IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

COMMERCIAL APPEAL FROM ORDER NO. 5 OF 2025
WITH
INTERIM APPLICATION STAMP NO. 12038 OF 2025

SICOM Ltd. and anr. … Appellants
Versus
Sri. Anjaneya Traders and ors. …. Respondents

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Mr. Satish Talekar i/b Mr.Tejas Mahamuni, for the Appellants.
Mr.Aloukik Pai a/w Adv. Nehal Rajput i/b Mr.Raj Dani, for the Respondent No.1.

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CORAM : ALOK ARADHE, CJ &
M.S.KARNIK, J.

DATE : 04th APRIL, 2025

ORAL ORDER [Per Chief Justice]:

1. Admit. With the consent of the learned counsel for the parties, heard finally.

2. This appeal under Section 13(1-A) of the Commercial Courts Act, 2015 has been filed against the order dated 20/12/2024 passed by the City Civil Court, by which the application for injunction filed by the respondent no.1 has been allowed and appellant-bank has been restrained from creating any third party interest in respect of the lands bearing survey nos. 308/1, 309/2, 309/3A, 309/4, 309/5, 310, 317/4, 276/3C, 311/5, 316/1, 316/2, 317/4, 317/5, 308/2, 309/1, 309/2, 311/4, 311/7, 315/2, 315/3, 315/3, 316/1, 308/3, 308/4, 308/5, 308/6, 311/6,

316/3 admeasuring 61.45 acres at Anaipatti Road, Musuvanoothu Village, Nilakottai Taluka, Dindigul, Anna District, Tamil Nadu. (hereinafter referred to as “the subject lands”.)

3. Facts giving rise to the filing of this appeal, in nutshell, are that the borrower has mortgaged the subject lands in favour of appellant-bank. The borrower failed to repay the amount of loan whereupon the public auction was conducted on 04/02/2016. Respondent no. 1 was found to be the highest bidder. Respondent no.1 thereupon paid a sum of Rs.30,00,000/- on 04/02/2016 and further deposited a sum of Rs.50,00,000/- on 06/02/2016. The balance amount of Rs. 2,14,00,000/- was required to be paid on or before 04/03/2016. It appears that despite extension being granted to the respondent no.1 to deposit the aforesaid amount, respondent no.1 did not deposit the aforesaid amount, even till March 2018. Thereafter the appellant-bank by a communication dated 21/05/2018 forfeited the amount deposited by respondent no.1.

4. On 06th April 2024, respondent no. 1 filed a suit, *inter alia*, on the ground that action of the appellant-bank in forfeiting the amount deposited by the respondent no.1 is illegal. Respondent no.1 also sought specific performance of contract. Accordingly, the suit was filed seeking relief of declaration and specific performance of contract. Along with plaint, an application for temporary injunction was also filed restraining the appellants from forfeiting the amount and re-auctioning of subject lands.

5. Learned Judge of the Commercial Court by an order dated 20/12/2024, allowed the application for temporary injunction and

restrained the appellants from acting upon the order of forfeiture and also restrained the appellants from re–auctioning the subject lands. Hence, this appeal.

6. Learned counsel for the appellants submitted that learned Judge of the Commercial Court ought to have appreciated that the respondent no.1 has failed to make out any *prima facie* case. It is further submitted that learned Judge ought to have appreciated that the respondent no.1 was required to deposit the amount on or before 04/03/2016 and even upto the extended time till March 2018, did not deposit the balance amount of Rs. 2,14,00,000/-. Therefore the appellant-bank was left with no option, but to forfeit the amount deposited by the respondent no.1. It is further submitted that the appellant-bank has a right to re-auction the property to recover its dues. It is therefore submitted that the impugned order deserves to be quashed and set aside.

7. On the other hand, learned counsel for the respondent no.1 submitted that learned Judge of the Commercial Court has found that on account of the order dated 09/09/2016 in Writ Petition No. 19566 of 2015 passed by the Division Bench of Madras High Court, the respondent no.1 could not deposit the balance amount. It is further submitted that the action of forfeiture of the amount deposited by the respondent no.1 is illegal. It is submitted that the learned trial Judge has rightly found that all essential ingredients for grant of injunction are made out and therefore has rightly granted injunction in favour of the respondent no.1 which does not call for any interference in this appeal.

8. We have considered the rival submissions made by learned counsel

for the parties. We have perused the record. In order to make out a *prima facie* case, the parties are required to show that there is serious question to be tried in the suit. Admittedly, public auction was held on 04/02/2016. Respondent no.1 deposited a sum of Rs. 30,00,000/- on 04/02/2016 and deposited a further sum of Rs. 50,00,000/- on 06/02/2016. As per the terms and conditions of the public auction, respondent no.1 was required to deposit the balance amount of Rs.2,14,00,000/- on or before 04/03/2016. It appears that time for deposit of aforesaid amount was extended from time to time. Appellant no. 1 – Bank by a communication dated 21/02/2018, further granted an opportunity to the respondent no.1 to deposit the amount. The remaining amount was not deposited by the respondent no.1, even till March 2018. Thereupon, the appellant–bank by an order dated 21/05/2018 forfeited the balance amount deposited by the respondent no.1. The suit has been filed after a period of 6 years, on 06/04/2024.

9. From the aforesaid narration of the facts, it is clear that respondent no.1 has failed to make out any *prima facie* case in its favour. In case, the appellant-bank is restrained from re-auctioning the subject property, the appellant-bank shall suffer irreparable injury as it will be restrained from recovery of amount which is due to it under the mortgage.

10. For the aforesaid reasons, in our considered view judicial discretion to deal with the prayer for injunction has not been exercised correctly by the learned trial court. The impugned order therefore cannot be sustained in the eye of law. It is accordingly quashed and set aside. Notice of Motion No. 4691 of 2024 is rejected.

11. Needless to state that any action taken by the appellant-bank for sale of the property in question shall be subject to the outcome of the civil suit. Further, needless to state that the findings have been recorded in this order only for the purpose of deciding the injunction application and shall have no bearing on the suit and suit shall be decided on its own merits by the trial Court.

12. Pending interim application(s), if any, stand disposed of.

(M.S.KARNIK, J.) **(CHIEF JUSTICE)**