

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2945 OF 2015**

M/s Koral Builders & Ors.

....Petitioners

V/s.

Parshwanath Co-op Bank Ltd. & Ors.

...Respondents

**WITH
WRIT PETITION NO.5479 OF 2015
WITH
WRIT PETITION NO.2525 OF 2015**

Mr.Madhur Rai i/b PRS Legal for Petitioner in WP/2525/2015 and for Respondent No.3 in WP/2945/2015

Mr. S. R. Ganbavale i/b Mr. Kush Lohankar for Petitioner in WP/2945/2015 and Respondent No.1 in WP/2525/2015

Mr. Surel Shah for Petitioner in WP/5479/2015 and for Respondent Nos.1 & 2 in WP/2945/2015

**CORAM : K.R. SHRIRAM &
PRITHVIRAJ K. CHAVAN JJ
DATED : 14th JUNE 2022**

P.C. :

WRIT PETITION NO.2945 OF 2015

1 Not on board. By consent taken on board in view of the order dated 7th June 2022.

2 On 3rd December 2020, the following order came to be passed:

"1. In Writ Petition No. 2945 of 2015 filed by the borrower, following order was passed on 15 January 2019:-

"1. The Petitioners have impugned the Judgment and Order dated 10 October 2014 passed by the learned Chairperson, Debts Recovery Appellate Tribunal, Mumbai in Securitization Appeal No.123 of 2010 and Misc. Securitization Appeal No.279 of 2010.

2] By the impugned Judgment and Order dated 10 October 2014, the Tribunal has set aside the sale of the property in question and has directed that, the Petitioner/ Borrower is entitled for its possession on payment of Rs.1,00,00,000/- (Rupees One Crore Only) to the Respondent No.1 within the stipulated period mentioned

therein. The Petitioners have impugned the said Judgment and Order on various grounds in the present Petition.

3] During the course of arguments, the learned counsel for the Petitioners on instructions from the partner of the said firm has admitted, acceptance of the loan amount and the debts. The learned counsel for the Respondent Nos.1 and 2 on instructions submitted that as of today the amount due and payable by the Petitioners to the Bank is approximately Rs.5,75,00,000/- (Rupees Five Crores Seventy Five Lakhs only).

4] The learned counsel for the Petitioners on instructions submitted that his clients are intending to put an end to the entire litigation, however, as of today the properties of the Petitioners are attached by the Bank and without its sale the Petitioners are unable to satisfy the loan amount.

5] Prima facie, it appears to us that the direction issued by the Tribunal of payment of rupees one crore to the bank for getting possession of the suit property is just and fair direction in the facts and circumstances of the present case. Be that as it may. As the Petitioners have invoked the discretionary jurisdiction of this Court under Article 226 of Constitution of India and as the Petitioners are desirous and intending to argue the matter on merits, we direct the Petitioners to deposit rupees one crore in the Registry of this Court to prove their bonafides. The Petitioners are accordingly granted six weeks time from today to deposit the said amount of rupees one crore in the Registry of this Court. If the Petitioners deposit the said amount within the stipulated period, the present Petition will be heard on its own merits on the next date of hearing.

6] Stand over to 27 February 2019."

2. Thus, the Court had directed the Petitioners to deposit an amount of Rs. One Crore and upon depositing the same, the petition was to be heard on merits. The reasons for issuance of such directions was also recorded.

3. Registry has placed an endorsement that the amount has not been deposited. Learned counsel for the Respondent Bank and the auction purchaser states that as per their own information, Petitioners had approached the Apex Court against the order dated 15 January 2019 by filing a Special Leave Petition and that Special Leave Petition was rejected. They state that the order of the Apex Court will be placed on record.

4. Further, when the petitions came up on 27 October 2020, following order was passed:- "

1. The last order passed in these petitions is dated 20 February 2020, wherein it is recorded that the borrower, whose property has been sold, appeared in person and informed that his counsel has returned the brief.

2. The learned counsel for the Petitioner states that substantial amount of money has not been made available to the Petitioner-Bank in view of the pending litigation.

3. Place the petition on board on 26 November 2020.

4. The borrower will make an arrangement to either appear in person or engage an advocate. Failure of the borrower to do so, the

Court may proceed to pass an appropriate order in his absence.

5. The learned counsel for the Petitioner states that he will communicate this order to the borrower."

5. Thereafter, the matter was adjourned to today.

6. When called out none appears for the Petitioner Borrower. By way of indulgence, we defer the hearing.

7. In view of the orders passed on 15 January 2019 and the subsequent orders passed, we extend the time to deposit this amount by further period of six weeks from today. The Petitioner Borrower is put to the notice that on failure to deposit this amount, Court may not entertain the petition on merits.

8. Learned counsel for the auction purchaser states that the auction purchaser is in possession of the subject property and third party rights have been created. The present position to continue till further orders.

9. Stand over to 14 January 2021.

10. This order will be digitally signed by the Private Secretary of this Court. All concerned to act on production by fax or email of a digitally signed copy of this order."

3 Six weeks period given in paragraph 7 of the order dated 3rd December 2020, expired sometime in the middle of January 2021. We are in June 2022. Till date, the amount of Rs.1 crore has not been deposited. Mr. Ganbavale states that petitioner died sometime in March 2022 and his sons have now approached him to explore the possibilities of settlement. Certainly, we will not come in the way of parties but the death of petitioner will not come to the rescue of the legal heirs of the estate because the six weeks period ended some time in the middle of January 2021, more than 15 months before petitioner expired.

4 Writ Petition No.2945 of 2015 is dismissed.

WRIT PETITION NO.5479 OF 2015
WITH
WRIT PETITION NO.2525 OF 2015

5 Stand over to 28th June 2022.

(PRITHVIRAJ K. CHAVAN, J.)

(K.R. SHRIRAM, J.)