

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8750 OF 2021

Narendra Thakker & Ors.

..... Petitioners

Vs.

Canara Bank & Ors.

..... Respondents

Mr. Girish Godbole I/b. Harshad Bhadbhade for the
Petitioners

Mr. Mayank Bagla a/w. Alok Bagla for Respondent No.7

Mr. Vaishnavi Bhilare for Respondent No.1 Bank

Mr. Rishabh Shah for Respondent No.2

**CORAM: A.A.SAYED &
ABHAY AHUJA, JJ.**

**DATED : FEBRUARY 11, 2022
(VIDEO CONFERENCING)**

P.C.

1 The present Writ Petition is filed only because the Debts Recovery Appellate Tribunal (DRAT) is vacant and where the Appeal No.3 of 2021 filed by the Petitioners is pending. The said Appeal has been filed by the Petitioners before the DRAT challenging the order dated 18th February 2021 passed by the Presiding Officer, Debts Recovery Tribunal (DRT), Mumbai, dismissing the Appeal, thereby

confirming the orders dated 29th December 2020 and 30th December 2020 in Recovery Proceeding No.551 of 2004.

2 The Petitioners are aggrieved, as their bid was not considered in the bidding process, pursuant to the public auction of immovable property by Respondent No.1 Canara Bank to whom Recovery Certificate has been issued. The deadline for submission of the bid was 4.30 pm on 28th December 2020. Respondent No.2 is the successful bidder. The case of the Petitioners is that they could not upload the documents before the deadline of 4.30 p.m. on 28th December 2020 due to technical glitches and the copy of the physical documents were submitted only at 05.20 p.m. on 20th December 2020. While dismissing the Application of the Petitioners, the Recovery Officer, in impugned order dated 29th December 2020 has observed as follows:

“5 It was categorically stated that intending bidders have to upload the documents and also submit the hard copies before the undersigned on or before 28.12.2020 by 04.30 p.m. Shri Narendra Thakker and six others, Intending bidder defaulted on three counts. Firstly, that they have uploaded insufficient documents. Secondly, hard copies have been submitted after 04.30 pm. and lastly they have not submitted the duly signed authorization of other six intending bidders.”

3 In the Appeal filed before the Presiding Officer, DRT, in paragraph Nos.36,39,48 and 49, it is observed as under :

36. The appellant Nos.2 to 7 have no locus-standi to challenge the impugned orders. Admittedly, the appellants Nos.2 to 7 did not grant any authority to the appellant no.1 to submit the bid on 28th December 202. No cause of action has accrued in favour of the appellant Nos.2 to 7.

.....

39. Whether the appellants attempted to collude and connive with the review applicant to sabotage the e-auction? Whether the appellants are used as a proxy litigant to protract the legitimate recovery of the respondent No.1 that is certificate holder? By annexing the Review Application, this Tribunal can safely infer the closeness or connection between appellants and the review applicant. The Review Application reached the appellants and got it annexed to the Appeal, to prejudice the Tribunal's mind. The conduct of the appellants is reprehensible and does not deserve any sympathy. It is nothing short of fraudulent activity.

.....

48 The disqualification of the appellants' participation in the bidding process is proper. It is as per the terms and conditions laid down in the sale notice. The learned R.O. has no authority to waive such condition on incomplete bid. There is no arbitrariness or irrationality in disqualifying the appellants. It is not in dispute that the terms and conditions laid down the compliance I details. The appellants' act of omission or commission violates Rules 59(2) of the 2nd Schedule of the Income Tax Act. It does not contemplate to condone the delay in tendering the bid beyond due date and time. There

are other clauses also which postulates strict compliance. The appellant failed to comply with the requirements of Rule.59(2), which is mandatory.

49 For the fault of the appellants, the right accrued in favour of the respondent nos.1 and 2 cannot be unsettled.”

4 Learned Counsel for the Petitioner states that the present Writ Petition is filed only seeking relief that pending the Appeal before the DRAT, no third party rights be created by Respondent No.2.

5 It is an admitted position that Respondent Nos.2, who is a successful bidder, has already paid the purchase price and has been issued Sale Certificate on 10th March 2021 and is in possession of the subject property. During pendency of the Appeal, there was no interim order passed by the DRAT despite the matter being adjourned multiple times before the DRAT, as admitted by the Petitioners in the Synopsis of the Petition.

6 In the facts and circumstances of the case, we are not inclined to grant any relief. The Petition is, therefore, dismissed. We, however, make it clear that after the DRAT starts functioning and the Appeal is heard, the same shall

be heard on its own merits without being influenced by the observations in this order.

(ABHAY AHUJA, J.)

(A.A.SAYED, J.)