

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

924 CIVIL APPLICATION NO.7208 OF 2019
IN SAST/15375/2019

STATE BANK OF INDIA A NATIONALIZED BANK
THROUGH ITS CHIEF MANAGER (SARC)
VERSUS
FAHMIDA ANSARI MOHD. SIRAJUDIIN ANSARI AND
OTHERS

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Mr.V.R. Patil, Advocate for the appellant.
Mr.P.N. Sonpethkar, Advocate for respondent
nos.1 to 3.

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CORAM: V.L. ACHLIYA,J.

DATE : 18.02.2020

ORAL ORDER:

The applicant-appellant has moved this application seeking stay to the impugned judgment and decree passed by the first appellate Court.

2. Heard learned counsel for the appellant-applicant and the counsel representing the respondent nos.1 to 3.

3. In brief, it is the contention of learned counsel for the applicant that the applicant has good case to succeed in appeal. It is submitted that the respondents-

plaintiffs have participated in the process of auction of property attached in Securitisation proceedings. The bid offered by the respondents being highest, same was accepted. The respondents deposited Rs.6,26,250/- as 25% of the amount of bid and balance 75% to be deposited as per terms provided and notified for auction of property. The property was sold with caveat that the property put to auction is put to sale on "as and where basis". The respondents were aware that the flat No.3 lying in possession of third person. With the knowledge that flat no.3 in possession of third person the plaintiffs have participated in the auction proceedings and offered bid which was accepted by applicants. Prior to participating in auction process, the respondents had taken inspection of the properties including flat no.3. As plaintiffs have failed to deposit the balance amount of 75% within stipulated period, the applicant-appellant has forfeited the amount to the extent of 25% of bid money. The trial Court has dismissed the suit. The appellate Court has allowed the appeal as the case of appellant could not be presented before the Appellate Court.

4. On the other hand, learned counsel for the respondents opposed the application with contention that the applicant has no case to succeed on merit. It is submitted that the bank has recovered the amount from the borrower and recalled the auction. Since the applicant was not able to hand over vacant possession of flat no.3, the respondents ought to have return the amount deposited by respondents. It is contended that the appeal is devoid of merit and raises no substantial question (s) of law and urged to dismiss appeal along with application.

5. On due consideration of submissions advanced, I am of the view, pending hearing and final disposal of appeal, the execution of decree deserves to be stayed on condition that the applicant-appellant shall deposit the amount in terms of decree with this Court. Accordingly, the application is allowed in terms of prayer clause "C", subject to deposit of decreetal amount with this Court within four weeks from today. Failure to deposit the amount within four weeks, the interim order liable to be recalled. In the event the amount is

deposited, same be invested in fixed deposit with any Nationalize bank for two years with standing instructions to renew the same till further orders from this Court.

6. Civil Application is disposed of in above terms.

[V.L. ACHLIYA]
JUDGE

SGA