

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.150 OF 2024

Poonamchand Shankarlalji Bhati & Anr. ..Petitioners

Vs.

Shivkrupa Saharkari Patpedhi Ltd. & Anr. ..Respondents

Mr. Jigar Agarwal i/b. Mr. Shyam K. Gawande for the Petitioners.

Mr. B. V. Samant for Respondent Nos.1 and 2.

CORAM : A. S. CHANDURKAR &
JITENDRA JAIN, JJ.

DATE : 5th JANUARY 2024.

P.C.:

1. The challenge raised by the Petitioners is to the proposed auction of Shop Nos.21 and 22, Blue Skyline Co-operative Housing Society as well as Shop No.8, Ground Floor, Siddhivinayak Co-operative Housing Society Limited, which is claimed to be owned by the Petitioners and which is the subject matter of mortgage with the Respondent-Patpedhi. Since the Petitioners failed to repay the amounts due the Patpedhi, proceedings for recovery were initiated. In those proceedings, notice of auction has been published and the auction is scheduled on 8th January 2024.

2. It is submitted by the learned counsel for the Petitioners that the entire dues of the society have been cleared. The Petitioners seek to rely upon the release deed dated 3rd February 2016 as well as communication dated 27th June 2016, wherein it has been stated that there are no dues recoverable by the society. On this premise, it is urged that the auction of the aforesaid properties is unjustified.

3. The learned counsel appearing for the Respondent-Patpedhi on the other hand has submitted that the release deed dated 3rd February 2016 as well as various receipts attached to the said release deed are bogus documents. The society has initiated criminal proceedings by filing complaint under Sections 420, 463 and 472 of the Indian Penal Code, 1860. The private complaint is presently pending with the learned Magistrate. The learned counsel has referred to various documents annexed to the private complaint.

4. From the material-on-record, we find that there is a serious dispute between the parties with regard to the authenticity of the release deed. The Patpedhi has specifically denied execution of any such release deed and has also disputed the receipts placed on record.

5. In the light of aforesaid, since we find that there are various disputed questions of facts arising, we do not deem it expedient to

exercise discretion under Article 226 of the Constitution of India. For this reason, writ petition is not entertained, it is accordingly dismissed. No costs.

6. The Petitioners are free to seek redressal of their grievances, if any, before the Competent Court.

(JITENDRA JAIN, J.)

(A. S. CHANDURKAR, J.)

(The order is modified as per order dated 8th January 2024. The corrections in the appearance of the Respondent Nos.1 and 2 of the order are shown in italics)