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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO.3252 OF 2018

M/s Sojar Motors Private Ltd
through its Director **..Petitioner.**

Vs

The State of Maharashtra & Ors. **..Respondents**

Mr. Vishal Kanade a/w Mr. Satish Raut, Ms. Vaishali Bhikale and Ms. Dipti Sawlani i/b Mr. Manmohan Rao for the Petitioner.
Ms. V.S. Nimbalkar, AGP for the State/Respondent Nos.1,4 and 5.
Mr. Vishal Ghosalkar for respondent No.3.
Mr. P.K. Dhakephalkar, Senior Advocate i/b Swapnil Patil for Respondent Nos.6-A and 6-B.

CORAM : A.S.GADKARI, J.
DATE : 30th July 2019.

P.C.:-

1] By the present petition under Article 227 of the Constitution of India, the Petitioner, has taken exception to the Order dated 21st December 2017 passed by the Divisional Joint Registrar, Co-Operative Societies, Mumbai Division, respondent No.4 herein, in Revision Application No.191 of 2017, dismissing the said Revision and confirmed Order dated 17.1.2017 passed by the respondent No.5 fixing upset prise of the suit property, as mentioned in its Schedule.

2] Heard Mr. Kanade, the learned counsel for the petitioner, the learned AGP for respondent Nos.1,4 and 5, Mr. Ghosalkar, the learned counsel for the respondent No.3 and Mr. Dhakephalkar, Senior counsel for the respondent Nos.6(A) and 6(B). Perused the entire record.

3] The record indicates that, the petitioner had availed a loan facility from the respondent No.2 Bank. As the petitioner, despite repeated demands, failed to repay the loan amount, the respondent No.2 left with no other alternative but to file proceedings under section 101 of the Maharashtra Co-Operative Societies Act, 1960 (for short "M.C.S. Act") and the Rules framed thereunder. The concerned Authority after hearing the parties to the said dispute has issued Recovery Certificate under Section 101 of the M.C.S. Act by its Order dated 27.2.2013. By the said Order, the concerned Authority had directed the petitioner to pay the principal amount of Rs.3,87,16,794/-(Rupees Three Crores Eight Seven Lakhs Seven Hundred Ninety Four Only) along with interest @ 16% per annum till its realization and also directed to pay other charges/expenses incurred by the Bank as mentioned in the Recovery Certificate. The record discloses that, the petitioner has accepted the said Order dated 27.2.2013 passed the concerned Authority under section 101 of M.C.S. Act and as of today the said Order holds field.

4] The record further indicates that, in a petition filed by the petitioner bearing No.4433 of 2017 challenging the auction of the suit property, the petitioner had made a solemn statement before this Court that, he will deposit the entire dues of the respondent No.3 Bank, as of 13th April 2017 (i.e. Rs.4,58,98,005.52) with the bank on or before 27th April 2017. The said statement is recorded in the Order dated 13.4.2017 passed by this Court. The record further clearly indicates that, the petitioner failed to adhere to its solemn statement made before this Court on 13.4.2017, did not deposit the said amount either with the bank or in the Registry of this Court. This fact has been recorded by this Court in its Order dated 28.4.2017 in the said petition. The said Order is annexed at page No.25 of the present compilation.

5] In this background, the petitioner has challenged the upset price fixed by the bank of the suit property which was mortgaged by the petitioner while availing loan facility. While fixing upset value of the said property, the bank had obtained Valuation Report from M/s Katkar Engineers and Valuers dated 29.7.2016. After considering said report and various other circumstances, including market price which bank could fetch by putting the said property in auction, the bank had fixed upset price @ of Rs.4,93,49,000/-. Accordingly, impugned Order dated 17.1.2017 was passed by the respondent No.5, fixing upset price as mentioned in the scheduled of the said Order. The said Order was challenged by the petitioner in Revision under section 154 of M.C.S. Act before the respondent No.4. The respondent No.4 by an elaborate Order has rejected the said Revision by its Order dated 21.12.2017, which is impugned herein.

6] Mr. Kanade, the learned counsel for the Petitioner submitted that, the upset price fixed by the bank and which has been accepted by the respondent No.5, is much lesser than the actual price, which a prudent purchaser will offer in open market. He submitted that, the petitioner has obtained a Valuation Report from M/s Archimage Designers, dated 4.11.2016 wherein the Market Value of the suit property is stated as Rs.8,78,94,450/-; Realizable Market Value @ 90% of it is Rs.7,91,05,005/- and Distress Sale Value @ 70% of Market Value is Rs.6,15,26,115/-. He submitted that, even distress sale value of the said property is much higher than the upset price fixed for sale of the property by the bank. That, there was delay of 14 to 15 days in making full payment to the bank by the auction purchaser i.e. respondent Nos.6A and 6B and therefore Rule 107(11)(g) of M.C.S. Rules has not been adhered with. He therefore submitted that, the impugned Order may be quashed and set aside by allowing the present petition.

7] Mr. Ghosalkar, the learned counsel for the respondent No.3 and the learned AGP vehemently opposed the present petition and submitted, that, the impugned Order passed by the respondent No.5 is as per the provisions of law and needs no interference by this Court and the present petition may therefore be dismissed. Mr. Dhakephalkar supported arguments of Mr. Ghosalkar and submitted that that, the auction process has already been completed and the respondent Nos.6A and 6B are declared successful bidders.

8] A minute perusal of the record would indicate that, the petitioner has accepted and admitted the Recovery Certificate issued by the Competent Authority under Section 101 of M.C.S. Act. As noted earlier, the petitioner had filed Writ Petition No.4433 of 2017 before this Court challenging auction fixed by the bank dated 17.4.2017 and in the said proceedings, had made a solemn statement before this Court that, he will deposit the entire amount with the bank on or before 27.4.2017. The said statement is recorded by this Court in its Order dated 13.4.2017. The petitioner however failed to deposit the said amount and subsequently sought permission to withdraw the petition with liberty to adopt appropriate proceedings. The said fact is recorded in Order dated 28.4.2017 passed in the said petition.

It therefore clearly appears from the record that, the petitioner on 13.4.2017 made a solemn statement before this Court that, he will deposit the entire amount, despite having knowledge that he will not be able to comply it, but made such statement only with a view to protract and/or to procrastinate the litigation and for nothing else.

9] There is another facet to the present case. The valuation report submitted by M/s Archimage Designers dated 4.11.2016 indicates that, the said valuation report was procured by the petitioner under the guise, to obtain loan from the lender of the applicant's (Petitioner's) choice. It appears that, the said Valuer was not made aware about the fact that, the case of the petitioner is subjudice before various forums and the said report will have to be produced before a Competent Authority established under law. This clearly depicts the conduct of the petitioner.

10] May it as it may, assuming for the sake of argument that the distress sale value of the said property on 4.11.2016 was about Rs.6,15,26,115/- and realizable market value was Rs.7,91,05,005/-, during the course of arguments on earlier occasion, this Court granted an opportunity to the petitioner to deposit the said sum of Rs.7,91,05,005/- in the Registry of this Court within stipulated period. Since then at least on three occasions the petitioner sought time to deposit it, however, failed to deposit it till date. The petitioner had also sought time to gather or collect the said funds from his well-wishers, with a view to prove his bonafide. However, today again the learned counsel for the petitioner on instructions is seeking further time to deposit the said amount.

11] As noted earlier, petitioner had sought time on various occasions from this Court to deposit the said amount only with a view to protract and/or procrastinate the matter and nothing else. If the petitioner was having genuine desire in setting aside the auction process, he would have certainly proved his bonafide. The contention of the petitioner that, the suit property will fetch more value than the upset price fixed by the bank has no substance in it, as the petitioner has already failed to prove his bonafide. As noted earlier, this Court is of the considered view that, with a view to protract and procrastinate the litigation, the petitioner with malafide intention has approached various forums, though the petitioner was aware about the fact that he is unable to pay the creditors their lawful dues.

12] After perusing the impugned Order, this Court finds that the same is an elaborate and well reasoned Order passed by the respondent No.4, after taking into consideration various attending circumstances and the facts involved in the present case. This Court finds no illegality and/or irregularity in the impugned Order, either in law or on the facts.

Petition being devoid of merits, is accordingly rejected.

(A.S.GADKARI, J.)