IN THE HIGH COURT OF JUDICATURE AT BOMBAY
IN ITS APPELLATE SIDE CIVIL JURISDICTION
WRIT PETITION ST. NO. 919 OF 2020

Bharati Sahakari Bank Ltd. Pune
An Urban Co-Operative Bank formed and registered under the provisions of Maharashtra Co-Operative Societies Act, 1960 and classified as Multi State Co-Op. Bank having head office at Bharati Bhavan, Lal Bahadur Shastri Marg, 13, Sadashiv Peth, Pune through its Authorised Officer .. Petitioner

Vs.

1. Mr. Dhananjay Pralhad Salunke
2. Mr. Mahesh Pralhad Salunke
   Both are residing at Post Surawadi, Taluka Phaltan, Dist. Satara-415528 .. Respondents

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Mr. Siddharth Samantray i/b Mr. Puneet Gogad for Petitioner
Mr. Rishabh Shah a/w Anshol Anjarlekar a/w Nandkumar Bharti i/b Raval-Shah & Co. for Respondent Nos. 1 and 2

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CORAM : PRADEEP NANDRAJOG, C.J. &
SMT. BHARATI DANGRE, J.

DATED : JANUARY 23, 2020

<u>ORDER</u> [PER PRADEEP NANDRAJOG, C.J.]:

1. The petitioner granted a Term Loan of ₹ 12.5 Crores. The respondents are the borrowers. They have created a mortgage of:

> Non agriculture plot of land ad-measuring 9850 sq. mtrs. forming part of the land bearing Gat No. 91, Hissa No.1, totally ad-measuring 01 H. 97 R (inclusive of Pot Kharaba ad-measuring 00 H. 04 R) lying and situated at village Surawadi, Taluka-Phaltan Dist. Satara together with construction of Hotel Building standing thereon ad-measuring 21252 sq. ft. comprising of First floor ad-measuring 7084 sq. ft. + second floor ad-measuring 7084 sq. ft. + Third floor ad-measuring 7084 sq. ft. situated at village Surawadi, Taluka – Phaltan, Dist. Satara
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> And
>
> Non agriculture plot of land ad-measuring 9450 sq. mtrs. carved out of larger land comprising of Gat No.74, Hissa No.10, totally ad-measuring 01 H. 81 R. and Gat No. 74, Hissa No.13, totally ad-measuring 00 H. 10 R. lying and situated at village Tadawale Taluka Phaltan & Dist. Satara.

2. The loan was classified as NPA on 23rd January 2018 and the petitioner issued a notice under sub-section (2) of Section 13 of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (**"SARFAESI Act"**) on 18th July 2018 informing that

outstanding dues as on the date of the notice were ₹ 12,66,84,288/-.

3. Inspite of the notice being served the respondents filed no reply and the petitioner took the symbolic possession of the secured assets on 27th November 2018. On 31st December 2018 the petitioner issued a public notice informing that the two properties would be sold and the reserve price indicated was ₹ 19.75 Crores. The respondents filed Securitisation Application (L) No. 40 of 2019 under Section 17 of the SARFAESI Act before the Debt Recovery Tribunal challenging the sale notice which application was rendered infructous because no bids were received pursuant to the sale notice dated 31st December 2018.

4. On 7th February 2019 the petitioner published the second sale notice informing that the auction would be held on 27th February 2019. Reserve price was fixed lower to ₹ 16.78 Crores. The respondents filed another Securitisation Application No. 89/2019 before the DRT challenging the sale notice which application became infructous inasmuch as no bids were received and hence on 29th March 2019 the respondents withdrew the same.

5. Third sale notice was issued on 28th February 2019 indicating reserved price at ₹ 12.87 Crores and date of auction was 20th March 2019. Respondents did not challenge the said sale notice. The petitioner-bank itself bidded at the auction and declared itself to be the highest bidder.

6. Respondents filed the 3rd Securitisation Application registered as SA No. 121/2019. They challenged the auction sale held on 20th March 2019 and the Sale Certificate issued by the petitioner in its name on 27th March 2019; and relevant would it be to highlight that in the said Securitisation Application the respondents did not challenge the debt due nor the measures taken by the petitioner-bank under SARFAESI Act.

7. Having purchased the property the petitioner had to take physical possession thereof. It filed an application under Section 14 of the SARFAESI Act before the District Magistrate Satara who authorised the Circle Officer to take possession of the property. Pursuant thereof the Circle Officer notified the respondents that he would take possession of the secured assets on 18th December 2019. Till then, no interim order was passed

by the learned DRT in SA No. 121/2019.

8. Aggrieved by the notice issued by the Circle Officer that he would take possession of the secured assets on 18th December 2019 the respondents filed the 4th Securitisation Application registered as No. 282/2019. For the first time in the said Securitisation Application the respondents questioned the demand raised in the Demand Notice dated 18th July 2018, a challenge which *ex-facie* was barred by limitation. Respondents filed Interim Application No. 1590/2019 in S.A. No. 282/2019 in which on 16th December 2019 learned DRT Pune has passed an interim order which has been challenged in the present petition. Interim measures in terms of prayer clauses (a) and (b) in paragraph 48 of the application have been granted.

9. On 19th December 2019 learned DRT Pune allowed S.A. No. 121/2019 i.e. the third Securitisation Application filed by the respondents and quashed the sale held on 20th March 2019.

10. It is the case of the petitioner that as on 15th January 2020 outstanding amount is ₹ 15,27,12,000/- and that after

the demand notice dated 18th July 2018 was issued by the petitioner the respondents have paid a sum of ₹ 80 lakhs.

11. The pleadings show that the respondents have admitted taking a loan, the creation of the mortgage, the default for repayment of the loan and that they did not file a reply to the demand notice.

12. In the backdrop facts afore-noted, it would be futile for this Court to decide upon the legality of the impugned order dated 16th December 2019 for the reason on 19th December 2019 learned DRT Pune has quashed the sale conducted by the petitioner.

13. If the petitioner is aggrieved by the sale being set aside the petitioner has to challenge the order dated 19th December 2019 passed by the learned DRT Pune in an appeal before the Debt Recovery Appellate Tribunal.

14. At this stage learned counsel for the respondents state that they are interested in availing the benefit of One Time Settlement Scheme. Needless to state if the petitioner has notified any such One Time Settlement Scheme, the

respondents would be entitled to submit a proposal in terms of the Scheme for a One Time Settlement.

15. For the reasons noted herein above, the Writ Petition is disposed of without adjudicating on the legality of the impugned order dated 16th December 2019 passed in the Interlocutory Application filed in the 4th Securitisation Application No. 282/2019 for the reason, in the 3rd Securitisation Application No. 121/2019 learned DRT has set aside the auction sale conducted on 20th March 2019 vide order dated 19th December 2019.

16. No costs.

SMT. BHARATI DANGRE, J. **CHIEF JUSTICE**