

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.298 OF 2019
IN
WRIT PETITION NO.5746 OF 2018

Sabastian Francis Almeida.] ... Applicant

Versus

State of Maharashtra & Ors.] ... Respondents

Mr. Niranjan Mogre for Applicant.

Mrs. S. S. Bhende, AGP for State.

Mr. Shantanu Raktate i/b Mr. Amar Parsekar for Respondent Nos.2 & 3.

Mr. Nikhil Rajani i/b M/s. V. Deshpande & Co. for Respondent No.4.

CORAM :- INDRAJIT MAHANTY &
SARANG V. KOTWAL, JJ.

DATE :- 06 MARCH, 2019

P. C. :-

1. Heard the learned Counsel for respective parties.
2. This Civil Application has come to be filed in a Writ Petition which has been disposed of by this Court by an order dated 23rd October, 2018. While disposing of the said Writ Petition, in direction (v), the following order was passed :

“v. Liberty is granted to the Petitioner, if he so desires, to take appropriate application for withdrawal of the amount deposited by the petitioner with the Registry of this Court and that may be decided on its own merits.”

3. The learned Counsel for the Applicant submits that in exercise of liberty granted to him, the present Civil Application has come to be filed seeking refund of Rs.40 (Forty) Lakhs which had been deposited by him pursuant to the earlier directions passed in the aforesaid Writ Petition vide order dated 26th May, 2018. The learned Counsel for the Respondent – Credit Society raises strong objection to the same saying that the property of the Petitioner had come to be mortgaged by his Power of Attorney holder and sale of such property is sought to be challenged by the Petitioner and even with the disposal of the Writ Petition, as noted above, liberty was granted to the Petitioner to proceed with Revision Application No.85 of 2018 pending before the Divisional Joint Registrar, Co-operative Societies (K.D.), Navi Mumbai, under Section 154 of the Maharashtra Co-operative Societies Act, 1960, which has been directed to be decided on its own merits. In this respect, the learned Counsel for the Applicant submits that the application has been filed by the Petitioner seeking revival of the said Revision Application pending consideration

by the Divisional Joint Registrar, Co-operative Societies (K.D.), Navi Mumbai as noted hereinabove.

4. Learned Counsel for the auction purchaser – Respondent No.4 also raised objection, *inter alia*, claiming that due to the interim orders passed in the Writ Petition he was prevented from taking over possession of the property which he has lawfully purchased at a public auction conducted by the Respondent No.2 – Society. He further submits that the deposit of the amount by the Petitioner was for the purpose of proving his *bona fides* before the High Court and on the basis of such deposit, interim directions had been passed.

5. The learned Counsel for the Petitioner submits that he has sought for revival of Revision Application No.85 of 2018 and the same is pending consideration before the Divisional Joint Registrar, Co-operative Societies (K.D.), Navi Mumbai. With the disposal of the Writ Petition, all interim orders have stood vacated. However, since the Petitioner has challenged the auction by filing a proceeding under Section 154 of the Maharashtra Co-operative Societies Act, 1960, we are of the considered view that since the Writ Petition has been

withdrawn, the ends of justice would be best sub-served if the amount of Rs.40 (Forty) Lakhs deposited with the Registry of this Court, along with accrued interest thereon, would be remitted to the Divisional Joint Registrar, Co-operative Societies (K.D.), Navi Mumbai, who shall deal with the said deposit at the time of final adjudication and disposal of the Petitioner's aforementioned Revision Application pending before him.

6. With such observations and directions, the present Civil Application stands disposed of.

(SARANG V. KOTWAL, J.)

(INDRAJIT MAHANTY, J.)