IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

Amk

WRIT PETITION NO. 2343 OF 2010
WITH
NOTICE OF MOTION NO. 527 OF 2010
IN
WRIT PETITION NO. 2343 OF 2010
WITH
CHAMBER SUMMONS NO. 355 OF 2010
IN
WRIT PETITION NO. 2343 OF 2010
WITH
CHAMBER SUMMONS NO. 134 OF 2016
IN
WRIT PETITION NO. 2343 OF 2010

Ami Ketan Oza & Ors. .. Petitioners
Vs.
Punjab & Sind Bank & Ors. .. Respondents

Mr. Charles D'souza a/w. Mr. Yash Badkar, Mr. Prashant Pandit for the Petitioner.
Mr. Surel Shah a/w. Mr. Ganesh Ambekar i/b Thakore Jariwala for Respondent No.4.
Ms. Swati Sawant i/b S. K. Legal for the Intervener in NMW 527/10.

CORAM : PRADEEP NANDRAJOG, C.J. &
SMT. BHARATI DANGRE, J.
DATE : 25th NOVEMBER, 2019.

P. C. :

1. Heard learned Counsel for the parties.

2. Late Ketan Oza since deceased being represented now in the Writ Petition by his legal heirs availed various cash credit facilities from Punjab and Sind Bank in the name of his sole propriety firm M/s. Alex

Pharmaceuticals and he created an equitable mortgage of Flat No. 602, 6th floor, Darshan Tower Co-operative Housing Society, Borivali. His wife Smt. Heena Oza created equitable mortgage of the adjoining Flat No.601. Both flats being adjoining were fused by the husband and wife in that the internal partition walls were broken. One Sanjay Notoriya had stood as a guarantor for the dues payable by Ketan to the bank.

3. There being an outstanding amount of ₹ 26,97,463/- in one cash credit facility and ₹ 6,14,748/- in another cash credit facility, the bank filed O.A. No. 137/2006 which was decreed on 27.03.2007. Noting payments made during the pendency of the original application, the sum decreed was ₹ 28,32,119/- together with simple interest @ 6% p.a. from the date when the claim was made till realization.

4. The decree having attained finality was put into execution by the Recovery Officer and the mortgaged assets were put to auction by a public notice. The highest bid was made by M/s. Sunny Agency Pvt. Ltd.. The sum was ₹ 80 lakhs. The bid was confirmed. M/s. Sunny Agencies deposited ₹ 80 lakhs with the learned Recovery Officer.

5. After the sale was effected, the Judgment Debtors filed two applications before the Recovery Officer. In one application, it was pleaded that during the pendency of the original application ₹ 1 lakh had been paid, credit whereof we find is reflected in the Judgment and decree dated 27.03.2007. It was stated in the application that the Judgment Debtors were willing to settle the dispute by paying ₹ 25 lakhs which was increased to ₹ 30 lakhs. It was pleaded that post-dated cheques were also offered. It was pleaded that ₹ 2.25 lakhs was paid to the bank as admitted in the letter dated 20.02.2008, which we note is a

letter post-Judgment and decree dated 27.03.2007 and post the auction sale of the two flats. Prayer made was to extend time to make the deposit. In the second application similar pleadings were made with a prayer that the auction sale be set aside.

6. Learned Recovery Officer dismissed both the applications on 13.10.2009 noting that after the sale was confirmed, no request could be entertained to extend the time for making payments. Learned Recovery Officer has held that as per applicable to Rule being 60 of the Second Schedule to the Income Tax Act, 1961 only upon the Judgment Debtor satisfying the decree by paying requisite amount within 30 days of the sale could be the sale be set aside.

7. Challenge to the said order has failed before the learned DRT when the Appeal was dismissed vide order dated December 17, 2009. Further, Appeal before the learned DRAT was dismissed vide impugned order dated 08.01.2010.

8. Challenging the order dated 08.01.2010 first contention urged in the Writ Petition is that the learned Recovery Officer ought to have auctioned one flat at a time for the reason if sale price realised from sale of one flat satisfied the decree, the second need not having been sold.

9. The same has been rightly rejected by learned DRAT in view of the fact that both the flats were inter-mingled.

10. The second challenge was to time not being granted by the Recovery Officer to deposit the decretal amount. The learned DRAT has reasoned that unless the decretal amount was satisfied in full and there was compliance with Rule 61 of the Second Schedule to the Income Tax Act, the sale could not be set aside.

11. We agree with the view taken by the learned DRAT for the reason auction sale cannot be interdicted merely upon an offer to pay the decretal amount in installments. Unless the entire decretal amount plus 5% of the bid amount is deposited, such sale cannot be set aside. The reason is obvious. The auction purchaser has to be recompensed.

12. We find that during the pendency of the Writ Petition, the Petitioners were permitted to deposit ₹ 26 lakhs with DRT. But this would be immaterial because third party rights have been interdicted.

13. Thus, dismissing the Writ Petition we confirm the sale in favour of Respondent No.4 requiring such amounts which have been deposited by the Petitioners with learned DRT/DRAT to be refunded to them with interest which has accrued thereon. The Bank would appropriate its dues towards the decree and keeping in view that the sale amount fetched was ₹ 80 lakhs, would disburse the rest to the Petitioners.

14. Possession of the flat shall be handed over to the auction purchaser within two weeks from today.

15. In view of dismissal of Writ Petition, all the interim applications are disposed of.

[SMT. BHARATI DANGRE, J.] [CHIEF JUSTICE]

Arjun M. Kadam

Digitally signed by Arjun M. Kadam
Date: 2019.11.26 11:40:00 +0530