

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

**CONTEMPT PETITION NO.420 OF 2022
IN
APPEAL FROM ORDER NO. 37 OF 2018**

**RAJLAXMI INFOTECH PRIVATE LTD THROUGH ITS
DIRECTOR VISHALMANOHARRAO BUDHWANT
VERSUS
VAIDHYANATH URBAN CO OPERATIVE BANK THROUGH ITS
MANGER AND ANOTHER**

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Mr. Shivprasad G. Jadhavar, Advocate for the applicant.
Mr. V.P. Golewar, Advocate holding for Mr. A.R. Joshi, Advocate
for respondent Nos.1 and 2.

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CORAM : SANDIPKUMAR C. MORE, J.

Order Reserved on : 7th February 2023

Order Pronounced on : 9th February 2023

ORDER:-

1. The petitioner Company is seeking action against the respondents under the Contempt of Courts Act, for willful and intentional disobedience of the order passed by this Court in Appeal from Order No.37/2018 on 4th October 2018.

2. The learned Counsel for the petitioner submits that the petitioner Company had filed Regular Civil Suit No. 54/2018 against respondent No.1 Bank for the alleged fraud while disbursing the loan amount. However, in the said civil suit, the plaint was rejected under Order VII Rule 11 of the Code of Civil Procedure. Against the said order of rejection,

the petitioner then filed Regular Civil Appeal No. 97/2018 before the District Court, Parbhani. However, the application below Exh.5 in the said appeal was rejected by the District Court. Thereafter the petitioner Company filed Appeal from Order No. 37/2018 against such rejection of Exh.5 at the hands of the learned District Court, Parbhani. In the said Appeal from Order this Court, vide order order 10th July 2018 had directed the respondents to put on hold the intended action subject to condition that the appellant shall deposit a sum of Rs. 1.5 Crores in this Court by 20th August 2018. Accordingly, the said amount was deposited. But while deciding the aforesaid Appeal from Order, this Court, vide order dated 4th October 2018, had made the following observations in para Nos.9 and 10:

“9. In view of the above, this appeal from order is partly allowed by continuing the relief granted to the appellant by this Court vide order dated 10.7.2018. The respondent / Bank is permitted to withdraw the entire deposited amount from this Court along with the accrued interest, if any and on this condition the appellant would stand protected against coercive steps pursuant to the order of the trial Court rejecting the plaint under Order VII Rule 11 of the CPC. The appellate Court shall, therefore, decide RCA No.97 of 2013 as expeditiously as possible and in any case on/or before the 28.2.2019.

10. It is made clear that as the respondent / Bank is withdrawing the amount of Rs.1,50,00,000/, it shall stop levying interest on this much amount and this withdrawal shall be subject to the result of the appeal”.

Thus, the learned Counsel for the petitioner Company submits that despite there being an order restraining the respondents for not to go for intended action, the respondents auctioned the properties of the petitioner Company situated at Chikhli, District Buldana by way of Assignment Deed and thus committed breach of the aforesaid both orders dated 10th July 2018 and 4th October 2018.

3. On the contrary, learned Counsel for the respondents strongly opposed the submissions and claimed that no breach is committed by the respondents in respect of the aforesaid orders of this Court in AO No. 37/2018. He pointed out that the intended action which was to be put on hold under these orders, was in fact in respect of the properties mentioned in the plaint of R.C.S. No. 54/2018 situated at Shriram Nagar, Karegaon Road, Parbhani and not in respect of the properties situated at Chikhli, District Buldana which are auctioned by the respondents. He also submitted that this Court has already made it clear in the civil application filed by the petitioner Company, that the properties situated at Chikhli, District Buldana which are auctioned by the respondents, are not covered under the order passed by this Court on 4th October 2018. As such, he prayed for

dismissal of the petition.

4. On perusal of record, it is evident that the petitioner Company is seeking action under the Contempt of Courts Act against the respondent Bank, mainly on the ground that despite restriction under the orders dated 10th July 2018 and 4th October 2018, the respondent Bank auctioned its property.

5. Admittedly, the properties which are subject-matter of R.C.S. No. 54/2018 are different from the properties which are auctioned by the respondent Bank. The suit properties are situated at Shriram Nagar, Karegaon Road, Parbhani and the properties which are auctioned, are situated at Chikhli, District Buldana. Further, it is evident from the order passed by this court on 28th July 2021 that the petitioner Company had in fact challenged the scheduled auction of the properties at Chikhli wherein this Court under order dated 16th March 2021, had in fact permitted the respondents to go ahead with the scheduled auction, but asked not to finalise the higher bid, till next date. The said order was extended upto 6th April 2021, but ultimately vide order dated 2th July 2021, this Court clarified that the properties situated at Chikhli, District Buldana are not the properties covered under the order dated

4th October 2018 in respect of which the present Contempt Petition is filed. Therefore, in the light of such clarification by this Court only, the act of auctioning the properties situated at Chikhli, District Buldana does not come under the provisions of the Contempt of Courts Act, and therefore, I find no force in the petition. In the result, the petition stands dismissed.

(SANDIPKUMAR C. MORE, J.)