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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
REVIEW PETITION NO. 55 OF 2024
IN
WRIT PETITION NO. 12422 OF 2018**

Shri Atul Nandkishor Kale

... Petitioner

Vs.

Mr. Shaikh Jaweed Sarfraz Shaikh

... Respondents

Abdul Haqq and Others

Mr. Atul Damle, Senior Advocate i/b. Mr. Yash Dinde for the Petitioner.

Ms. Surbhi Agrawal for the Intervenor.

Mr. Drupad S. Patil a/w. Ms. Srushti S. Chalke for Respondent Nos. 1,
2 and 3.

Mr. B. B. Dahiphale, AGP for Respondent Nos. 4 to 6.

Mr. Shrirang Katneshwarkar for Respondent No. 7.

CORAM : GAURI GODSE, J.

DATE : 6th MAY 2024

P.C.

1. This Review Petition is filed by the auction purchaser seeking review and recall of the Judgment and Order dated 23rd February 2024. Learned senior counsel appearing for the auction purchaser

pointed out the observation made in paragraph 31 of the judgment. He submits that the notice of Revision Application No. 238 of 2014 was not served upon the auction purchaser; hence, the order passed in the said revision setting aside the auction sale was not challenged by the auction purchaser. He therefore submits that there is an error apparent on the face of the record in the observation recorded in paragraph 31.

2. To support the said submission, the learned senior counsel for the auction purchaser pointed out that the address of the auction purchaser mentioned in Revision Application No. 238 of 2014 was incorrect in as much as the address was shown as 'C/o. Bank'; hence, there was no occasion for the auction purchaser to appear in the said Revision Application and/or challenge the order passed in the said Revision Application. He further submits that the auction purchaser learnt about the Revision Application No. 238 of 2014 at the time of hearing of the Writ Petition on 23rd February 2024.

3. I have perused the papers of the review petition and the writ petition filed by the auction purchaser. It is not the case of the auction purchaser that the aforesaid submissions are part of the grounds raised by the auction purchaser in his petition filed for challenging the

order passed in Revision Application No. 349 of 2014. It is not even his case that these submissions were made during the hearing on 23rd February 2024. A perusal of the title of the Judgment under review indicates that in the writ petition filed by the bank to challenge the order passed in Revision Application No. 238 of 2014, the auction purchaser is a party respondent. All the writ petitions were time and again heard together. Hence, I do not find any substance in the submission that the auction purchaser learnt about the Revision Application No. 238 of 2014 at the time of hearing of the Writ Petition on 23rd February 2024.

4. It is not in dispute that Revision Application No. 349 of 2014 arose out of the order of confirmation of the auction sale. Thus, the auction purchaser challenged the subsequent order of confirmation of sale without making any grievance with regard to the earlier order setting aside the auction sale.

5. In view of the aforesaid submissions, I do not see any error apparent on the face of the record in the observation made in paragraph 31.

6. Learned counsel for the auction purchaser pointed out that by way of additional affidavit, it is brought on record that the Revision Application 9 of 2014 for challenging proclamation dated 12th December 2013 was disposed of as infructuous on 16th April 2015. He further submits that thus the observation made by me in paragraph 35 that the Revision Application No. 9 of 2014 is pending, needs to be corrected. Learned counsel for the borrowers does not dispute the same.

7. Hence, the said observation requires clarification. Therefore, it is clarified that Revision Application No. 9 of 2014 for challenging the proclamation dated 12th December 2013 was not pending at the time of passing the Judgment and Order dated 23rd February 2024.

8. For the aforesaid reasons, the review petition is dismissed with the abovementioned clarification.

[GAURI GODSE, J.]