

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

WRIT PETITION NO. 11952 OF 2023

M/s. Om Construction & Infrastructures ... Petitioner

versus

State of Maharashtra and Others ... Respondents

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Mr.Niranjan Mogre for the Petitioner.

Mr.S.H.Kankal, AGP for Respondent Nos. 1 to 3-State.

Mr.Pramod N.Joshi with Ms.Rukmini Khairnar for Respondent No.4.

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**CORAM : NITIN JAMDAR &
MANJUSHA DESHPANDE, JJ.**

DATE : 20 DECEMBER 2023

P.C.:

Heard the learned Counsel for the parties.

2. The Petitioner is the borrower of Respondent No.4- Bank. In spite of the recovery certificate issued against the Petitioner in March 2019 for Rs.1,04,07,785/- plus interest has not paid a single rupee till date and has only subjected Respondent No.4- Bank to multiple litigations. The present Petition being one of such litigations.

3. The Petitioner is in the business of construction and real estate development. The Petitioner had obtained loan from Respondent

No.4- Bank in the year 2014. The Petitioner, as stated earlier, has not repaid the loan amounts, not even a portion of it. Therefore, on 20 August 2018, Respondent No.4- Bank filed recovery application under Section 101 of the Maharashtra Co-operative Societies Act, 1960 (the Act of 1960) for recovery of dues amounting to Rs. 1,04,07,785/-. The recovery certificate was issued on 13 March 2019 by the Deputy Registrar Co-operative Societies. Notice prior to attachment was issued on 30 March 2019 by the Special Recovery Officer regarding attachment of the mortgaged properties. On 14 May 2019, the mortgaged properties of the Petitioner were attached and public notice was issued regarding attachment of the said properties. The Deputy Registrar Co-operative Societies debating regarding the upset price and challenging the auction notices issued in April and May 2022 just prior to auction was scheduled.

4. The Petitioner filed a Writ Petition bearing No. 4612 of 2022 in this Court. This Writ Petition was disposed of on 6 May 2022 issuing certain directions. The present Petition is filed on 20 September 2023 for staying the proceedings in respect of Civil Application No. 29 of 2022 filed before the Deputy Registrar Co-operative Societies by Respondent No.4- Bank under Section 100 of the Act of 1960 and Rule 85 of the Maharashtra Co-operative Societies Rules, 1961 (the Rules of 1961). When the present Petition came up on board on 19 October 2023, the stay on the auction process was declined and no relief was granted.

Thereafter, the Petition has come up for consideration.

5. The learned Counsel for the Petitioner submits that though it is correct that the recovery certificate has not been challenged (as the terms required under the Statute) and the loan amount has not been paid, Respondent No.4-Bank should be directed to take steps forthwith for carrying out auction of the second mortgaged property, that is, open NA plot, out of three mortgaged properties. To a query whether the Petitioner can dictate as to which property should be sold in an auction by Respondent No.4- Bank to recover its dues or whether he has any statutory right to do so, the Petitioner has placed reliance on the order passed by the Division Bench of this Court in Writ Petition No. 4612 of 2022, more particularly, clause (iii) of paragraph 25 which reads thus:

“25 (iii) The Respondent No.3- bank to take steps to auction the property of the Petitioner namely land admeasuring 0 hector 20 R alongwith construction thereon out of Survey No. 165 (2/2) 5 of Tarwala, Dindori Road, Nashik after the upset price is fixed by the Respondent No.2. If the auction sale of the said property fails to satisfy the dues of the Respondent No.3-bank as contemplated by Section 156 of the said Act then the Respondent No.3-bank is at liberty to auction other properties”.

Reliance is also placed on the observations made in the said decision.

6. Reply affidavit is filed on behalf of Respondent No.4- Bank. The learned Counsel for Respondent No.4- Bank also submits that

the Petition is infructuous as Civil Application No. 29 of 2022 on which the Petitioner sought stay has already been decided.

7. We may note here that since the Petitioner has invoked equity jurisdiction of this Court, we had put a query to the learned Counsel for the Petitioner for extending indulgence as to whether the Petitioner is ready to give a proposal for repayment of the admitted dues. The Petitioner throughout the proceedings has described itself as a developer which is as on today carrying out the development projects. In spite of this position, the learned Counsel for the Petitioner, on instructions, categorically refused to deposit a single rupee. The only interest of the Petitioner appears to be to create maze of litigation to somehow stall recovery of the amounts. As a result, from 2014, for last nine years, Respondent No.4-Bank has not been either able to recover its legitimate dues or to sell the properties.

8. In the order dated 6 May 2022 passed in Writ Petition No.4612 of 2022, it was stated that after the auction was held by Respondent No.3- Bank and if Respondent No.3-Bank did not get the requisite amount, liberty was granted to Respondent No.3- Bank to auction further properties. It was also stated that the upset price was fixed, which was also challenged by the Petitioner in Writ Petition No. 8162 of 2022 in which no interim order was passed. Respondent No.4- Bank has stated that auctions were conducted but no proper purchasers have forthcoming. After making these

attempts, Respondent No.4- Bank filed proceedings under Section 100 of the Act of 1960 and Rule 85 of Rules of 1961.

9. Respondent No.4- Bank has contended that this application was filed on 10 October 2022 and after taking multiple adjournments, when it was placed for passing order, the Petitioner has moved the present Petition. Respondent No.4- has stated that the total outstanding as of today is approximately Rs. 4,71,77,749/-. Respondent No.4- Bank also stated that if the Petitioner intends to sell the properties, then nothing stopped the Petitioner from bringing prospective buyers .

10. The order passed by the Division Bench of this Court in Writ Petition No. 4612 of 2022 cannot be considered as prohibiting Respondent No.4- Bank from recovering its dues. The order will have to be understood in this perspective and it does not give free charter to the Petitioner to raise unlimited blockages in the way of Respondent No.4- Bank from recovering its legitimate dues. The stay to the proceedings in Civil Application No. 29 of 2022 was sought by filing Petition on 20 September 2023 when the application was filed by Respondent No.4- Bank on 10 October 2022. Clearly, it was an attempt to scuttle these proceedings. Neither the Petitioner has brought any prospective purchasers nor the Petitioner is ready to clear any of the dues. Respondent No.4- Bank has taken recourse to the statutory provisions. If it was the case of the Petitioner that Civil Application No. 29 of 2022 filed by

Respondent No.4- Bank was contrary to the order passed by this Court on 6 May 2022, the Petitioner ought not to have waited for one year to raise this challenge. Therefore, this conduct on the part of the Petitioner is clearly not a bona fide.

11. Taking over all view of this matter, we find that no case is made out to exercise equity jurisdiction under Article 226 of the Constitution of India.

12. The Writ Petition is accordingly dismissed.

13. Furthermore, Civil Application No. 29 of 2022, as pointed out by the learned Counsel for Respondent No.4-Bank, has already been decided.

(MANJUSHA DESHPANDE, J.) (NITIN JAMDAR, J.)