

Sharayu Khot.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COURT RECEIVER'S REPORT NO. 88 OF 2024

IN

INTERIM APPLICATION NO. 3110 OF 2021

IN

EXECUTION APPLICATION NO. 210 OF 2011

IN

SUIT NO. 3782 OF 1989

Hiroo Tuljaram Shahani

...Applicant/
Defendant No. 7

In the matter of

Ram Tuljaram Shahani (Deleted since
deceased) Seema King & Anr.

...Plaintiffs

Versus

Bhagwan Tuljaram Shahani & Ors.

...Defendants

Mr. Monil Punjabi i/by Mr. Rajesh Sahani for the Plaintiffs.

Mr. Niket Jani i/by Jani & Parikh for the Defendant Nos. 2, 3 and 6.

Mr. Rajesh Singh, Advocate Purchaser present.

Mr. S.K. Dhekale, Court Receiver a/w Mr. N.C. Pawar, OSD present.

CORAM : R.I. CHAGLA J

DATE : 25 March 2025

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ORDER :

1. The matter had been placed for determination of the stamp duty payable on the Court sale of the Suit flat. By the said order dated 17th March 2025, this Court had accepted the offer of Advocate Mr. Rajesh Singh for the Suit flat at Rs. 4.40 Crores. The valuation of the Suit flat by the valuer appointed by the Court Receiver was of higher value i.e. Rs. 5.85 Crores.

2. This Court had considered that there were repeated attempts at Court sale and that there were no offers for the Suit flat at the value arrived at by the Court appointed valuer. Further, the learned Counsel for the parties had informed this Court that the value arrived at by the Court appointed Valuer was unrealistic, given the condition of the Suit flat and that Suit flat requiring renovation, as in its present condition it is not habitable, and the suit building having been built in the year 1950. Accordingly, this Court had accepted the offer of Advocate Mr. Rajesh Singh at Rs. 4.40 Crores for the Suit flat.

3. The contention raised by the learned Counsel for one of

the intending purchasers is that the stamp duty payable on the Deed of Conveyance to be executed between the Court Receiver and Advocate Mr. Rajesh Singh is to be computed on the market value of the suit property and not on the offer price, i.e. Rs. 4.40 Crores which had been accepted by this Court.

4. Reliance had been placed on the decision of the learned Single Judge of this Court in **Pinak Bharat & Co. Vs. Anil Ramrao Naik**¹, wherein the learned Single Judge of this Court held that where there is a sale by the Court i.e. through the Court Receiver in execution, and if the sale price is at or below the valuation obtained, then the valuation will serve as the current market value. This would be considered for the purpose of payment of stamp duty.

5. It is now informed to this Court by the learned Counsel for the Plaintiffs that the said decision in **Pinak Bharat & Co.** (supra) has been set aside by the Division Bench of this Court vide order dated 17th March 2025. Hence, the said decision cannot be relied upon.

¹ Comm.EXA/22/16 dated 27.03.2019

6. The learned Counsel for the Plaintiffs has submitted that the Supreme Court in **Registrar of Assurances and Anr. Vs. ASL Vyapar Private Limited and Anr.**² has gone into the issue of Court auction for the purpose of determining the stamp duty payable on the conveyance and has held that in Court auction price obtainable may be slightly less as any bidder has to take care of a scenario where the auction may be challenged which could result in passage of time in obtaining perfection of title, with also the possibility of it being overturned. The Supreme Court has further considered that in a Court auction, the necessary pre-requisites require fixation of a minimum price and other aspects to be taken care of so that the bidding process is transparent.

7. The Supreme Court has further considered that the Registering Authority can hardly be said to be the only authority with knowledge of the subject to the exclusion of the Court; the independent determination by a Registering Officer would not apply to a Court sale but to a private transaction; the Stamp Act being a fiscal statute, while being interpreted strictly and literally would not imply some kind of absolute power.

² 2022 SCC OnLine SC 1554

8. The stamp duty on the conveyance would be payable as per the highest offer price accepted by the Court and the sale confirmed in favour of the offerer.

9. The learned Counsel for the Plaintiffs has further relied upon the decision of the Division Bench of this Court in **Trident Estate Private Limited and Anr. Vs. Office of Joint District Registrar – Class – 1 and ors.**³, which has relied upon the decision of the Supreme Court in **ASL Vyapar Pvt. Ltd.** (supra) and held in accordance therewith. He has submitted that this is the settled position of law viz. that the highest offer price for the suit property accepted by the Court is required to be taken into consideration for the purpose of payment of stamp duty.

10. Having considered the submissions, in my view, there is much merit in the submissions of the learned Counsel for the Plaintiffs that in view of the highest offer price having been accepted by this Court, this would be the price taken into consideration for imposition of the stamp duty. This is well settled in the aforementioned decisions in **Registrar of Assurances and Anr. Vs. ASL**

³ 2024 SCC OnLine Bom 3423

Vyapar Private Limited (supra) and **Trident Estate Private Limited** (supra). The decision in **Pinak Bharat & Co.** (supra) of the learned Single Judge of this Court has been set aside by the Division Bench of this Court vide order dated 17th March 2025 by placing reliance upon the decision of the Supreme Court in **Registrar of Assurances and Anr. Vs. ASL Vyapar Private Limited** (supra).

11. Accordingly, the Registrar of Assurances shall take into consideration the highest offer price of Rs. 4.40 Crores accepted by this Court for the Suit flat in imposing the stamp duty on the Deed of Conveyance being executed between the Court Receiver and the offerer Advocate Mr. Rajesh Singh.

12. The learned Counsel for the Plaintiffs and the learned Counsel for the Defendant Nos. 2, 3 and 6 have sought extension of time to file the Undertaking that there are no rights created in respect of the Suit flat by deposit of the Original Title Deeds which was to be filed within one week from the date of the said order i.e. 17th March 2025.

13. Accordingly, extension of time is granted.

14. Affidavit of Undertaking shall be filed by the Plaintiffs and the Defendant Nos. 1 to 7 on or before 4th April 2025.

15. The Court Receiver present has informed this Court that insofar as the duplicate share certificate of the Suit flat is concerned, it is in the possession of the Court Receiver and not with the Prothonotary & Senior Master of this Court, as recorded in paragraph 15 of the said order dated 17th March 2025. This statement is accepted.

16. Place the matter for compliance on 7th April 2025.

[R.I. CHAGLA J.]