

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

**WRIT PETITION NO. 12082 OF 2019
ALONG WITH
INTERIM APPLICATION NO. 3252 OF 2020
IN
WRIT PETITION NO. 12082 OF 2019**

Abhijeet Tekavade

... Petitioner
Applicant

Versus

The State of Maharashtra and Ors.

... Respondents

**ALONG WITH
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 5341 OF 2019**

Sahebrao Deshmukh Co-op. Bank Ltd.

... Petitioner

Versus

The Police Inspector and Ors.

... Respondents

Mr. P. K. Dhakepalkar, Senior Counsel i/by Mr. Swapnil R. Patil for the Petitioner in WP/12082/19 and Applicant in IA/3252/20 and for Respondent No.4 in Criminal WP/5341/19.

Mr. Vishal C. Ghosalkar for the Petitioner in Criminal WP/5341/19 and for the Respondent No.3 in WP/12082/19.

Mr. Yuvraj Patil, AGP for the Respondent Nos.1-State, 4 and 5 in WP/12082/19.

Mr. Deepak Thakre, Public Prosecutor in Criminal WP/5341/19 for Respondent-State.

Mr. Kishor Patil i/by Mansi S. Bane, for the Respondent No.7 in WP/12082/19 and for Respondent No.2 in WP/5341/2019.

**CORAM: R. D. DHANUKA AND
V. G. BISHT, JJ.**

DATE : 15th FEBRUARY, 2021.

ORAL JUDGMENT (*Per R.D. Dhanuka, J.*) :-

. By an Administrative order passed by the Hon'ble Chief Justice, the Criminal Writ Petition No. 5341 of 2019 has been directed to be clubbed along with the Writ Petition No. 12082 of 2019 along with Interim Application No. 3252 of 2020 in Writ Petition No. 12082 of 2019. By consent of parties both the proceedings were heard together and are being disposed of by the Common Order.

2. The petitioner in Writ Petition No. 12082 of 2019 has prayed for Writ of Mandamus or order, writ or direction to the respondent nos. 2 to handover complete vacant and peaceful possession of the property described in prayer clause (a) of the Writ Petition and further seeks an order and direction to respondent no.6 to grant police protection to respondent no.2 to recover vacant and peaceful possession of the said property from the respondent no.2 (respondent no.7 in Writ Petition No. 12082 of 2019) and handover the said possession thereof to the petitioner.

3. Interim Application No. 3252 of 2020 is filed by the Applicant (original petitioner) in the Writ Petition *inter-alia* praying for an action against the respondents for committing willful breach of the order dated 4th March, 2020 passed by this Court under the provisions of Contempt of Courts Act, 1971.

4. The respondent no. 7 had borrowed the loan from respondent no.3 in the sum of Rs.3,50,00,000/- in the month of November 2010. Various defaults were committed by the respondent no.7 in making repayment of the said loan. The respondent no.2 issued recovery certificate under Section 101 of the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as 'the said MCS Act' for short) against the respondent no.7. The notice before the attachment was issued and thereafter followed by an order of attachment of mortgage property on 22nd September, 2013. It is the case of the respondent no.3-bank that the physical possession of the said property was handed over by respondent no.7 to respondent no.2 to enable respondent no.2 to handover the peaceful possession of the said property to the petitioner. On 17th January, 2017, the respondent no.5 fixed the upset price for auctioning the said property.

5. Being aggrieved by the said order, the respondent no.7 filed a Writ Petition No. 4433 of 2017 before this Court challenging the said order and also the auction notice dated 16th March, 2017. On 13th April, 2017, the learned Counsel for the respondent no.7 (petitioner therein) made a statement that his client would deposit the entire dues of bank on or before 27th April, 2017. This Court though granted adjournment after recording the statement made by the respondent no.7 herein made it clear that no stay of auction was granted by this Court. On 27th April, 2017, this Court noticed that no amount was deposited by the respondent no.7 though a statement was made before this Court on 13th April, 2017. The respondent no.7 withdrew the said petition with

liberty to file an appropriate proceedings. The learned Counsel for the bank made a statement before this Court that the auction had already taken place on 17th April, 2017. This Court accordingly granted liberty to the respondent no.7 to withdraw the said petition with liberty as prayed.

6. On 28th June, 2017, the respondent no.5 confirmed the sale conducted by the respondent no.2. Respondent No.4 rejected the revision application filed by the respondent no.7 by an order dated 31st May, 2017. This Court did not grant any stay in the Writ Petition No. 6224 of 2017 filed by the respondent no.7 by an order dated 31st May, 2017 and directed the respondent no.4 to decide the revision application within a period of six months. On 21st December, 2017, the respondent no.4 dismissed the revision application filed by the respondent no.7. The respondent no.7 thereafter filed a Writ Petition No. 3252 of 2018 before this Court against the said order dated 21st December, 2017. This Court dismissed the said Writ Petition by an order dated 30th July, 2019.

7. It is the case of the bank that even prior to the date of conducting auction, the bank has already taken the possession of the mortgage property of respondent no.7. It appears that the respondent no.7 has after handing over the peaceful possession of the respondent no.3-bank, claims to be in a possession of the said property. The Police Station could not provide any police protection to the Special Recovery Officer in taking physical possession from respondent no.7.

8. The petitioner who is the auction purchaser has paid the entire sale consideration of Rs.5,90,00,000/- in the month of May 2017 with Bank and has filed this Writ Petition.

9. On 4th March, 2020, this Court recorded the statement made by the learned Counsel for the respondent no.7 that his client was not carrying out any construction and nor creating any third party rights, title and interest in the suit property. This Court granted an injunction against the respondent no. 7 for making any construction or from entering into any sale, exchange, transfer, mortgage, gift or from creating any third party rights or otherwise dealing with the said property.

10. It is the case of the petitioner that since the respondent no.7 continued to carry out construction in spite of the injunction order passed by this Court on 4th March, 2020 and in spite of statement made before this Court on that date, the petitioner filed the interim application *inter-alia* praying for initiation of action against the respondent no.7 for committing willful breach of the order dated 4th March, 2020 passed by this Court and Contempt of Courts Act against the respondent no.7.

11. The Criminal Writ Petition bearing No. 5341 of 2019 is filed by the Bank *inter-alia* praying for an order against respondent no.1 i.e. Police Inspector to register the FIR against the respondent no.2 herein (respondent no.7 in Writ Petition No. 12082 of 2019) and for providing necessary assistance to the Special Recovery Officer of the Bank for

removing the respondent no.2 herein.

12. We have heard the learned Counsel for the parties and perused the documents annexed with these proceedings.

13. Mr. Patil, learned Counsel for the respondent no.7 in Writ Petition No. 12082 of 2019 states that his client has filed a dispute impugning the order passed by the Registrar confirming the sale of the auction in favour of the auction purchaser and the said dispute is pending. He submits that in view of the pendency of the said dispute, his client is not liable to handover the possession of the auction property in favour of the petitioner or to the Special Recovery Officer. Learned Counsel however does not dispute that the order passed by the Registrar confirming the action sale and issuing sale certificate cannot be challenged in the dispute filed by his client.

14. A perusal of the record clearly indicates that pursuant to the recovery certificate obtained by the petitioner against the respondent no.7 who was borrower and had mortgaged its property to the bank, the bank after obtaining various order from the authorities under Section 101 and under the provisions of Rule 107 of MCS Rules auctioned the said property. Various petitions filed by the respondent no.7 in this Court to obstruct the auction of the said property, were rejected after making various observations against the respondent no.7. The recovery certificate as well as the auction initiated by the respondent no.3-bank has attained finality. The sale certificate is already issued. The auction purchaser has already paid the entire consideration.

15. The concerned Police Station thus could not have refused to provide requisite assistance to the Special Recovery Officer to get vacant and peaceful possession from the respondent no.7.

16. We are inclined to accept the statement made by the respondent no.3-bank that it had already obtained a physical possession of the said property from the respondent no.7 prior to conducting the auction of the said property. However, to obstruct the process of handing over physical possession of the property to the auction purchasers, the respondent no.7 has illegally entered into the possession of the mortgage property.

17. Insofar as the dispute filed by the respondent no.7 is concerned, we are not making any observations about the maintainability of such dispute filed by the respondent no.7. However, learned Counsel for the respondent no.7 does not dispute that the order passed by the Registrar confirming the sale cannot be subject matter of the challenge in a dispute filed under Section 91 of the MCS Act.

18. In our view, the petitioner has thus made out a case for recovery of possession from the respondent no.7 by seeking assistance of the Superintendent of Police i.e. respondent no.6 in Writ Petition No. 12082 of 2019 by granting police protection to respondent no.2 to recover the vacant and peaceful possession from the respondent no.7 and to handover the said possession thereof to the petitioner.

19. Rule is accordingly made absolute in term of prayer clause (a). The Superintendent of Police, Raigad shall provide the police protection to the respondent no.2 within 48 hours from the date of communication of this order who shall take physical possession of the said property described under prayer clause (a) of the Writ Petition No. 12082 of 2019 from the respondent no.7 or any other parties found in possession thereof and shall handover the possession thereof to the petitioner within 24 hours from the date of taking possession. If the respondent no.7 or any other person resists the action of taking possession, the respondent no.2 shall take forcible possession of the said property.

20. Insofar as the Criminal Writ Petition filed by the Bank is concerned, we are of the view, the respondent no.2 herein (respondent no.7 in Writ Petition No. 12082 of 2019) could not have obstructed the Recovery Officer or a Police from taking physical possession of the property from the respondent no.7. The petitioner-bank has thus made out a case for issuance of direction to the respondent no.1 to register FIR against the respondent no.2 herein (respondent no.7 in Writ Petition No. 12082 of 2019) for obstructing the possession of the property and for interfering with the orders passed by this Court from time to time and also the auction of the property lawfully carried out by the Special Recovery Officer. Such FIR shall be filed within four weeks from the date of communication of this order. The Criminal Writ Petition No. 5341 of 2019 is made absolute in aforesaid terms. The respondent no.7 in Writ Petition No. 12082 of 2019 is directed to pay cost quantified at Rs. 1 Lakh within one week from today to the

auction purchaser. Interim Application is also disposed off in aforesaid terms.

21. Parties to act on the copy of this order authenticated by the Sheristedar of this Court.

[V. G. BISHT, J.]

[R. D. DHANUKA, J.]