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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION (St.) No. 2151 OF 2020

Narendra Mahadev Thakkar … Petitioner
Vs.
The Kurla Nagarik Sahakari Bank Ltd. & Ors. … Respondents

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Ms. Devyani Kulkarni, for the Petitioner.

Mr. K. V. Tambe, for Respondent Nos. 1 and 2.

Mr. N. C. Walimbe, AGP for Respondent No. 3.

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CORAM : C. V. BHADANG, J.

DATE : FEBRUARY 5, 2020

PC :

1. The challenge in this petition is to the impugned orders dated 13th December, 2017, 30th January, 2018, 28th December, 2018, 1st January, 2020 and 3rd January, 2020, passed by the authorities below. The net result of passing of these orders, is that the property belonging to the Petitioner, which is admittedly mortgaged in favour of the first Respondent Bank by the Petitioner, in the capacity of a guarantor for a loan advanced to the brother of the Petitioner, has been attached and put to auction.

2. Heard leaned counsel for the parties and perused record.

3. It transpired during the course of the arguments at bar, that the Petitioner has previously filed Writ Petition No. 10775 of 2018 in

which there was a challenge to the order dated 13th December, 2017 which is one of the orders challenged in this petition. It is necessary to note that the said petition was disposed off by consent of parties on 9th October, 2018. The consent terms are produced on records at page 69 of the compilation. A bare perusal of the consent terms shows that the Petitioner had paid Rs. 5 Lacs by demand draft dated 5th October, 2018 and had agreed to clear the entire balance dues on or before 5th December, 2018. Till date the dues are not cleared. The consent terms also record that the Petitioner had confirmed execution of the mortgage in favour of the first Respondent Bank.

3. The only contention raised on behalf of the Petitioner is that he is ready and willing to pay the balance amount subject to appropriate installments being granted to him. The learned counsel for the Petitioner submitted that there is one time settlement (OTS) scheme in operation and the first Respondent should extend the benefit of the said scheme to the Petitioner.

4. The learned counsel for the first Respondent pointed out that earlier Petitioner had applied for OTS Scheme without deposit of 5% of the amount, as required under the terms and the conditions of the Scheme.

5. The learned counsel for the Petitioner, on instructions,

states that Petitioner shall apply afresh to the first Respondent Bank for availing of the benefit of the OTS Scheme by depositing 5% amount. The learned counsel for the first Respondent states that, if such an application is made, the Bank will consider the same on its own merits and as per the applicable terms and conditions.

6. Considering the fact that there were previous consent terms executed and filed before this Court, I do not find that, a case, for interference in the impugned orders, is made out. However, it will be open to the Petitioner to apply to the first respondent Bank for availing of the benefit of the OTS Scheme, within one week from today, alongwith deposit of 5% amount as required, and if such an application is made, the Bank shall consider the said application on its own merits, as per the applicable terms and conditions. It is made clear that this Court has not expressed any opinion on the entitlement or otherwise of the Petitioner, for the benefit under the OTS Scheme. The petition is disposed of in the aforesaid terms, with no order as to costs.

Sd/-
C. V. BHADANG, J.