

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.5910 OF 2022

**CHANDRAKANT DATTU SISODE PATIL
VERSUS
SAU. MALUBAI CHANDRAKANT PATIL AND OTHERS**

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Advocate for Petitioner : Mr. Bhargav Bhushan Kulkarni
Advocate for Respondent Nos. 1 to 4 : Mr. G. L. Gujar h/f
Mr. Manish V. Bhamre
Advocate for Respondent No.5 : Mr. Mukul Kulkarni
Advocate for Respondent No.6 : Mr. V. P. Patil

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 19th SEPTEMBER, 2022

PER COURT :

1. Petitioner is aggrieved by order dated 20/09/2016, passed by learned Civil Judge, Junior Division, Shindkheda, below Exhibit-1 in Regular Darkhast No.14/2012, thereby confirming sale of property of petitioner in execution of decree passed in favour of respondent Nos. 1 to 4. The said order was questioned by petitioner by filing Regular Civil Appeal No.130/2016, which is also dismissed by the appellate Court. Petitioner is aggrieved by both these orders.

2. I have given due consideration to the rival submissions made by learned advocates for the respective parties.

3. Admittedly, decree was passed in Special Civil Suit No.39/2001 in favour of respondent Nos. 1 to 4, thereby directing

petitioner to pay maintenance at the rate of Rs.1,000/- per month to each of respondent Nos. 1 to 4 and arrears for the period from 04/04/1998 to 03/04/2001, amounting to Rs.1,44,000/-.

4. Regular Darkhast No.14/2012 is filed by respondent Nos. 1 to 4 for recovery of maintenance of Rs.2,99,504/-. In the said darkhast, property of petitioner bearing Block No.230/1, situated at village Nardana, to the extent of 1/3rd share of petitioner was attached and put for public auction. Sale of the said property of petitioner fetched amount of Rs.12,11,000/-, which was deposited in executing Court.

5. Decree holders/respondent Nos. 1 to 4 sought withdrawal of amount of Rs.8,18,504/- from amount of sale proceeds. Petitioner resisted the said application and by filing application Exhibit-137 challenged the auction sale being illegal and irregular, contending that Tahsildar, Shindkheda, has not considered objection of petitioner to auction sale. Respondent Nos. 1 to 4 were paid amount of Rs.8,12,504/- out of sale proceeds. Executing Court elaborately considered record and rival submissions and by impugned order dated 20/09/2016 confirmed the sale. Respondent No.6 is declared as purchaser of property sold in auction. Decree holders/respondent Nos. 1 to 4 were permitted to withdraw amount of Rs.8,12,504/-. Decree holder (one of the decree holders) in

Regular Darkhast No.2/2015 was permitted to withdraw amount of Rs.1,03,652/- from the amount of sale proceeds. Petitioner challenged this decision by filing appeal under Order 43 Rule 1 of the Code of Civil Procedure, bearing Regular Civil Appeal No.130/2016.

6. During pendency of appeal, petitioner/judgment debtor withdrew amount of Rs.3,10,619/- out of sale proceeds from executing Court. After hearing petitioner and respondents, appellate Court dismissed appeal with costs. Hence, present petition.

7. Heard learned advocate for petitioners, learned advocate for respondent Nos. 1 to 4, learned advocate for respondent No.5 and learned advocate for respondent No.6.

8. Admittedly, towards recovery of arrears of maintenance period 1/3rd share of property of petitioner was put for auction and amount of Rs.12,11,000/- was received from sale proceeds. Petitioner has tried to rely upon letter dated 16/12/2015 issued by Sub-Divisional Officer, Shirpur to Tahsildar, Shindkheda, that there were some technical flaws and irregularity in procedure of auction sale and Sub-Divisional Officer, Shirpur, has informed to conduct re-auction of the said property. Petitioner has also sought relevant documents from Tahsildar by filing application. Petitioner by

communication dated 21/12/2020 was informed that documents sought by him are not available and therefore, Tahsildar is not in a position to give documents asked by him.

9. Executing Court has recorded a specific finding that judgment debtor has failed to prove that there was material irregularity or fraud in publishing or conducting sale of Block No.230/1. Executing Court has observed that notice of auction sale under Order 21 Rule 66 is duly served on judgment debtor. Proclamation was issued by bailiff on 17/09/2008 and the same was also served on judgment debtor/petitioner. Judgment debtor moved application Exhibit-74 for appointment of valuer for assessment of subject plot. Auction sale was, therefore, suspended and Tahsildar, Shindkheda, was appointed as valuer to fix the value. Accordingly, valuation was done and after following due procedure, auction sale was conducted on 20/10/2015. It is further held that though the period of one year is over, neither judgment debtor nor any other person interested in subject plot moved any application to set aside sale of subject plot as per Order 21 Rule 89 or 90 of the Code of Civil Procedure. Executing Court, therefore, by taking into consideration legal provisions, passed the impugned order.

10. Appellate Court has considered grounds raised by petitioner by coming to conclusion that no illegality or irregularity is

found during the auction sale. Objection of petitioner in respect of the said letter dated 16/12/2015 is also considered holding that, what type of irregularity or illegality crept in auction sale is not clear from the said letter. In that view of the matter, appellate Court has also held against the petitioner.

11. Perusal of both the impugned orders show that both the Courts below have properly appreciated and dealt the contentions of petitioner and have rightly held against him. Taking into consideration the fact that petitioner has withdrawn remaining amount of sale proceeds during pendency of appeal, no substance is found in the challenge raised by petitioner in present petition. Writ petition, being devoid of merits, is dismissed. No costs.

(NITIN B. SURYAWANSHI, J.)