



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 4450 OF 2023

Shakil Tajuddin Pirjade

...Petitioner

Versus

Rajendra Hairalal Shah And Ors

...Respondents

***Mr. Chaitanya Chavan a/w Adv. Karan S. Thorat i/by
Adv. Prithviraj S. Gole, Advocates for Petitioner.***

*Mr. Charles D'souze a/w Adv. V.N. Ajitkumar i/by V.N.
Ajitkumar, Advocates for Respondent No.1.*

Mr. Anant B. Shinde , Advocates for Respondent No. 3.

***Mr. Rajendra Hiralal Shah, is present through Video
Conferencing and he is identified by representing Advocate.***

**CORAM : B. P. COLABAWALLA &
M.M. SATHAYE, JJ.**

DATE : OCTOBER 20, 2023

P. C.

1. The present Writ Petition impugns an order dated October 28, 2022 passed by the Debts Recovery Appellate Tribunal, Mumbai (**DRAT**) in Appeal No.212 of 2015 (**Impugned Order**) filed by Respondent No. 1. By the Impugned Order, the sale of an immovable

property in favour of the Petitioner was set aside and the Petitioner was granted liberty to withdraw the bid amount paid by the Petitioner together with accrued interest thereon, if any.

2. Briefly stated, Respondent No.1 was a judgment debtor in Recovery Proceeding No. 136 of 2007 (**Recovery Proceedings**) initiated by Bank of Baroda (i.e. Respondent No.3) before the Debts Recovery Tribunal, Pune (**DRT, Pune**)

3. During the course of the Recovery Proceedings, pursuant to an order dated January 26, 2009, an auction notice was issued by the DRT Pune for sale of an un-divided 1/3rd share in an immovable property being agricultural land having a total area of 3 Hectar 45 Are plus Potkhrab land admeasuring 4 Are thereby making the total area of 3 Hectar 49 Are situated at Village Shiradwad, Taluka: Shirol, Dist. Kolhapur bearing Gat No. 40 and 53 together with all appurtenant thereto (**Subject Property**). The Petitioner had participated in the auction, emerged as the highest bidder with a bid of Rs. 9,36,000 (Rupees Nine Lakhs and Thirty-Six Thousand Only), and deposited the entire bid amount with the DRT Pune as well.

4. In the interregnum, Respondent No. 1 preferred Appeal No. 3 of 2009 before the DRT Pune, challenging the order dated January 26,

2009. By an order dated March 16, 2009 passed in the said Appeal, the confirmation of the sale in favour of the Petitioner was stayed.

5. While matters stood thus, Respondent No.1 approached Respondent No. 3 for a One Time Settlement (**OTS**). Respondent No. 3 acceded to the request of Respondent No. 1, the OTS amount was paid by Respondent No. 1 in full and final satisfaction of the recovery certificate and the claim of Respondent No. 3 against Judgement Debtors including Respondent No. 1 herein. Accordingly, Respondent No.3 filed an Application in the Recovery Proceedings for closure of the same. The said Application was allowed and the Recovery Proceedings were closed on June 3, 2010 albeit without any notice to the Petitioner.

6. As the Recovery Proceedings were closed, Respondent No.1 did not pursue Appeal No. 3 of 2009 and the same was dismissed for want of prosecution on November 01, 2010.

7. Thereafter, on December 6, 2010, the Petitioner filed an Application to reopen the Recovery Proceedings and also sought an order confirming the sale of the Subject Property in favour of the Petitioner. The said Application was allowed, the sale of the subject property was confirmed in favour of the Petitioner *vide* an order dated December 14, 2010, and a sale certificate was also issued in favour of the

Petitioner and registered on March 21st, 2012 (Reg. No.SRL-01431-2012). Pertinently, these developments in the Recovery Proceedings were without any notice to Respondent No. 1 and/or Respondent No. 3.

8. On learning of these developments, Respondent No. 1 preferred Appeal No.10 of 2012 before the DRT Pune challenging the order December 14, 2010 by which the sale was confirmed in favour of the Petitioner. The said Appeal was dismissed on March 20, 2015.

9. The order dated March 20, 2015 was challenged by Respondent No. 1 before the Debts Recovery Appellate Tribunal, Mumbai (**DRAT**) in Appeal No. 212 of 2015. The said Appeal was allowed by the Impugned Order leading to the present Writ Petition.

10. Arguments in the above Writ Petition were heard at some length during which time we indicated that we were not inclined to interfere with the Impugned Order since the **(a)** the Recovery Proceedings were reopened without notice to Respondent No. 1 and Respondent No. 3; **(b)** on the date of reopening the Recovery Proceeding the claim of Respondent No. 3 under the recovery certificate had been fully marked and satisfied; **(c)** the sale of the Subject Property in favour of the Petitioner was also confirmed without notice to Respondent No. 1 and Respondent No. 3 and **(d)** as the claim of Respondent No. 3 under the

recovery certificate had been satisfied there was no occasion to confirm the sale of the Subject Property in favour of the Petitioner. At the same time, we also indicated that Respondent No. 1 and 3 had not informed the Petitioner about the settlement of the disputes between Respondent No. 1 and Respondent No. 3 leading to the peculiar circumstances of the present case and the Petitioner being put to some hardship and inconvenience.

11. In this background, Respondent No. 1 offered to pay the Petitioner some compensation to put a quietus to the dispute. The Petitioner has agreed to accept the compensation offered by Respondent No. 1 and abandon the challenge in the present Writ Petition.

12. Resultantly, the Impugned Order is confirmed and the Writ Petition is disposed off, by consent of the parties, on the following terms:

a. We are informed that the bid amount of Rs. 9,36,000 (Rupees Nine Lakhs and Thirty-Six Thousand Only) deposited by the Petitioner with the DRT Pune in the Recovery Proceedings (i.e., Recovery Proceeding No. 136 of 2007) has been invested by the DRT Pune in a fixed deposit with erstwhile Syndicate Bank (now Canara Bank). The Petitioner shall be entitled to the said amount

of Rs. 9,36,000 (Rupees Nine Lakhs Thirty Six Thousand Only) together with all interest accrued thereon;

b. The Recovery Officer, DRT Pune is directed to liquidate the aforementioned fixed deposit and release the said amount of Rs. 9,36,000 (Rupees Nine Lakhs Thirty Six Thousand Only) together with all interest accrued thereon in favour of the Petitioner within a period of 4 weeks from today;

c. In addition to the above, Respondent No. 1 shall pay an amount of Rs. 4,00,000 (Rupees Four Lakhs Only) as compensation to the Petitioner. In compliance, today, in Court, Respondent No.1 has handed over a Demand Draft bearing No.013938 dated 19th October, 2023 of Rs. 4 Lacs drawn on HDFC Bank Ltd issued in favour of Petitioner, which is accepted and acknowledged by Petitioner today.

d. The Petitioner shall take all necessary steps for cancellation of the sale certificate issued by the Recovery Officer, DRT Pune which was registered on 21st March, 2012 (Reg. No.SRL-01431-2012) and thereafter the same shall be submitted to the Recovery Officer, DRT Pune with intimation to Respondent No.1 and 3 within a period of 4 weeks from today.

13. The Writ Petition is disposed off on the above terms.

14. No order as to costs.

15. This order will be digitally signed by the Private

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Shubham Talle

Secretary/Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[M.M. SATHAYE, J.]

[B. P. COLABAWALLA, J.]