IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1166 OF 2021
WITH
CIVIL APPLICATION NO.4038 OF 2022
IN
WRIT PETITION NO.1166 OF 2021

1. Santosh s/o. Chandrasen Khetri
Age: 40 years, Occ: Agril. and Trade
R/o. Motewadi, Tal- Majalgaon,
Dist. Beed.

2. Ram s/o. Pralhadrao Khetri
Age : 50 years, Occ: Agril. and Trade
R/o. Motewadi, Tal- Majalgaon,
Dist. Beed. ... **PETITIONERS**

VERSUS

1. The State of Maharashtra
through the Secretary,
Ministry of Finance, Mantralaya,
Mumbai – 32.

2. The Collector, Beed
District Beed

3. The Regional Manager,
State Bank of India
Regional Business Office – 1
Heena Heights, Jalna Road Beed
Dist. Beed.

4. The Manager,
State Bank of India
Branch Majalgaon, Tq. Majalgaon,
Dist. Beed. ... **RESPONDENTS**

...
Advocate for the Petitioners : Mr. Kudale Bhagwan S.
AGP for Respondents No.1 and 2 : Mr. P.K. Lakhotiya
Advocate for Respondents No.3 and 4 : Mr. S.V. Adwant
...

CORAM : R.G. AVACHAT AND ABASAHEB D. SHINDE, JJ.

DATE : 17.10.2025

ORDER :

1. Rule. Rule is made returnable forthwith. With the consent of the parties heard finally at the stage of admission.

2. This is a writ petition filed by a hapless auction purchaser invoking our jurisdiction under Article 226 of the Constitution of India, thereby, initially praying for following reliefs :

> “(A) The writ petition may kindly be allowed.
>
> (B) By issuing writ of mandamus or any other appropriate writ, the respondents No.3 and 4 may be directed to put Petitioners in possession of the purchased property Shop No.16, B-Floor, Plot No.1, House No.AS-24/1397, Siddheshwar Complex, 258.24 sq.ft. situated at Majalgaon and issue sale certificate in respect of the sale property as expeditiously as possible.
>
> (C) That in the alternate if it is no possible for the Respondents No.3 and 4 to hand over possession of the sale property and issue sale certificate, then the Respondents No.3 and 4 may kindly be directed to return amount of Rs.10,15,000/-deposited by the Petitioners with the Respondents Bank along with the interest 18% p.a.
>
> (D) Any other just and equitable relief to which the petitioners are entitled for may kindly be granted.”

3. Factual matrix of the matter are as follows :

i. It is case of the petitioners that, the borrower and guarantor of the loan sanctioned by the respondents No.3 and 4 – Bank, committed default, as a result of which, the property of mortgagor bearing

Shop No. 16, B-Floor, Plot No.1, House No.AS-24/1397, Siddheshwar Complex, 258.24 sq.ft. situated at Majalgaon District Beed (hereinafter called as writ property) was put for auction vide auction sale notice dated 25.02.2015 scheduled on 20.03.2015, by resorting to the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (herein after called as Securitisation Act).

ii) The upset price fixed by the respondents No.3 and 4 – Bank was Rs.9,15,000/-

iii) The petitioners submitted their bid for Rs.10,15,000/- out of which 10% amount out of said price was deposited by the petitioners on the same day i.e. 20.03.2015. After finding that the petitioners are the highest bidders, the writ property is sold to the petitioners. The petitioners accordingly deposited the remaining sale price on 04.04.2015. The petitioners, thereafter, requested the respondents No.3 and 4 and more particularly, respondent No.4 – Bank to issue sale certificate and give possession of the writ property, however, despite several request, no steps were taken by the respondents No.3 and 4 since 04.04.2015. Even though the petitioners made representations on several occasions, the respondents No.3 and 4 did not paid any heed. Hence, the petitioners are before this Court.

4. The respondent No.4 has filed an affidavit-in-reply and has admitted the fact that the petitioners are the highest bidder and deserves

to be put in possession of the writ property. It is also stated that the respondents No.3 and 4 have tried their level best to put the petitioners in possession, however, it is due to the adamant approach of the guarantor that possession could not be handed over to the petitioners. It is also stated in the affidavit-in-reply that though the respondents No.3 and 4 have initiated the proceedings under Section 14 of the Securitisation Act by filing an application before the District Collector, Beed, for getting the possession, however, the said application came to be rejected for non-compliance of Section 13(2) and Section 13(4) of the Securitisation Act. In short the stand of the respondents No.3 and 4 is that it is only because the guarantor whose property has been sold in auction did not cooperate for handing over the possession, therefore, the possession of writ property could not be handed over to the petitioners.

5. This Court after hearing both the sides on 14.02.2022 passed following order :

> *"1. Record reveals that in furtherance of advertisement dated 03.03.2015, issued by respondent No. 3, petitioners purchased suit property i.e. Shop No. 16, B Floor, Plot No. 1, House No. AS-24/1397, Siddheshwar Complex, Majalgaon, District Beed, in auction and paid a sum of Rs. 10,15,000/- to respondent No. 4. Though more than six and half years have lapsed, till date the petitioners did not get possession of the suit property. With this precise grievance, the petitioners have invoked jurisdiction of this Court under Article 226 of the Constitution of India.*
>
> *2. Petitioners have prayed the following reliefs as per prayer clause (B) and (C) :*
>
> > *"(B) By issuing writ of mandamus or any other appropriate writ, the Respondents No. 3 and 4 may be directed to put*

Petitioners in possession of the purchased property Shop No.16, B-Floor, Plot No. 1, House No. AS-24/1397, Siddheshwar Complex 258.24 sq.ft. situated at Majalgaon and issue sale certificate in respect of the sale property as expeditiously as possible.

(C) That in the alternate if it is not possible for the Respondents No. 3 and 4 to hand over possession of the sale property and issue sale certificate, then the Respondents No. 3 and 4 may kindly be directed to return amount of Rs.10,15,000/- deposited by the Petitioners with the Respondents Bank along with the interest 18% p.a."

3. It is the case of respondent No. 4 that, the principal borrower is still in possession of the suit property and is not vacating the same for handing it over to the petitioners.

Be that as it may, the fact on record remains that, though respondent Nos. 3 and 4 accepted huge amount of Rs. 10,15,000/- from the petitioners in March 2014, till date the petitioners are deprived of not only of their legitimate expectation but being bona fide purchasers of suit property and to have its vacant and peaceful possession from respondent Nos. 3 and 4. The reasoning given in reply by respondent No. 4 for not handing over the possession of the suit property to the petitioners till date is just an eye wash. Respondent No.4 before accepting the said huge amount from petitioners ought to have made them aware that, they will not be in a position to give vacant and peaceful possession of suit property to them for decades and in such an eventuality the petitioners would not have ventured into purchasing the said property.

4. In view of the above and as by way of ad-interim relief, we direct respondent Nos. 3 and 4 to deposit the said sum of Rs.10,15,000/- along with 12% interest accrued thereof from April 2015 till 31.01.2022 in the Registry of this Court within a period of four weeks from today.

5. Stand over to 21.03.2022."

6. Pursuant to the order dated 14.02.2022, the respondents No.3 and 4 deposited an amount of Rs.22,79,932/- in this Court which is stated to be invested in the Nationalized Bank on 25.04.2023. During the

pendency of the writ petition, it seems that the respondents No.3 and 4 approached the District Collector, Beed, once again and with the help of Tahsildar, Beed, the writ property has been taken in possession by the respondents No.3 and 4 and the same has been handed over to the petitioners on the same day. The copy of the panchanama to that effect has already been placed on record by the respondents No.3 and 4.

7. Thus, admittedly, the petitioners have received the possession of writ property on 14.03.2022. Thus so far as prayer clauses 'B' and 'C' of the writ petition are concerned, those do not survive. However, the petitioners, thereafter, amended the writ petition by claiming the compensation for having suffered loss on account of delay in handing over the possession of writ property and even incorporated prayer clause 'E', thereby, claiming compensation which reads thus :

> "*(E) The respondent No.3 and 4 may be directed to pay by way of compensation Rs.8,50,000/- to the applicants.*"

8. After hearing the learned counsel for the petitioners as well as the respondents No.3 and 4, we are of the view that the proceedings of putting the mortgage property (secured assets) for auction is governed by the Security Interest (Enforcement) Rules, 2002 (hereinafter Rules of 2002) and more particularly Rule 8 and 9 of the said rules which reads thus :

> ***" 8. Sale of immovable secured assets.-****(1) Where the secured asset is an immovable property, the authorised officer shall take or cause to*

be taken possession, by delivering a possession notice prepared as nearly as possible in Appendix IV to these rules, to the borrower and by affixing the possession notice on the outer door or at such conspicuous place of the property.

(2)[The possession notice as referred to in sub-rule (1) shall also be published, as soon as possible but in any case not later than seven days from the date of taking possession, in two leading newspapers], one in vernacular language having sufficient circulation in that locality, by the authorised officer.

[(2-A) All notices under these rules may also be served upon the borrower through electronic mode of service, in addition to the modes prescribed under sub-rule (1) and sub-rule (2) of rule 8.]

(3) In the event of possession of immovable property is actually taken by the authorised officer, such property shall be kept in his own custody or in the custody of any person authorised or appointed by him, who shall take as much care of the property in his custody as a owner of ordinary prudence would, under the similar circumstances, take of such property.

(4) The authorised officer shall take steps for preservation and protection of secured assets and insure them, if necessary, till they are sold or otherwise disposed off.

(5) Before effecting sale of the immovable property referred to in sub-rule (1) of rule 9, the authorised officer shall obtain valuation of the property from an approved valuer and in consultation with the secured creditor, fix the reserve price of the property and may sell the whole or any part of such immovable secured asset by any of the following methods:-

(a) by obtaining quotations from the persons dealing with similar secured assets or otherwise interested in buying the such assets; or
(b) by inviting tenders from the public;
[(c) by holding public auction including through e-auction mode; or]
(d) by private treaty.

[Provided that in case of sale of immovable property in the State of Jammu and Kashmir, the provision of Jammu and Kashmir Transfer of Property Act, 1977 shall apply to the person who acquires such property in the State.]

(6) the authorised officer shall serve to the borrower a notice of thirty days for sale of the immovable secured assets, under sub-rule (5):

[Provided that if the sale of such secured asset is being effected by

either inviting tenders from the public or by holding public auction, the secured creditor shall cause a public notice in the Form given in Appendix IV-A to be published in two leading newspapers including one in vernacular language having wide circulation in the locality.]

[(7) every notice of sale shall be affixed on the conspicuous part of the immovable property and the authorised officer shall upload the detailed terms and conditions of the sale, on the web - site of the secured creditor, which shall include, _

(a) the description of the immovable property to be sold, including the details of the encumbrances known to the secured creditor;

(b) the secured debt for recovery of which the property is to be sold;
(c) reserve price of the immovable secured assets below which the property may not be sold;
(d) time and place of public auction or the time after which sale by any other mode shall be completed;
(e) deposit of earnest money as may be stipulated by the secured creditor;
(f) any other terms and conditions, which the authorized officer considers it necessary for a purchaser to know the nature and value of the property.]

(8) Sale by any methods other than public auction or public tender, shall be on such terms as may be settled [between the secured creditors and the proposed purchaser in writing].

9. Time of sale, Issue of sale certificate and delivery of possession, etc.-

[(1) No sale of immovable property under these rules, in first instance shall take place before the expiry of thirty days from the date on which the public notice of sale is published in newspapers as referred to in the proviso to sub-rule (6) of rule 8 or notice of sale has been served to the borrower:

Provided further that if sale of immovable property by any one of the methods specified by sub rule (5) of rule 8 fails and sale is required to be conducted again, the authorized officer shall serve, affix and publish notice of sale of not less than fifteen days to the borrower, for any subsequent sale.]
(2) The sale shall be confirmed in favour of the purchaser who has offered the highest sale price in his bid or tender or quotation or offer to the authorised officer and shall be subject to confirmation by the secured creditor:

Provided that no sale under this rule shall be confirmed, if the *amount offered by sale price is less than the reserve price, specified under sub-rule (5) of [rule 8]:*

Provided further that if the authorised officer fails to obtain a price higher than the reserve price, he may, with the consent of the borrower and the secured creditor effect the sale at such price.

[(3) On every sale of immovable property, the purchaser shall immediately, i.e. on the same day or not later than next working day, as the case may be, pay a deposit of twenty-five per cent. of the amount of the sale price, which is inclusive of earnest money deposited, if any, to the authorized officer conducting the sale and in default of such deposit, the property shall be sold again.]

(4) The balance amount of purchase price payable shall be paid by the purchaser to the authorised officer on or before the fifteenth day of confirmation of sale of the immovable property or such extended period [as may be agreed upon in writing between the purchaser and the secured creditor, in any case not exceeding three months].

(5) In default of payment within the period mentioned in sub-rule (4), the deposit shall be forfeited and the property shall be resold and the defaulting purchaser shall forfeit [to the secured creditor] all claim to the property or to any part of the sum for which it may be subsequently sold.

(6) On confirmation of sale by the secured creditor and if the terms of payment have been complied with, the authorised officer exercising the power of sale shall issue a certificate of sale of the immovable property in favour of the purchaser in the Form given in Appendix V to these rules.

(7) Where the immovable property sold is subject to any encumbrances, the authorised officer may, if he thinks fit, allow the purchaser to deposit with him the money required to discharge the encumbrances and any interest due thereon together with such additional amount that may be sufficient to meet the contingencies or further cost, expenses and interest as may be determined by him:

[Provided that if after meeting the cost of removing encumbrances and contingencies there is any surplus available out of money deposited by the purchaser such surplus shall be paid to the purchaser within fifteen days from date of finalisation of the sale.]

(8) On such deposit of money for discharge of the encumbrances, the authorised officer [shall] issue or cause the purchaser to issue notices to the persons interested in or entitled to the money deposited with him and take steps to make the payment accordingly.

(9) The authorised officer shall deliver the property to the purchaser free from encumbrances known to the secured creditor on deposit of money as specified in sub-rule (7) above.

(10) The certificate of sale issued under sub-rule (6) shall specifically mention that whether the purchaser has purchased the immovable secured asset free from any encumbrances known to the secured creditor or not."

9. From the perusal of Rule 8 (7)(f) of Rules of 2002 which states that *any other terms and conditions, which the authorized officer considers it necessary for a purchaser to know the nature and value of the property.*

10. The Hon'ble Apex Court in ***Mandava Krishna Chaitanya V. Uco Bank, Asset Management Branch [2018 SCC Online 196]*** after referring to the provisions of Rules 8 and 9 of the Security Interest (Enforcement) Rules, 2002, which deal with sale of immovable secured assets, time of such sale, issuance of the sale certificate and delivery of possession, etc., it was held as under :

"10. The aforestated statutory scheme demonstrates that the secured creditor may also sell a secured asset which is not free from encumbrances. However, an endeavour must necessarily be made by the secured creditor to know as to whether any encumbrances attach to the secured asset, as the rules stipulate delivery of the property to the purchaser free from encumbrances known to the secured creditor. The secured creditor cannot therefore blindly accept any property as security and go on to sell the same without even enquiring as to what encumbrances attach to it. Be it noted that a secured creditor and more particularly, a bank, offers loan facilities on the strength of such secured assets and, in most cases, such loan facilities are sourced from public funds garnered from the exchequer/common man and therefore, a high level of responsibility attaches to the secured creditors, especially banks, to ensure that the secured assets, on the strength of which they offer tax payers monies or customer deposits to borrowers, are worthy of being mortgaged as security for such loans. It is not open to a bank, such as the UCO Bank, to baldly state that it

obtained the subject property as security for the loan sanctioned by it to a borrower and that once it proposed to sell it on an as is where is and as is what is basis, it is freed from all responsibility."

11. In the same decision in ***Mandava Krishna Chaitanya*** (supra) the Hon'ble Apex Court in similar circumstance, has allowed the writ petition in favour of the auction purchaser and directed the bank to refund the sale consideration with interest at 18% per annum. We can profitably rely on paragraphs No.23 and 24 which reads below:

"23. Further, the concept of as is where is and as is what is basis has lost its significance in the current commercial milieu and the principle of caveat venditor is more on the rise as compared to the outdated principle of caveat emptor. The Transfer of Property Act, 1882, requires the seller to own up to certain duties and it is not open to a responsible bank to take an innocent auction purchaser for a ride by selling to him a tainted property and thereafter claim protection under the principles of buyer beware. The counter- affidavit filed by the bank clearly demonstrates that the bank undertook no exercise whatsoever to verify and ascertain as to what encumbrances attached to the subject property at any stage. No details are forthcoming of any efforts having been made by the bank, be it before the registration authorities or any other authority at any stage. Now, it has come to light that the property in question is tainted on grounds more than one. It falls within the full tank level of a lake and, surprisingly, it is also treated as a ceiling surplus land. ***That apart, the possession of the property cannot even be handed over by the bank to the petitioner as the sale was effected without the bank securing actual physical possession thereof and the bank does not deny the factum of a lease having been created by the borrower in relation thereto. The bank therefore cannot comply with the statutory mandate of delivering actual possession of the property sold under the sale certificate.*** *The decisions of various Courts referred to supra would come to the aid of the petitioner in this regard. That apart, the registration authorities already indicated to the petitioner that the subject land is noted as a ceiling surplus land. Therefore, even if they do entertain the sale certificate issued by the bank for registration, it would be subject to this cloud and would not amount to clear conveyance of title. It is therefore manifest that the bank made the innocent petitioner a*

victim by failing to exercise due diligence, not only in terms of the statutory scheme of the SARFAESI Act and the Rules of 2002, but also in its own commercial interest, let alone public interest, when it accepted this property as security for the loan sanctioned by it. This utter carelessness on the part of the bank in sanctioning loans, by use of public monies, on the strength of secured assets which are not even worthy of being mortgaged, requires to be deprecated in the strongest terms. Banks necessarily have to exercise more care and caution while using public monies available with them, be it through deposits by customers or otherwise, when sanctioning loans without caution or worse and cannot be permitted to claim protection under outdated legal principles so as to victimize innocent auction purchasers, such as the petitioner. This Court therefore has no hesitation in holding that the auction sale held by the bank, without even exercising minimum care to ascertain the encumbrances attaching to the subject property and without informing the petitioner or other bidders of the same, vitiates the sale proceedings, culminating in issuance of the sale certificate which is yet to be registered.

24. The writ petition is accordingly allowed setting aside the said sale. The bank shall refund the sale consideration of Rs.4,80,44,000/- paid by the petitioner, with interest thereon at 18% per annum from the date of the deposit till the date of realization, within two weeks from the date of receipt of a copy of this order. As the bank is itself at fault for this entire imbroglio and the petitioner was made to part with his valuable monies with no consequential benefit therefor and the bank enjoyed the custody of these monies all through, the rate of interest as applied by the Supreme Court in like circumstances in MATHEW VARGHESE vs. M.AMRITHA KUMAR is adopted."

12. The purport of judgment of the Hon'ble Apex Court in the case cited (supra) is, if the Creditor Bank fails to handover possession to the auction purchaser, the interest of auction purchaser can certainly be protected. In the instant case also the respondents No.3 and 4 without ensuring as to whether the petitioners could be put in possession of the writ property, auctioned the same, accepted the entire sale consideration from the petitioners and failed to handover possession of the writ property to the petitioners for considerable

period. Admittedly, the writ property is a commercial shop where the petitioners wanted to run their business. We, therefore, have to consider whether in peculiar fact situation, the petitioners are entitled for compensation as prayed for.

13. It is pertinent to note that, the petitioners with a fond hope that they would be in a position to enjoy the writ property, made their offer which was accepted by the bank and deposited an amount of Rs.10,15,000/- on 04.04.2015, with the expectation that the respondents No.3 and 4 - Bank would hand over the vacant possession of the writ property within a reasonable time. However, even after a lapse of seven and a half years, the respondents No.3 and 4 have failed to deliver the vacant possession. Throughout these years, the petitioners patiently awaited for favourable response from the bank but nothing progressed. On the contrary the respondents No.3 and 4 giving lame excuse tried to shirk their responsibility.

14. Considering the fact that, admittedly, the handing over of the possession to the petitioners has been delayed by almost seven and a half years which deprived the petitioners from enjoying the writ property and has resulted into causing loss to the petitioners, we are inclined to consider the prayer made by the petitioners for payment of compensation.

15. During the course of hearing of the writ petition, both the learned counsel for the petitioners and the learned counsel for respondents No.3 and 4 are *ad idem* that the amount deposited in this Court and which is in fixed deposit with the Nationalized Bank, has accrued the interest and the said amount of interest could be paid to the petitioners to balance the equities.

16. Without laying down any precedent, we are, therefore, inclined to invoke our jurisdiction under Article 226 of the Constitution of India by exercising our discretionary power and in the light of the fact that both the learned counsel for the petitioners as well as the respondents No.3 and 4 have agreed that the interest amount accrued on the amount deposited by respondents No.3 and 4 could be paid to the petitioners, the ends of justice would subserved by passing the following order :

O R D E R

A] We direct that the entire amount of interest accrued on amount of Rs.22,79,932/- deposited by respondents No.3 and 4 pursuant to order dated 14.02.2022 passed by this Court be paid to the petitioners within four (4) weeks from today towards compensation.

B] After paying the aforesaid amount of interest to the petitioners, we further direct that the principal amount of Rs.22,79,932/- deposited by the respondents No.3 and 4 be refunded to the respondents No.3 and 4 within a period of two (2) weeks thereafter.

C] Rule is thus made absolute in above terms.

D] Civil application pending, if any, stands disposed of.

(ABASAHEB D. SHINDE, J.) **(R.G. AVACHAT, J.)**

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