a-vis* plot No. 30. A certificate had been issued by Debts Recovery Tribunal for recovery of certain amount in favour of CBI. During pendency of RP bearing No. 111 of 2003 filed by CBI lot of events had occurred *viz.,* JJSB had proceeded with action under Securitization Act, and the same had been opposed and challenged by MCCS. The challenge had been sustained and an appeal therefrom before the Debts Recovery Appellate Tribunal at the instance of JJSB was being prosecuted. The matter had been *subjudice*, not only before Presiding Officer, Debts Recovery Tribunal and the Debts Recovery Appellate Tribunal, but had travelled to this court as well.

10. Learned advocate particularly points out that the sale in favour of the petitioner as claimed, had been all along subject to the orders in the proceedings. Moreover, there had been clear indication of that though the sale may proceed with, it would not be finalized. Obviously, he submits that, the sale under Recovery Proceeding No. 111 of 2003 is during pendency of litigation against the same and even otherwise no benefit would enure to the petitioner of the contended and considered vacuum of relief coverage. He submits that it would also be noted that JJSB had taken possession of secured assets. It was allowed to proceed

further with stipulation that dues of MCCS to be satisfied first as referred to.

11. The tribunal did not consider the request for the lack of recovery officer being party to the appeal. He submits that it would have to be taken note of that pursuant to said order dated 8th June, 2011, further proceedings were initiated under the Securitization Act by JJSB and the same been objected to by parties to the original application of 2001 by present petitioner under SA bearing No. 112 of 2012 and also under SA No. 113 of 2012 by CBI, which have culminated into the two concurrent orders impugned before this court.

12. Learned advocate submits that the facts do disclose that for recovery from debtors matters therefor were all along pending and with reliefs about non finalization of sale gives indication that the matter is not similar at all on the facts as to those were involved in the citations relied upon on behalf of the petitioner. According to him, it is not open for the petitioner now to contend that by operation of rules, the sale has become absolute and much less pursuant to the decision, relied upon, of the Supreme Court.

13. He refers to and relies on a decision in the case of

"Navalkha and Sons V/s Sri. Ramanya Das and Others" reported in *AIR 1970 SC 2037* to emphasise that property would not vest in auction purchaser unless sale is confirmed. For similar purpose, he also refers to a decision in the case of *"M. V. Janardhan Reddy V/s Vijaya Bank and Others"* reported in *(2008) 7 SCC 738*.

14. Learned advocate further submits that the proceedings for recovery at the instance of CBI were not tenable as against property secured by MCCS and JJSB. Their objections were pending and were not finally decided. As a matter of fact, Exhibit-64 has not been finally decided. Though order was passed by the recovery officer directing sale to proceed with, yet release of amount was subject to outcome of Exhibit-64, which carries an undercurrent that the sale was not final and was subject to litigation.

15. Learned advocate goes on to submit that observations of the Debts Recovery Tribunal in its order in Appeal No. 7 of 2010 would have to be appreciated in the context of facts and circumstances in which those appear and not isolatedly. Order will have to be taken into account in its entirety and not part wise. The order is not at all liable to be faulted with. Further, while the appellate tribunal, in its order, has given proper

reasons, albeit, it took a little while for delivery of the decision, yet, on merits, the same would be unquestionable.

16. In addition to aforesaid, he has referred to decision in the case of *"Madhukar Baburao Deshmukh V/s Jalgaon Jillha Maratha Vidya Prasarak Co-op Samaj Ltd., Jalgaon and Others"* reported in *2002 (3) Mh.L.J. 201* in order to entreat this court to consider that as observed in that case, the court should refrain from invoking its extraordinary powers if the decision in favour of the petitioner in this case would amount to revival of an illegal order. For similar purpose, he also refers to judgment in the case of *"Maharaja Chintamani Sarar Nath Shahdeo V/s State of Bihar"* reported in *1999 DGLS (SC) 1109 : 1999 AIR (SC) 3609*, which has been referred to in aforesaid decision.

17. Mr. Dixit, learned senior advocate along with Mr. Nagargoje, purport to support the decisions rendered and concurs with the submissions advanced on behalf of MCCS. He submits security of a mortgagee-creditor would not be amenable to be dealt with for recovery of amount by an unsecured creditor unless and until the security is invoked for repayment of debts of secured creditor and this aspect warrants special attention particularly that proceedings for recovery of amount by secured

creditors had been prosecuted and the purported auction sale in recovery proceeding by CBI were under an inchoate interim order pending an appeal against the same as also decision on objection by MCCS.

18. According to him, Appeal No. 19 of 2014 is only in respect of Recovery Proceeding No. 111 of 2013 and did not in fact and in law challenge proceedings taking place under Securitization Act Applications No.112 of 2014 and 113 of 2014 were by petitioner himself and CBI, respectively, which have culminated into order of Debts Recovery Appellate Tribunal. Petitioner is *estopped* and does not have *locus standi*. According to him, there is neither challenge either to auction nor to sale thereunder.

19. Learned advocate submits, despite liberty being given for participation in auction sale, petitioner had chosen to refrain from. The offer before this court years down and that too only of a rupee more is mischievous and does not deserve any consideration.

20. Learned advocate for CBI purports to support the petitioner and Mr. Deshmukh, learned advocate appearing on behalf of respondent No. 6 – auction purchaser supports

respondents No.1 and 5.

21. Factual aspect about plot No. 30 - CTS No. 5787 being given in security to MCCS and JJSB does not appear to be in dispute. It is also not in dispute that MCCS had approached co-operative court for recovery of debts in 2001 which had culminated into an award in 2005. During this process, JJSB had also proceeded with for recovery of amount pursuant to Securitization Act and under the same, possession is stated to have been taken by JJSB.

22. Thereafter, objection had been taken by MCCS under Exhibit-64 in pending RP No. 111 of 2003 and it remained undecided. On 3rd May, 2010 the auction had taken place. Order dated 3rd May, 2010, was subject matter of challenge by MCCS before DRT in appeal No. 7 of 2010.

23. Further, the securitization proceedings by JJSB were litigated and as referred to above, eventually had culminated into order dated 8th June, 2011. Petitioner had indeed been a party to writ petition No. 1975 of 2010 ensued in said litigation before this court in the interregnum and also been party before DRT in appeal No. 7 of 2010 as well as had been before DRAT in SA No. 112 of 2012.

24. In further litigation, which ensued, petitioner had taken objection, which has culminated into impugned orders.

25. Mr. Bhandari, learned advocate for petitioner has relied on a decision in the case of *"Janakraj V/s Gurudial Singh and Another" (supra)*. Said case had been dealing with a matter prosecuted pursuant to the Code of Civil Procedure and the Supreme Court had been dealing with provisions thereunder, particularly rules, 89 to 91. There it had been referred to by the Supreme Court that if no application for setting aside sale is made or if made and has been disallowed, court has no choice but to confirm the sale and the sale would be absolute. The court had further observed that there would be certain cases wherein the court may refuse to confirm sale. In the facts of that case, it had been considered by the Supreme Court that auction purchaser had been entitled to confirmation of sale notwithstanding that after the sale, decree had been set aside.

26. Learned advocate Mr. Bhandari has also referred to *"Sadashiv Prasad Singh V/s Harendar Singh and Others"* reported in *2014 STPL 4714 SC*. Decision in said case has been rendered taking into account situation that while recovery officer had ordered sale of property in favour of purchaser on 28th August, 2008 and in

absence of objections to the same, had confirmed sale on 22nd September, 2008 in favour of the purchaser. Recovery officer also had ordered handing over of physical possession of property to auction purchaser and the auction purchaser had taken over possession in March, 2009. While Harendar Singh had taken the matter to high court in November, 2009, the high court had been disinclined to interfere with the sale and the proceedings, since there had been no satisfactory explanation for not approaching the court well within time, challenging decision or subsequent proceedings or orders of recovery officer.

The Supreme Court, in the context of facts of that case as referred to above and while mutation proceedings had been moved by auction purchaser and no objection to the same had been raised by Harendar Singh and he had approached high court late, had considered that challenge by Harendar Singh was liable to be rejected on the ground of delay and *laches* as third party right had emerged in the mean time as auction purchaser was *bona fide* purchaser for consideration.

27. While learned advocate Mr. Bhandari refers to section 29 of the Recovery of Debts and Bankruptcy Act, 1993 and pursuant to the same, second schedule to the Income Tax Act, 1961, as enforced from time to time as far as possible would apply, and

has referred to rules 60 to 63 thereof, particularly emphasizing rule 63 of said rules, rule 63 of said rules, reads, thus -

> " *63. (1) Where no application is made for setting aside the sale under the foregoing rules or where such an application is made and disallowed by the Tax Recovery Officer, the Tax Recovery Officer shall (if the full amount of the purchase money has been paid) make an order confirming the sale and thereupon the sale shall become absolute.*
>
> *(2) Where such application is made and allowed, and where, in the case of an application made to set aside the sale on deposit of the amount and penalty and charges, the deposit is made within thirty days from the date of the sale, the Tax Recovery Officer shall make an order setting aside the sale:*
>
> *Provided that no order shall be made unless notice of the application has been given to the persons affected thereby.* "

28. It may have to be referred to that under the very rule, an order confirming sale is contemplated and it does not appear to be the case of the petitioner that any such order of confirmation of sale had ever been passed by the recovery officer. The rule further refers to that it is upon the order, sale would become absolute. Thus, it appears that from income tax rules no benefit would enure to the petitioner in the absence of an order of confirmation of sale.

29. It is contended by petitioner that in the decision by DRT in Appeal No. 7 of 2010, SA 112 of 2012 and SA 113 of 2012 dated

10th July, 2013 operative order is in stark contrast to the reasons. Perusal of the judgment would reveal that stock of events, facts as well as about litigation and chronicled one at that as also about submissions of the respective parties, has been taken and all relevant aspects were elaborately considered, discussed and consequence of observations is putting down auction sale under order dated 3rd May, 2010 of Recovery Officer in RP No. 111 of 2003 as well as setting aside order of auction at the instance of JJSB..

While DRT had set aside action for auction in 2012 at the instance of JJSB, it appears to have been appreciated that it would not be a case where JJSB had been unaware of the earlier auction sale of property and in such a case, it appears to have been considered that the same ought to have been referred to by JJSB and that pursuant to order dated 8th June, 2011 of DRAT, JJSB ought to have approached recovery officer and it was considered that JJSB had not made such an approach, on these counts, 2012 action by JJSB under Securitization Act for sale of property had been considered, to be not lawful, not proper and was liable to be set aside. It was also considered that it was not proper on the part of JJSB while appeal of MCCS had been pending before tribunal.

30. The reasons would not be said to be favouring or legalizing the auction in petitioner's favour under the order of recovery officer. The auction sale to petitioner was of an interim and inchoate nature and was subject to finalization and was being litigated over. Observations and reasons would not enure any benefit for the petitioner to lend validity to the auction sale in his favour. Submissions on this count turn out to be of little substance and tend to be technical.

31. In the appeal therefrom before DRAT at the instance of present petitioner relief sought was to set aside judgment and order of DRT in Appeal No. 7 of 2010 dated 10th July, 2013 further seeking a direction to recovery officer to confirm sale of plot. This, to quite a large extent gives an indication of that petitioner had not been unwary of the nature of order under which transaction of auction and sale pursuant to the same had not been absolute and final and that the same had been subject to various conditions, aspects and litigation.

32. The appellate tribunal also appears to have taken stock of the situation and had also taken into account decisions relied upon by the parties. On scrutiny of the proceedings and the material, appellate tribunal has gauged that conclusion

appearing under the operative order of DRT is not liable to be faulted with, while it appears that the relevant aspects have been taken into account by the Debts Recovery Tribunal.

33. Mr. Bhandari, learned advocate for the petitioner though purports to claim fallacies underlying the order, in the reasons and the operative order of the Debts Recovery Tribunal and the time gap between date of reserving order and the ultimate order by the Debts Recovery Appellate Tribunal, yet, one may have to take into account that DRT and DRAT have taken into consideration overwhelming facts that the property in question had been security to the borrowings by the *Kabras* from MCCS and JJSB. There had been litigation for recovery of debts, by MCCS and action by JJSB pursuant to Securitization Act as well had been pending during recovery proceedings by unsecured creditor CBI. In RP No. 111 of 2003, there were objections by MCCS as well as by JJSB. It is with the objections, sale had been proceeded with, on the condition that the amount would be released only subject to decision of Exhibit-64 and purchaser would become absolute owner only after sale certificate would be issued. In the interregnum, proceedings under Securitization Act pursuant to which there had been auction notice which ensued Securitization Application No.6 of 2005 at the instance of MCCS

had been litigated over.

34. Looking at the facts and circumstances, petitioner would not be able to take any benefit out of claimed disparity in reasons and the order passed by the tribunal. DRT had taken into account all the relevant aspects in the matter as considered and has appreciated the same, which are not liable to be termed as, in any way, against the facts or for that matter perverse or so unreasonable. The order of DRT is not liable to be faulted with nor is unjustifiable on grounds and reasons on which the exception is being taken to the same. Decision of DRAT is being faulted with on account of interlude between date of reservation of order and date of decision. In this respect, it may be pertinent to take into account, while writ petition No. 1232 of 2017 had been moved by the petitioner and it had been referred to in the order of division bench of this court, judgment is reserved and order is not yet pronounced and yet the high court had not intercepted appeal No. 19 of 2017, we do not think that the contention on this ground carries any force with the same.

35. Other facet that will have to be considered is that, secured creditors had already been prosecuting matter for recovery of their debts. MCCS had already a verdict in its favour from co-operative court which had not been challenged and JJSB had

invoked provisions of Securitization Act even before auction had been mooted in RP No. 111 of 2003. Section 35 of the Securitization Act, gives primacy and overriding effect notwithstanding inconsistencies in other laws. It is not disputed that while enforcing security interest pursuant to section 13 of the Securitization Act, while borrower had failed to discharge liability in full, the secured creditor had taken possession of secured assets.

36. It may also have to be taken into account that the property under sale had already been charged to mortgage and had been encumbered. Security interest of financial institutions as secured creditors had been put to stake in the proceedings by the recovery officer. Secured creditors, MCCS and JJSB, had objected to the recovery proceedings by CBI. His orders in respect of the same were litigated over. Propriety, legality and validity of dealing with the property had been under question. Secured property was put to auction without final decision on objection and without letting opportunity to creditors in the proceedings. In this situation, transaction/auction would not vest the property in the purchaser without charge/encumbrances absolutely. Recovery officer appears to be oblivious of all these aspects and does not appear to have been taken into account while passing

orders for auction or sale. Secured interest of creditors would seldom be let go haywire under approach of recovery officer. Auction under an interim order, while the legality of order was questioned and pending, it was an inchoate auction, sale. While order dated 3rd May 2010, in particular was under challenge before DRT, said order itself has been set aside. Consequently, the transaction pursuant to the same would, thus, fall and crumble down for, it too would not be legal and proper.

37. Decision in the case of *"Saheb Khan V.s Mohd. Yusufuddin and Others"* reported in *AIR 2006 SC 1871* would be of little assistance to the petitioner. Even analogy therefrom would not carry forward his case. It is a decision on altogether different contextual background.

38. In the circumstances, it does not appear that petitioner can legitimately claim to be covered by the decisions relied on and by drawing analogy from the same. In such a case, the submissions sought to be shored up by, income tax rules and a decision of the Supreme Court delivered in different context, turn out to be fragile in the given set of facts and circumstances and litigated proceedings and would not assist the petitioner to protect sale in his favour.

39. Auction and sale in favour of petitioner was not an absolute final order crystallizing the sale. It was subject to further orders. Most importantly, when the very order on the basis of which, with reference to income tax rules, finalization of sale is being claimed, had been set aside and had not been an order which had been considered could be maintainable on merits by the DRT as well as DRAT. The DRT had set aside sale dated 3rd May, 2010 in RP No. 111 of 2003 by CBI directing refund of the amount having regard to various aspects referred to earlier in the judgment by the tribunal. Further, the property was allowed to be auctioned giving liberty to the present petitioner to participate. With discussion as above, impugned decisions by DRT and DRAT are not liable to be interfered with and intercepted.

40. Mr. Bhandari, learned advocate for the petitioner tenders across an affidavit of the petitioner to the effect that he is ready to equal the bid of respondent No. 6 as on 28th November, 2016 and would compete the auction. However, having regard to aforesaid, we have already referred to in the submissions that this is an offer, the case of *"Pravin Gada and Another V/s Central Bank of India and Others"* *(Supra)* wherein auction purchaser had been allowed to increase his bid to the accepted impugned bid, that

was a peculiar case, wherein possession as well had already been parted with to appellant before the Supreme Court. It is not even case of the petitioner that he had ever been put in possession of the property in furtherance of the sale under clout.

41. From the facts and circumstances, it would be imperative to consider that arguments advanced on behalf of the petitioner about there being no cover of interim protection to MCCS and/or JJSB, during the period 8th June, 2011 to 20th August, 2011, appears to be slender and brittle strand picked up. Moreover, it would have to be considered that the entire action of sale under order dated 3rd May, 2010, had litigation looming over and said order as well shows that the sale was not to be crystallized by certificate until its finalization. Additionally, in the challenge to sale order before DRT in Appeal No. 7 of 2010, the same has been set aside by DRT and maintained by the appellate authority.

42. Looking at the relevant aspects and the facts and circumstances and the litigation, it does not appear to be a case wherein high court under its discretionary and equitable powers should cause interception to the order of DRT of DRAT. We find ourselves unable to be persuaded by petitioner's case to accede to the request under the writ petition and grant the same as

prayed for in the writ petition. We are of the view that impugned orders are not liable to be unsettled. Writ petition, therefore, is not entertained and is dismissed with no order as to costs. Rule stands discharged.

43. There is a request on behalf of the petitioner to continue interim relief operating in order to enable him to challenge this decision. As such, interim relief to continue till 15th December, 2019.

[S. M. GAVHANE]
JUDGE

[SUNIL P. DESHMUKH]
JUDGE

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