2024:BHC-AUG:22676

IN THE HIGH COURT OF JUDICATURE AT BOMBAY BENCH AT AURANGABAD

WRIT PETITION NO.13865 OF 2023

1. Sanjay Bhimrao Patil,
Age: 45 Years, Occu.: Business,
R/o. Near School No.11,
Fule Colony at Chalisgaon,
Taluka: Chalisgaon, District: Jalgaon

2. Renuka Sanjay Patil,
Age: 39 Years, Occu.: Household,
R/o.: Near School No.11,
Fule Colony at Chalisgaon,
Taluka: Chalisgaon, District: Jalgaon

3. Prataprao Chandrarao Bhosale,
Age: 55 Years, Occu.: Business,
R/o.: Netaji Chowk, Near Maruti Mandir
at Chalisgaon, Taluka: Chalisgaon,
District: Jalgaon

4. Mulchand Tirthdas Goplani,
Age: 52 Years, Occu.: Business,
R/o.: 203, Sindhi Colony Road,
at Chalisgaon, Taluka: Chalisgaon,
District: Jalgaon

5. Bhimsing Kautik Patil,
Age: 50 Years, Occu.: Business,
R/o.: Near School No.11,
Fule Colony at Chalisgaon,
Taluka: Chalisgaon, District: Jalgaon **.. Petitioners**
(Original Judgment debtor)

Versus

1. Shriram City Union Finance Ltd.,
Vitthal Shopping Complex, 119
A Wing, Shop No. 1-6, Jay Nagar,
Beside Omkareshwar Temple, Jalgaon

Taluka and Jalgaon- Jalgaon **.. Respondent**
(Original Decree Holder)

2. Bhagesh Chhotu Chaudhari,
Age: 33 Years, Occu.: Business,
R/o.: Behind Hanuman Mandir,
Netaji Palkar Chowk, Chalisgaon,
Taluka: Chalisgaon, District: Jalgaon **.. Respondent**
(Auction Purchaser)

…

Advocate for Petitioners: Mr. Jitendra Vijay Patil
Advocate for Respondent No.1: Mr. V. Y. Bhide
Advocate for Respondent No.2: Mr. Ujwal S. Patil

…

CORAM	**:**	**ARUN R. PEDNEKER, J.**
DATE	**:**	**24.09.2024**

<u>JUDGMENT</u>:

1. Heard.

2. Rule. Rule returnable forthwith. With consent of the parties, the matter is heard finally.

3. By the present petition, the petitioners are challenging the order dated 03.10.2023, passed below Exhibit 198, in Arbitration Regular Darkhast No.292 of 2020, passed by the Civil Judge, Senior Division, Chaligaon. By the impugned order, the learned Judge has allowed the application filed by the auction purchaser and extend the time to deposit balance amount of the auction purchase.

4. The facts giving rise to the petition are summarized as under:

A] Petitioners No.1 and 2 obtained loan from respondent no.1 financial institution by mortgaging property admeasuring 248.45 Sq. Meters along with constructed house on plot no.309. Petitioners No.3 and 4 are the guarantors of the loan. Since, the petitioners were unable to pay the loan, respondent no.1 financial institution instituted recovery proceedings against the petitioners and award came to be passed on 14.07.2018 in favour of respondent no.1.

B] Regular Darkhast No.292 of 2020 was filed before the learned Civil Judge, Senior Division, Chalisgaon and during pendency of the execution proceedings compromise took place between the parties. It was agreed that borrowers would pay Rs.60,00,000/- towards the final settlement of the award. The petitioners only paid Rs.17,00,000/- and were unable to pay the balance amount, as such, the recovery proceedings continued further and the mortgaged property was put up for auction.

C] On 16.09.2023, respondent no.2 was declared as the highest bidder of the mortgaged property. Accordingly, as per Rule

84 of Order 21 of the CPC, on 16.09.2023, the auction purchaser deposited 25% of the amount before the executing court.

D] Respondent no.2 / auction purchaser deposited 25% of the purchase money on 16.09.2023 and again 25% of the purchase money on 03.10.2023, and, also, by an application at Exhibit-198, he prayed for extension of time to deposit remaining 50% of the purchase money in the court.

E] The application was resisted by the petitioners contending that the purchase money has to be deposited within 15 days of the auction, failing which the auction has to be set aside. The civil court by impugned order dated 03.10.2023, below Exhibit 198, passed the following order.

> ***" ORDER***
>
> ***1. The application (Exh.198) is allowed.***
>
> ***2. The concerned Clerk to present the first cheque dated 03.10.2023 for encashment immediately and the second cheque on 02.11.2023 and report its compliance."***

The learned Civil Judge, Senior Division, Chalisgaon, by order dated 03.10.2023, granted extension of time to deposit balance 50% of amount till 02.11.2023.

5. The learned counsel for the petitioners submits that the time to deposit would have not been extended beyond 15 days till 02.11.2023, in view of Order 21 Rule 85 of the CPC. He submits that the provision is mandatory and relies upon the following Judgments:

> ***[1] Manilal Mohanlal Shah and Ors. Vs. Sardar Sayed Ahmed Sayed Mahamad and Ors., AIR 1954 SC 349,***
>
> ***[2] Nandkishor Daultrao Shelke Vs. Baban Vitthal Mhaske and Ors., 2005 (3) ALLMR 131,***
>
> ***[3] Uttamchand Milapchand Vs. Balkrishna Ramnath, AIR 1961 Bom. 224,***
>
> ***[4] Annamalai Vs. Nagoorgani and another, 2006 (5) CTC 649.***

6. Per contra, learned counsel appearing for respondent no.1 / financial institution submits that the Bhagesh Chhotu Chaudhari was the successful bidder in the auction sale for Rs.50,12,000/- on the date of declaration as successful bidder i.e. on 16.09.2023, the bidder has deposited Rs.12,53,000/- as 25% of the bid amount in the court by cheque payment. The 15th day was Sunday and 02.10.2023 was a public holiday, as such, on the very next date i.e. on 03.10.2023, the successful bidder by filing application Exhibit-198 in the pending execution Arbitration Regular Darkhast No.292 of 2020 tendered payment of the entire remaining

bid amount by two cheques; one cheque was of the same date i.e. 03.10.2023 of Rs.12,53,000/- and another cheque was of Rs.24,55,880/- dated 02.11.2023. As such, the bidder prayed for tendering payment of 50% of the bid amount by post dated cheque of one month. The executing court allowed the application. He submits that such an extension was permissible under Section 148 of the CPC and the court was within it's jurisdiction to extend the time.

7. It is also contended that the petitioners have not come up with any concrete proposal and no prejudice would be caused to the petitioners by extension of time. The amount fetched is by way of public auction.

8. In addition to the submissions made by the learned counsel for respondent no.1, respondent no.2 / auction purchaser contends that, respondent no.2 being the highest bidder, the amount be accepted and the petitioners being the defaulters have not deposited any amount; since the year 2020, as such, this court should interfere in the matter.

9. Considering the submissions raised by the parties, the issue that arises for consideration is, whether the executing court

could have accepted the post dated cheque, thereby, granting an additional one month time to the auction purchaser to deposit the purchase money. The relevant provisions dealing with this aspect is Order 21, Rules 84, 85 and 86, which are quoted below for ready reference:

> *"<u>84. Deposit by purchaser and re-sale on default</u>*
> *(1) On every sale of immovable property the person declared to be the purchaser shall pay immediately after such declaration a deposit of twenty-five per cent on the amount of his purchase-money to the officer or other person conducting the sale, and in default of such deposit, the property shall forthwith be re-sold.*
> *(2) Where the decree-holder is the purchaser and is entitled to set-off the purchase-money under rule 72, the Court may dispense with the requirements of this rule.*
>
> *<u>85. Time for payment in full of purchase money</u>*
> *The full amount of purchase-money payable shall be paid by the purchaser into Court before the Court closes on the fifteenth day from the sale of the property :*
> *Provided that, in calculating the amount to be so paid into Court, the purchaser shall have the advantage of any set-off to which he may be entitled under rule 72.*
>
> *<u>86. Procedure in default of payment</u>*
> *In default of payment within the period mentioned in the last preceding rule, the deposit may, if the Court thinks fit, after defraying the expenses of the sale, be forfeited to the Government, and the property shall be re-sold, and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may subsequently be sold."*

10. The Hon'ble Supreme Court in the case of **Manilal Mohanlal Shah and Ors. Vs. Sardar Sayed Ahmed Sayed Mahamad and Ors.** *(supra)*, has considered similar question, whether failure to deposit the auction price under Order 21, Rules 84 and 85 of the CPC is only a material irregularity in the sale, which can only be set aside under Rule 90 of the CPC or whether it is wholly void. The Hon'ble Supreme Court, at para 8 of the Judgment has held that the provision regarding deposit of 25% by the purchaser is mandatory and the full amount of the purchase money must be paid within 15 days from the date of sale. Rule 85 is mandatory in nature and, if, the payment is not made within a period of 15 days, the court has discretion to forfeit the deposit and, there, the discretion ends but the obligation of the court to re-sell the properties is imperative and the further consequences of non payment is that the defaulting purchaser forfeits all claim to the property. The Hon'ble Supreme Court in the case of **Manilal Mohanlal Shah and Ors. Vs. Sardar Sayed Ahmed Sayed Mahamad and Ors.** *(supra),* paras 8, 11 and 12 has observed as under:

> ***"8. The provision regarding the deposit of 25 per cent by the purchaser other than the decree-holder is mandatory as the language of the rule suggests. The full amount of the purchase-money must be paid within fifteen days from the date of the sale but the decree-holder is entitled to the advantage of a set-off. The provision for payment is,***

however, mandatory... (Rule 85). If the payment is not made within the period of fifteen days, the Court has the discretion to forfeit the deposit, and there the discretion ends but the obligation of the Court to re-sell the property is imperative. A further consequence of non-payment is that the defaulting purchaser forfeits all claim to the property (Rule 86).

11. Having examined the language of the relevant rules and the judicial decisions bearing upon the subject we are of opinion that the provisions of the rules requiring the deposit of 25 per cent of the purchase-money immediately on the person being declared as a purchaser and the payment of the balance within 15 days of the sale are mandatory and upon non-compliance with these provisions there is no sale at all. The rules do not contemplate that there can be any sale in favour of a purchaser without depositing 25 per cent of the purchase-money in the first instance and the balance within 15 days. When there is no sale within the contemplation of these rules, there can be no question of material irregularity in the conduct of the sale. Non-payment of the price on the part of the defaulting purchaser renders the sale proceedings as a complete nullity. The very fact that the Court is bound to resell the property in the event of a default shows that the previous proceedings for sale are completely wiped out as if they do not exist in the eye of law. We hold, therefore, that in the circumstances of the present case there was no sale and the purchasers acquired. no rights at all.

12. It was urged before us that the Court could allow a set-off in execution proceedings under its inherent powers apart from the provisions of Order XXI, Rule 19, of the Code of Civil Procedure Code. We do not think that the inherent powers of the Court could be invoked to circumvent the mandatory provisions of the Code and relieve the purchasers of their obligation to make the deposit. The Appellants by misleading the Court want to benefit by the mistake to which they themselves contributed. They cannot be allowed to take advantage of their own wrong."

11. The Hon'ble Madras High Court also in the case of **Annamalai Vs. Nagoorgani and another** *(supra),* has held that Order 21, Rules 84, 85 and 86 mandatory. The Hon'ble Madras High Court has further held that the court has no power under Section 148 of the CPC to extend the time fixed by the law or the statute and observed at paras 14, 15, 16 and 19 as under:

> ***"14. It is thus clear that the provisions are mandatory being saddled with the specified time for payment and penalties in case of failure to deposit the purchase money. If the Court extends the time, the mandatory provisions of Order 21 Rules 84, 85 and 86 would be circumvented by resorting to Section 148 of CPC.***
>
> ***15. Let us consider now Section 148 of C.P.C. itself. Section 148 of the Code provides for enlargement of time by the Court. As per Section 148, where any period is fixed or granted by the Court for doing any act prescribed or allowed by the code, the Court may in its discretion from time to time enlarge such period even though, the period originally fixed or granted may have expired.***
>
> ***16. Time stipulated under Section 148 C.P.C. has been amended by the C.P.C. Amendment Act 46/1999 (w.e.f. 1.7.2002) by inserting the words " not exceeding 30 days in total". Under Section 148, the Court can enlarge the time for doing any act fixed or granted by the Court for any act fixed or allowed by the Code. Time stipulated for payment of purchase money within a period of two weeks is the mandatory provision stipulated under Order XXI Rule 89 C.P.C. Such time is not fixed by the Court; but period fixed by the Code. In such cases, under Section 148 of C.P.C. the Court has no power to extend the time fixed by the law or Statute.***

> ***19. Since the Petitioner has not deposited the balance amount within the stipulated time, the Executing Court has rightly dismissed the Petition for extension of time. If any payment is made within the date, under Order 21 Rule 86, the Court has discretion to forfeit the deposit. Since under Order 21 Rule 81, the Court has the discretion, it is for the Executing Court to pass appropriate Orders if any application is filed by the Revision Petitioner/Auction Purchaser to refund the amount after defraying the expenses of the sale."***

12. In view of the clear enunciation of the law in the above two judgments of the Hon'ble Supreme Court and Madras High Court that Order 21, Rules 84, 85 and 86 of the CPC being mandatory, no extension can be granted beyond 15 days in depositing the entire amount. The auction sale is, thus, set aside. However, in view of the discretion, which is available with the court under Order 21 Rule 86 of the CPC, this court would direct refund of the amount deposited along with accrued interest to the auction purchaser within a period of four (04) weeks from today.

13. The Writ Petition is accordingly allowed. Rule is made absolute in above terms.

[ARUN R. PEDNEKER, J.]

marathe