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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO. 5163 OF 2022

PURUSHOTTAM BADRINATH CHANDAK

....PETITIONER

V/s.

SAVITRABAI BADRINARAYAN CHANDAK
SINCE DEC THR LRS AND ORS

.....RESPONDENTS

Dr. Uday P. Warunjikar Advocate for the Petitioner
Mr. Girish R. Agrawal Advocate for Respondent no.2
Mr. Ajay A. Joshi Advocate for Respondent no. 3

CORAM : NITIN W. SAMBRE, J.

DATE: APRIL 26, 2022.

P.C.:

1) Respondent no. 3 Plaintiff filed a Suit for partition in which the Petitioner is shown to be Defendant no. 3. After the Suit was decreed on 11/07/1997, execution proceedings were initiated.

2) Based on the Report of Court Commissioner it was ordered that Partition cannot be effected. Pursuant to provisions of Order XXI Rule 66 of the Code of Civil Procedure, 1908 (Hereinafter referred to as 'CPC' for the sake of brevity) order came to be passed thereby

directing auction of the Suit property.

3) It appears that Petitioner who claimed to be Judgment-Debtor no. 2 moved an Application Exh. 92 offering Rs. 1 Crore towards consideration in the said execution.

4) As a consequence, vide order below Exh. 77, Petitioner was permitted to deposit sale consideration of Rs. 75,00,000/- excluding his 1/4th share with directions to permission to parties to the Decree to execute the sale deed failing which Court Officer was directed to execute the sale deed.

5) Plaintiff-Decree holder and present Petitioner preferred Writ Petition No. 8669/2021 and 7390/2021 which was allowed by consent with directions to carry out valuation of the Suit property.

6) In the said order at the request of parties, this Court directed Executing Court to complete entire process of action within 10 weeks.

7) Vide impugned order passed on 30/03/2022 below Exh. 1, bid of Judgment-Debtor no. 2 for Rs. 1,38,00,000/- was accepted. Since the amount of Rs. 75,00,000/- was already deposited as observed herein above, he was directed to deposit remaining amount.

- 8) Said order is under challenge on the ground that Court below committed an error in valuing the property at much below market value as has been mentioned in the valuer's report.
- 9) Dr. Warunjikar would invite attention of this Court to valuation given by Government approved Valuer appointed by the Court which is around Rs 50 lakh so also report of the Valuer produced by the Petitioner wherein valuation of the Suit property is mentioned as Rs. 1,81,79,000/-.
- 10) As such, according to him, Court should re-auction the property.
- 11) I have appreciated said submissions.
- 12) Fact remains that even if the Petitioner has come out with a case that Suit property is valued at Rs. 1,81,79,000/-, Petitioner is neither willing to buy the said property at that cost nor offer was received over and above amount of Rs 1.38 crore. Executing Court has considered highest offer received pursuant to the provisions of Order XXI Rule 66 of the CPC and proceeded to accept the offer of Rs. 1,38,00,000/- given by Judgment-Debtor no. 2. Court as such directed issuance of sale certificate.

13) As neither Petitioner nor Respondent No.3 has brought any purchaser over and above the offer made by the judgment-debtor No.2 of Rs 1.38 crores, the claim that property should be put to public auction based on valuation report of the Petitioner does not warrant any consideration, as the same is without any legal basis.

14) In that view, in my opinion, no interference is called for in the impugned order. Petition as such stands rejected.

15) At this stage, prayer is made by Petitioner and Respondent no. 3 that order of saddling the cost be recalled.

16) Parties are at liberty to move before the Executing Court with such prayer. Executing Court shall deal with the same in accordance with law.

17) Liberty to the parties to apply for grant of time to vacate the premises before the Court below.

[NITIN W. SAMBRE, J.]