

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5832 OF 2024

Sanjay Sarraf

.. Petitioner

Versus

District Deputy Registrar-3 & Ors.

.. Respondents

.....

- Mr. Pankaj Savant, Senior Advocate a/w Mr. Harshwardhan Borse, Mr. Joshua D'Souza & Mr. Yashwant Dhanegave for Petitioner
- Mr. Shadab Khan for Society
- Mr. D.S. Deshmukh, AGP for State

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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 22, 2024

P. C.:

1. Not on board. Mentioned. Taken on board.
2. Perused the praecipe dated 22.04.2024. Heard Mr. Savant, learned Senior Advocate for Petitioner; Mr. Khan, learned Advocate for Society and Mr. Deshmukh, learned AGP for State.
3. Mr. Savant would submit that public auction is being held of the suit property which is an office belonging to the Petitioner being a member of the Society tomorrow. He would clarify that tomorrow is the last date for receiving the bids invited by the Society in Recovery proceedings. He would inform the Court that pursuant to recovery certificate issued in 2017, subsequent events would virtually alter the factual possession. According to him, all dues towards outstanding

amounts of the Society have been paid by the Petitioner and in that view of the matter, he relies upon reconciliation report dated 04.10.2021 and statutory orders dated 20.01.2022, 22.04.2022 and 08.01.2024. He would submit that if these orders and the reconciliation report are perused, the suit property should not be auctioned.

4. With the able assistance of Mr. Savant, I have perused these orders and I am of the *prima facie* opinion that the Society will have to be given an opportunity to place its objections since the auction is proceeded with respect to the recovery certificate issued in the year 2017.

5. At this stage, Mr. Khan, learned Advocate appears for the Society. According to him, he has taken instructions and would submit that an amount of Rs. 67 Lacs is outstanding from the Writ Petitioner. Be that as it may if the same is outstanding, Society shall place the details of the same before this Court on affidavit. Society will show as to how much is the principal amount out of Rs. 67 Lacs and how much is the interest and at what rate, interest is charged alongwith adjustment for all amounts received / paid by the Petitioner. While doing so, Society shall take into cognizance the reconciliation report of the Government Auditor *qua* the suit flat as also the three subsequent orders passed by the Dy. Registrar. In view of this exercise that will be

done by the Society, appropriate affidavit-in-reply shall be filed by the Society within a period of four weeks from today.

6. Mr. Khan would submit that tomorrow is the last date for receiving of bids. He would submit that holding an auction programme and calling for bids is a time consuming exercise and involves expenditure especially for the Co-operative Society where the expenses are indirectly borne by the members of Society. He would make a suggestion that Society should be allowed to receive the bids and keep them as it is, until this Court considers its affidavit-in-reply on the outstanding amounts. The suggestion made by Mr. Khan is fair since I have to hear the Society on merits and according to it, there is an outstanding of Rs. 67 Lacs. In that view of the matter, the Society shall receive the bids by tomorrow i.e. 23.04.2024 as per the auction programme, which is the last date and keep them frozen until the present Petition is heard and appropriate further directions are passed by this Court depending upon the position of the outstanding amount on the next adjourned date.

7. Society shall file its affidavit-in-reply within a period of four weeks from today. Rejoinder, if any, shall be filed by Petitioner within two weeks thereafter.

8. Stand over to **12th June, 2024.**

[MILIND N. JADHAV, J.]

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