

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION (ST) NO. 4622 OF 2020

Mr. Manoj Javerchand Sethia

.. Petitioner

v/s.

The Authorized Officer,
Bank of Maharashtra & Ors.

..Respondents

Mr. Rishabh Shah A/W. Mr. Anshul Anjarlekar A/W. Mr. Sayyam Maheshwari I/B. Raval Shah & Co. for the Petitioner.
Ms. Hema Desai A/W. Durga Prasad for the Respondent Nos.1 and 2.
Mr. Midhun Kumar Allu i/b. Sagar Kursija for the Respondent No.8.

**CORAM : A.A.SAYED &
SMT. ANUJA PRABHUDESSAI, JJ.
DATED : 12th MARCH, 2020.**

P.C. :

1. The Writ Petition is filed seeking the following relief:

“(a) That this Hon’ble Court may be pleased to issue a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, order or direction, after calling for the papers and proceedings of Securitisation Application No. 64 of 2020 and be pleased to stay all further acts and proceedings pursuant to the e-auction dated 27 February, 2020, along with a further direction for hearing the Securitisation Application No. 64 of 2020 and Interim Application No.127 of 2020.”

2. When the matter was called out yesterday, it was pointed out by the learned Counsel for the Respondent Bank that the auction has already been conducted and the sale is to be confirmed on 13.3.2020

in favour of the auction purchaser.

3. We had therefore directed the Petitioner to make the auction purchaser as party Respondent, and to serve the auction purchaser. The Petitioner has accordingly added the auction purchaser as Respondent No.8 in the Petition and has served the auction purchaser, and the auction purchaser is represented by learned Counsel appearing before us.

4. It is pointed out to the Court by the learned Counsel for the Respondent Bank that earlier six auction attempts have failed and this is the seventh attempt, and that with great difficulty they have managed to sell the secured asset in auction.

5. The learned Counsel for the Respondent Bank has submitted that the outstanding dues as of today are in the range of Rs.7.79 crores. In the circumstances, we called upon the learned Counsel for the Petitioner who is stated to be the guarantor, to give the schedule of repayment if the Petitioner wants to seek any ad-interim relief not to confirm the sale. Learned Counsel for the Petitioner has today submitted a schedule of proposed payment wherein the Petitioner has proposed to pay Rs.1.50 crores by 12th March, 2020 i.e. today, Rs.1 Crore by 31.3.2020 and Rs.1.5 Crore by 15.4.2020. The said proposed payment does not set out as to how the Petitioner will be

paying the balance amount of the outstanding dues. As a matter of fact, in para 4 of the schedule of proposed payment, the Petitioner has stated as follows:

“4. The Petitioner further states that, on deposit of the amount mentioned in paragraph no.1, 2 and 3 above, the Petitioner reserves its rights and contentions to approach the Hon’ble Debts Recovery Tribunal for adjudication of the disputes between the Petitioner and Respondent No.1 and 2 herein, as well as initiate discussions with Bank Officers.”

6. It is contended by the learned Counsel for the Petitioner that the mandatory provisions of Rules 8 and 9 of the SARFAESI Rules have not been complied with as there is no service of 15 clear days of individual notice upon the Petitioner. He has relied upon the judgment in the case of Mathew Varghese vs. M. Amritha Kumar & Ors. (2014) 5 SCC 610; and Vasu P. Shetty vs. Hotel Vandana Palace & Ors. (2014) 5 SCC 660.

7. Considering the facts of the case and after hearing the learned Counsel for the parties, we are of the view that this is not a fit case to exercise the extra ordinary writ jurisdiction of this Court. Two Securitisation Applications filed by the Petitioner are already pending before the DRT wherein the sale has also been challenged.

8. In the light of the above, the Petition is dismissed. We make it clear that we have not gone into the merits of the matter and it will be open to the DRT to pass orders as it deems appropriate.

(ANUJA PRABHUDESSAI, J.)

(A.A.SAYED, J.)