IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Writ Petition No.5401 of 2019
Keshav Kurudkar Vs. Shripat Kurudkar and others

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Mr. S.R. Deshpande, Advocate for the petitioner.
Mr. S.B. Ninawe, Advocate for the respondents No.1 to 32.
Mr. S.P. Kishrsagar, Advocate for the respondent No.33.

CORAM : MANISH PITALE, J.

DATED : JANUARY 21, 2020

By this writ petition, the petitioner has challenged order dated 27/06/2019, passed by the Court of Joint Civil Judge (Junior Division), Umrer (Executing Court), whereby the objection filed by respondent No.33 was accepted and sale confirmed in favour of the petitioner was set aside. Although there was direction given to refund the amount deposited by the petitioner after deducting the expenses of the Court, the petitioner is dis-satisfied with the impugned order, because according to him the sale could not have been set aside.

2. It was contended on behalf of the petitioner that the thrust of allegations in the objection filed on behalf of respondent No.33 was that there had been manipulation of Court record and that fraud was committed at the behest of the petitioner, due to which the sale deserved to be set aside. It was contended on behalf of the petitioner before this Court that unless

and until evidence was led in support of such allegation pertaining to fraud and manipulation, the Executing Court could not have allowed the objection for setting aside the sale.

3. In response, the learned counsel for the respondent No.33 submitted that a perusal of the impugned order shows that the sale was set aside only on the ground that the petitioner failed to adhere to the mandatory requirement of Order 21 Rule 85 of the Code of Civil Procedure (CPC), whereby he was expected to deposit the total balance amount within 15 days of auction dated 24/4/2019. According to learned counsel for the respondent No.33, having failed to do so, the Executing Court was justified in holding against the petitioner.

4. A perusal of the impugned order shows that although the application was filed on behalf of the respondent No.33, *inter-alia,* on the ground of fraud and manipulation, alleged at the behest of the petitioner, sale was set aside only on the ground that the petitioner failed to deposit balance amount within the mandatory period under Order 21 Rule 85 of CPC. There can be no doubt about the fact that requirement of the said provision is mandatory and this has been laid down by the Hon'ble Supreme Court in a number of judgments, including in the case of **C.N. Paramasivam and another Vs. Sunrise Plaza through Partner and others, (2013) 9 SCC 460**, on which the

learned counsel appearing for the respondent No.33 has placed reliance. Therefore, on this ground, the writ petition does not deserve to be entertained, as no error can be attributed to the Executing Court in passing the impugned order by relying upon Order 21 Rule 85 of CPC.

5. Nonetheless, the learned counsel appearing for the petitioner highlighted the fact that the petitioner is co-sharer and that according to him, certain mandatory requirements under Section 8-AA of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947, were not followed in the present case. But, a perusal of material placed before this Court shows that no such contention was advanced on behalf of the petitioner before the Executing Court. Therefore, such contention cannot be entertained for the first time in writ jurisdiction.

6. In view of above, the writ petition is found to be without any merits and it is dismissed. Yet, liberty is reserved for the petitioner to raise such contentions as may be available in law, including under the said provision of the aforesaid Act of 1947, before the Executing Court. On such objection being raised, the Executing Court shall decide the same in accordance with law.

JUDGE