

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 2503 OF 2018
IN
WRIT PETITION NO. 12891 OF 2016

Warna Sahakari Bank Ltd. ... Applicant
V/s.

Milind Tyre and Rubber Pvt. Ltd.
And Ors. ... Respondents

Mr. Vishwajeet Kapse for the Applicant.
Mr. S.H. Kankal, AGP for the Respondent Nos. 3, 4, 5 & 6.

**CORAM: K.K.TATED, &
SARANG V. KOTWAL JJ.**
DATE : 12th MARCH 2020

P.C.

1 Heard learned Counsel for the parties.

2 Though the Respondent Nos. 1 and 2 are duly served and their Advocate filed vakalatnama, no one appeared on behalf of them, when the matter called out.

3 On earlier occasion, the matter was on board before this Court on 31.01.2020, on that date also no one appeared on behalf of Respondent Nos. 1 and 2. Hence, matter was postponed to 14.02.2020 for hearing.

4 By this Civil Application, Applicant bank is seeking to reduce the reserved price at Rs.1,46,87,065/- (Rs. One crore forty six lakhs eighty seven thousand sixty five only) (as per valuation of Government Approved valuer

dated 21.03.2018) for the purpose of auction mortgage property, land and building situated at Gat/R.S. No. 1148(part) at Giroli Road, Village Kodoli, Tal. Panhala, Dist. Kolhapur.

5 The learned Counsel for the Applicant submits that in the present proceeding, they applied under Section 101 of the Maharashtra Co-op. Societies Act, 1960 on 05.09.2005 for recovery of their dues of Rs. 1,03,68,091/- (Rs. One crore three lakhs sixty eight thousand ninety one only). He submits that the concerned authority issued a recovery certificate dated 05.09.2005 for sum of Rs. 1,0368,091/- (Rs. One crore three lakhs sixty eight thousand ninety one only) and interest at the rate of 16.5%. He submits that in the present proceeding, the Sales Tax Department filed their affidavit dated 03.04.2017 stating that they have to recover sum of Rs. 87,52,520/- under the Bombay Sales Tax Act and Central Sales Tax Act, 1956 from the Respondent No.1.

6 The learned Counsel for the Applicant submits that in the present proceeding, the learned Counsel appearing on behalf of Sales Tax Office made a statement before this Court that, they already recovered their dues and hence, they have no objection to pass the order in the present proceeding.

7 The learned Counsel for the Applicant submits that earlier this Court by order dated 24.07.2018 fixed the

reserved price of land at Rs.2,23,00,000/-. (Rs. Two crores twenty three lakhs only). He submits that at that time on the basis of valuation report dated 21.03.2018, this Court recorded that the distress Value to be Rs.1,46,87,065/- (Rs. One crore forty six lakhs eighty seven thousand sixty five only).

8 The learned Counsel for the Applicant submits that pursuant to the order dated 24.07.2018, the Applicant Bank held the auction for disposal of the said property. He submits that auction has failed because nobody has given their bid above reserved price. Hence, they preferred Civil Application for reducing the reserved price. He submits that the reading of earlier order dated 24.07.2018 passed by this court the distress value shows as Rs. 1,46,87,065/- (Rs. One crore forty six lakhs eighty seven thousand sixty five only). He submits that in view of this fact, the Applicant may be permitted to dispose of the said property by public auction considering the reserved price as Rs.1,46,87,065/- (Rs. One crore forty six lakhs eighty seven thousand sixty five only). He submits that if the present Applicant is not allowed, then irreparable loss will be caused to them because for last several years their dues are not realised for want of proper auction reserved price.

9 On the other hand, the learned AGP appearing on behalf of State submits that in the interest of justice, this Hon'ble Court be pleased to direct the Applicant to place on record the recent valuation report so that the Court

can decide the reserved price of the mortgage property.

10 It is to be noted that in the present proceeding, this Court by order dated 24.07.2018 on the basis of Government Valuation Report dated 21.03.2018 decided the reserved price as Rs. 2,23,00,000/- (Rs. Two crores twenty three lakhs only). This Court also recorded in the said order that distress value to be Rs.1,46,87,065/- (Rs. One crore forty six lakhs eighty seven thousand sixty five only).

11 In view of subsequent development that the earlier auction failed for want of any purchaser and as the dues are pending for last several years, we are of the opinion that Applicant has made out a case for allowing the present Civil Application.

12 Hence, the following order:

a) Civil Application is allowed in terms of prayer clause (a), which reads thus:

"a) Pending the hearing and final disposal of the Writ Petition, this Hon'ble Court may be pleased to reduce the reserved price at Rs. 1,46,87,065/- (as per valuation of Government Approved valuer dated 21.03.2018) for the purpose of auction their mortgage property of land and building situated at Gat/R.S. No. 1148(part) at Giroli Road, Village Kodoli, Tal. Panhala, Dist. Kolhapur."

b) After auction is successfully completed, the Applicant to comply the earlier order dated 17.01.2018 passed by this court i.e. deposit entire amount in the Registry of this Court.

c) No order as to costs.

(SARANG V. KOTWAL, J.)

(K.K.TATED, J.)