IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

7 WRIT PETITION NO. 4171 OF 2021
WITH
CIVIL APPLICATION NO. 3387 OF 2022
WITH
CIVIL APPLICATION NO. 5095 OF 2022
IN WP/4171/2021

KUSUM ANNARAO SOMWANSHI AND ANOTHER
VERSUS
THE OSMANABAD JANATA SAHAKARI BANK LTD. AND OTHERS

...

Advocate for Petitioners : Mr. B.R. Kedar h/f Mr. R.D. Biradar
Advocate for Respondent Nos. 1 to 3 : Mr. A.N. Irpatgire

...

CORAM : RAVINDRA V. GHUGE AND S. G. DIGE, JJ.

DATE : 4th APRIL, 2022

PER COURT :-

1. We have considered the submissions of the learned Advocate for the respective sides.

2. We have perused the earlier order passed by this Court on 11th March, 2022, which reads as under:-

> *"1. The learned counsel for the original petitioners states that if the applicant bank provides correct amount, his client is ready and willing to pay the entire dues. The learned counsel for the applicant bank states that the amount due and payable by the original petitioners is already mentioned in the civil application.*

2. The original petitioners should take instruction about the said amount and to clear the admitted amount within two weeks from today. If there is any dispute in respect of the balance amount after such admitted amount is released by the petitioners, the Court will pass the appropriate order for payment of balance amount on the next date. Place the matter on board for reporting compliance on 4th April, 2022."

3. Considering the disputed issues, we would have been justified in disposing off the petition and relegating the petitioners to the statutory remedy before the Debts Recovery Tribunal under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. However, this Court earlier passed an order on 8th March, 2021 directing that the auction proceedings would not be finalized on the condition of depositing Rs.16,00,000/- in this Court. The amount has been deposited.

4. The learned Advocate for the petitioners is aggrieved by the fact that the bank is auctioning their three plots (Open plots) at lesser amount through auction process. The plots are not being sold at the market rate. The petitioners can bring a prospective buyer, who could purchase the plots at the market rate. From such sale proceeds, the outstanding loan amount could be satisfied and the excess amount will have to be delivered to the petitioners.

5. Petitioner No. 2, who is husband of petitioner No. 1, is present in the Court. On his instructions, it is submitted that prospective buyer would be brought before the Bank within a period of two months and if higher amount is being paid by prospective buyer, the bank should not oppose.

6. The learned Advocate for the Bank is agreeable with a rider that the amount of Rs.16,00,000/- deposited in this Court along with accrued interest, may be transferred to the Bank, which amount could be adjusted as against the loan accounts of the petitioners. The petitioners are also agreeable for the same.

7. In view of the above, this petition is disposed off with the following directions:

(a) The amount of Rs. 16,00,000/- along with accrued interest, if any, lying in this Court, would be transferred by the Registry to the respondent No.1 Bank .

(b) The Bank shall prepare the loan account statement inclusive of the amount of Rs.16,00,000/-, which they would now get from this Court and tender such statement to the petitioners on or before 30th April, 2022.

(c) The petitioners would produce before the bank, such prospective buyers, who are willing to purchase the plots or any of them at such price which would cover the outstanding loan amount, payable by the petitioners. If this occurs, the respondent-bank would permit such sale transaction to take place and after the plots are sold to such prospective buyers, the outstanding loan amounts would be adjusted with the sale proceeds and the remaining amount would be handed over to the petitioners.

(d) If the above condition is satisfied by the sale of one or two plots, the remainder plot which is mortgaged, shall be released by the bank forthwith.

(e) The above sale of plot/s to the prospective buyers would be completed on or before 30th June, 2022. If the petitioners fail in bringing forthwith prospective buyers prior to 10th June, 2022, the respondent- Bank would be at liberty to finalize the auction sale on or before 13th June, 2022.

(f) In the event any dispute with regard to the calculations of the outstanding dues, the remedy as may be available to the petitioners as against such calculations is kept open.

(g) The protection granted by this Court, is subject to the sale of the mortgage properties in the light of the conditions set out above.

8. Pending Civil Applications do not survive and stand disposed off.

(S.G. DIGE)
JUDGE

(RAVINDRA V. GHUGE)
JUDGE

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