ARJUN VITTHAL KUDHEKAR

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

INTERIM APPLICATION NO. 4050 OF 2025
IN
COMMERCIAL EXECUTION APPLICATION NO. 125 OF 2017

Vasant Shenoy …Applicant
Versus
Sanjay Kumar …Respondent

Mr. Animesh P. Gupta a/w Jay Varia, for the Applicant.
Mr. Rahul Narichania, Senior Advocate, *Amicus Curiae*.

CORAM: MADHAV J. JAMDAR, J.
DATED: 04 DECEMBER 2025

P.C.:

1. Heard Mr. Animesh Gupta, learned Counsel for the Applicant and Mr. Rahul Narichania, learned Senior Counsel appointed as *Amicus*.

2. The reliefs sought in this Interim Application are as follows:

> "*a. To pass an Order/ Direction towards Hon'ble Prothonotary and Senior Master, High Court, Bombay to issue a fresh certificate of sale in favour of the Applicant for the said property i.e. Flat no. 404, ILA Apartments, Section 4, RDP 7, Charkop, Kandivali West, Mumbai 400 067;*
>
> *b. To pass an Order directing the Applicant to make payment of the Stamp Duty and Registration Charges with the concerned Sub-Registrar of Assurances and/or other concerned Government Authority for the said property i.e Flat no. 404, ILA Apartments, Section 4, RDP 7, Charkop, Kandivali West, Mumbai – 400 067, after receiving fresh certificate of sale from the office of*

Hon'ble Prothonotary and Senior Master, High Court, Bombay.

c. To pass an Order directing the Sheriff of Mumbai to handover the possession of the said property i.e. Flat no.404, ILA Apartments, Section 4, RDP 7, Charkop, Kandivali West, Mumbai – 400 067, to the Applicant Vasant N. Shenoy, on receipt of the copies of the payment of Stamp Duty and Registration Charges;

d. To pass an Order directing the Hon'ble Chairman/Secretary of the ILA Apartments, Section 4, RDP 7, Charkop, Kandivali West, Mumbai – 400 067, to admit the Applicant Vasant N. Shenoy as a member of their society on payment of necessary charges and issue share Certificate in respect of said property i.e. i.e. Flat no. 404, ILA Apartments, Section 4, RDP 7, Charkop, Kandivali West, Mumbai – 400 067, in favour of the Applicant Vansant N. Shenoy;

e. To pass an Order directing the concern authority of Electricity Board to transfer the electricity meter in favour of the Applicant Vasanat N. Shenoy, in respect of said property i.e. Flat no.404, ILA Apartments, Section 4, RDP 7, Charkop, Kandivali West, Mumbai – 400 067

f. Any other direction and/or order that this Hon'ble Court deems fit and necessary."

3. Mr. Animesh Gupta, learned Counsel for the Applicant submits that the Applicant has purchased the property in question i.e. Flat No.404, ILA Apartment, Section 4, RDP 7, Charkop, Kandivali (W), Mumbai 400 067 in a Court Auction and accordingly, certificate of sale dated 15th April, 2023 has been issued in favour of the Applicant. He submits that however, possession of the subject premises has not been handed over to the Applicant, as the Applicant is not able to comply with Order dated 13th March 2023 passed by a learned Single Judge in

Sherrif's Report No.10 of 2023 in Commercial Execution Application No.125 of 2017.

4. Before consideration of the prayers sought in the Interim Application No.4050 of 2025, it is necessary to set out the reliefs granted by Order dated 13th March 2023 passed in Sherrif's Report No.10 of 2023 in Commercial Execution Application No.125 of 2017, wherein prayer clauses (a) to (g) of the Sheriff's Report have been granted. The said prayers clauses of Sheriff's Report are reproduced herein below for ready reference:

> "*a) The Hon'ble Court may confirm the auction sale of the suit property i.e. right, title and interest of the Defendant abovenamed in his ownership immovable property situated at Flat No.404, LLA Apartments, Section 4, R.D.P. 7, Charkop, Kandivali, Mumbai - 400 067 for an amount of Rs.93,00,000/- (Rupees Ninety Three Lakhs only) in favour of Mr. V.N. Shenoy, the Auction Purchaser;*
>
> *b) the Hon'ble Court may direct the Hon'ble Prothonotary and Senior Master, High Court, Bombay to issue Certificate of Sale in respect of the suit property i.e. right, title and interest of the Defendant abovenamed in his ownership immovable property situated at Flat No.404, LLA Apartments, Section 4, R.D.P. 7, Charkop, Kandivali, Mumbai 400 067 in favour of the auction purchaser Mr. Vasant N. Shenoy.*
>
> *c) the Hon'ble Court may direct the Auction Purchaser Mr. Vasant N. Shenoy to make payment of the Stamp Duty and Registration Charges with the concern Sub-Registrar of Assurances after receiving the Certificate of Sale from the office of the Hon'ble Prothonotary and Senior Master, High Court, Bombay;*
>
> *d) the Hon'ble Court may direct the Sheriff of Mumbai*

> *to handover the possession of the Flat No.404, LLA Apartments, Section 4, R.D.P. 7, Charkop, Kandivali, Mumbai 400 067 to the auction purchaser Mr.Vasant N. Shenoy on receipt of the copies of the payment of stamp duty and registration charges from him;*
>
> *e) the Sheriff of Mumbai may be directed to deduct the expenses of Rs.82,804/- incurred by this office from the amount deposited by the Plaintiff on valuation and advertisements of the auction sale in order to reimburse the same to the plaintiff/C.A. of the plaintiff and to also deduct Rs.93,000/- as Sheriff's poundage, from the sale proceeds of Rs.93,00,000/- and deposit the balance sale proceeds of Rs.91,24,196/- (Rupees Ninety One Lakh Twenty Four Thousand One Hundred Ninety Six only) in the office of the Hon'ble Prothonotary and Senior Master, High Court, Bombay.*
>
> *f) the Hon'ble Court may direct the Hon. Chairman / Hon. Secretary of the Flat No.404, LLA Apartments, Section 4, R.D.P. 7, Charkop, Kandivali, Mumbai 400 067 to admit Mr. Vasant N. Shenoy as a member of their society on payment of necessary charges and issue Share Certificate in respect of the said flat No.404 in favour of Mr. Vasant N. Shenoy.*
>
> *g) the Hon'ble Court may direct the concern authority of electricity board to transfer the electricity meter in favour of the auction purchaser Mr. Vasant N. Shenoy, the auction purchaser in respect of the said flat No.404;*"

Thus, a learned Single Judge directed the Applicant who is the Auction Purchaser to make payment of stamp duty and registration charges with the concerned Sub-Registrar after receiving the Certificate of Sale and directed the Sheriff to handover the possession of the subject flat to Auction Purchaser i.e. the Applicant on receipt of payment of stamp duty and registration charges.

5. It is the submission of Mr. Gupta, learned Counsel that the learned Single Judge directed the Applicant who is the Auction Purchaser to make payment of stamp duty and registration charges with the concerned Sub-Registrar after receiving the Certificate of Sale and directed the Sheriff to hand over the possession of the subject flat to Auction Purchaser i.e. the Applicant on receipt of payment of stamp duty and registration charges. Mr. Gupta, learned Counsel, submits that, at that time the Applicant could not pay the stamp duty and registration charges, however, the Applicant has purchased the subject property in Court auction by making full payment of Rs.93,00,000/- within a time period as directed by this Court. It is submitted that as per the *Registration Act, 1908* ("**Registration Act**"), the document of title is required to be registered within a time limit of four months and therefore, a fresh Certificate of Sale be issued in favour of the Applicant instead of the Certificate of Sale dated 15th April 2023.

6. Admittedly, the Applicant could not pay the stamp duty and registration charges, however, the Applicant has purchased the subject property in Court auction by making full payment of Rs.93,00,000/- within a time period as directed by this Court.

7. This Court, in the context of Amnesty Scheme issued by the State of Maharashtra under the provisions of the *Maharashtra Stamp Act, 1958* ("**Maharashtra Stamp Act**") had an occasion to deal with the contention whether a document on which stamp duty has been paid by taking advantage of the Amnesty Scheme can be registered even after the time limit as provided under the provisions of the Registration Act is over in the case of ***Atul Project India Private Limited v. State of Maharashtra*** [1]. In the said decision this Court has recorded following conclusions in Paragraph No.48:

> "*48. In view of above discussion following conclusions are recorded:-*
>
> *(i)* ***The Registration Act makes provisions in public interest for record of documents and mainly documents of title. The same has been enacted to check forgery, prevent fraud, to protect the publicand to provide good evidence of the genuineness of written instruments.***
>
> *(ii)* ***The Stamp Act is a fiscal measure enacted to secure revenue for the State on certain classes of instruments. The stringent provisions of the Act are conceived in the interest of the revenue.***
>
> *(iii)* ***The purpose of the Amnesty Scheme issued by exercising power under Section 9 of the Maharashtra Stamp Act is in consonance with the object of the Stamp Act i.e. to secure revenue for the State.***
>
> *(iv)* ***The object of the Registration Act is not for securing revenue but maintaining a record of documents of title in public interest. The stringent timelines prescribed under the Registration Act for presentation of document have been made to prevent fraud and to protect the public.***
>
> *(v) The non stamping of the instrument with proper stamp duty, in terms of the provisions of the Maharashtra Stamp Act, entailed the following*

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consequences:-

(a) As per Section 33 of the Stamp Act, if the agreement which is produced before the Authority contemplated under Section 33 and is not duly stamped, the Authority is empowered to impound the same. In fact, even after registration of the instrument also power is given under Section 33-A of the Stamp Act to impound the instrument if it is not duly stamped.

(b) Section 34 of the Stamp Act provides that instruments not duly stamped is inadmissible in evidence.

(c) Section 46 of the Stamp Act provides that all duties, penalties and other sums required to be paid under this Act, may be recovered by the Collector by distress and sale of the movable property of the person from whom the same are due as an arrear of land revenue. Execution of any instrument with the intention to evade the duty is an offence under Section 59.

(vi) ***Once under the Amnesty Scheme proper stamp duty as determined is paid within the time limit as granted by the order passed under the Amnesty Scheme, for the purpose of the Stamp Act the said document/instrument will be treated as on which proper stamp duty has been paid and for the purpose of Sections 33, 34, 40, 46 and 59, the same will be considered as the document on which the proper stamp duty has been paid. The same has no effect on the stringent time line provided under the Registration Act for presentation of the documents for registration.***

(vii) ***The High Court cannot in its Writ Jurisdiction extend the statutory period under the Registration Act for presentation of a document for registration.*** *However, the only limited exception is where the delay*

in presenting the document was not attributable to the Petitioner and the same is on account of some impossibility or by virtue of an act of Authority. The said decisions are premised under the principle that no man can be compelled to perform an impossible act or be punished for the acts of a Authority.

(viii) ***The object of the Registration Act is not for securing revenue but maintaining a record of documents of title in public interest. Thus, allowing registration of the subject document dated 4th October 1987 which has been presented for the first time for registration on 31st January, 2024 i.e. after about 37 years, cannot be allowed in view of specific timelines provided in Section 23 read with Section 25 of the Registration Act. It is very clear that the said strict timelines are provided to prevent fraud and protect the public as the purpose of the Registration Act is to a maintain record of documents of title in public interest. The payment of stamp duty under the Amnesty Scheme will have no effect of altering the strict timelines provided under the Registration Act for presentation of documents.***"

(Emphasis added)

8. Thus, what has been held that the Registration Act makes provisions for record of documents in the title in public interest. The same has been enacted to check forgery, prevent fraud and to protect the public and to ensure the genuineness of written instrument. The stringent timeline prescribed under the Registration Act for presentation of document has been made to prevent fraud and to protect the public. Thus, it has been held that the stringent timeline provided under the Registration Act for presentation of the document for registration can not be modified and in fact, the High Court even in its writ jurisdiction can not extend the statutory period under the Registration Act for presentation of the document for registration.

9. In view of the legal position, although the Applicant has already paid entire consideration of Rs.93,00,000/- of auction sale and the said sale has been confirmed by this Court, however, as the stamp duty is not paid and the document is not registered, the Sheriff has not handed over the possession of the subject flat to the Applicant.

10. Mr. Gupta, learned Counsel appearing for the Applicant submitted that the Applicant has now collected the funds and is in a position to pay the stamp duty, however, as the timeline as provided by the Registration Act of four months is already over, prayer is sought that fresh certificate of sale be issued.

11. In view of the above position, this Court appointed Mr. Rahul Narichania, learned Senior Counsel as Amicus.

12. Mr. Rahul Narichania, learned Senior Counsel pointed out Section 17(2)(xii) as also Section 17(1) (b) and (c) of the Registration Act and also relied on the following decisions:

i) Decision of the Supreme Court in the case of ***B. Arvindkumar v. Government of India***[2]

ii) Decision of Calcutta High Court, in the case of ***Sk. Nuruddin v. Kolkata Municipal Corporation***[3]

2 **(2007) 5 SCC 745**
3 **2018 SCC OnLine Cal 10543**

iii) Decision of Madras High Court, in the case of ***Sri Balaji Fibre v. Office of the Inspector General of Registration***[4]

iv) Decision of the Supreme Court, in the case of ***State of Punjab v. Ferrous Alloy Forgings P. Ltd.***[5]

Learned Amicus, on the basis of the provisions of the Registration Act as also on the basis of above decisions, submitted that the Certificate of Sale which has been issued by the Sheriff of this Court does not require mandatory registration.

13. For appreciating the submission of learned Amicus, it is necessary to set out Section 17 of the Registration Act:

> *"17. **Documents of which registration is compulsory.**—*
>
> *(1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act XVI of 1864, or the Indian Registration Act, 1866 (20 of 1866), or the Indian Registration Act, 1871 (8 of 1871), or the Indian Registration Act, 1877 (3 of 1877), or this Act came or comes into force, namely—*
>
> *(a) instruments of gift of immovable property;*
>
> *(b) **other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees***

4 **(2024) 1 High Court Cases (Mad) 375**

5 **2024 SCC Online SC 3372**

and upwards, to or in immovable property;

(c) ***non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest****; and*

(d) lease of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent;

(e) ***non-testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property****:*

Provided that the State Government may, by order published in the Official Gazette, exempt, from the operation of this sub-section any leases executed in any district, or part of a district, the terms granted by which do not exceed five years and the annual rents reserved by which do not exceed fifty rupees.

[(1-A) The documents containing contracts to transfer for consideration, any immovable property for the purpose of Section 53-A of the Transfer of Property Act, 1882 (4 of 1882), shall be registered if they have been executed on or after the commencement of the Registration and Other Related Laws (Amendment) Act, 2001 and, if such documents are not registered on or after such commencement, then, they shall have no

effect for the purposes of the said Section 53-A.]

(2) ***Nothing in clauses (b) and (c) of sub-section (1) applies to*** *—*

(i) any composition-deed; or

(ii) any instrument relating to shares in a Joint Stock Company, notwithstanding that the assets of such Company consist in whole or in part of immovable property; or

(iii) any debenture issued by any such Company and not creating, declaring, assigning, limiting or extinguishing any right, title or interest, to or in immovable property except in so far as it entitles the holder to the security afforded by a registered instrument whereby the Company has mortgaged, conveyed or otherwise transferred the whole or part of its immovable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures; or

(iv) any endorsement upon or transfer of any debenture issued by any such Company; or

(v) [any document other than the documents specified in sub-section (1-A)] not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest of the value of one hundred rupees and upwards to or in immovable property, but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest; or

(vi) any decree or order of a Court [except a decree or order expressed to be made on a

compromise and comprising immovable property other than that which is the subject-matter of the suit or proceeding]; or

(vii) any grant of immovable property by the Government; or

(viii) any instrument of partition made by a Revenue Officer; or

(ix) any order granting a loan or instrument of collateral security granted under the Land Improvement Act, 1871 (26 of 1871), or the Land Improvement Loans Act, 1883 (19 of 1883); or

(x) any order granting a loan under the Agriculturists Loans Act, 1884 (12 of 1884), or instrument for securing the repayment of a loan made under that Act; or

[(x-a) any order made under the Charitable Endowments Act, 1890 (6 of 1890), vesting any property in a Treasurer of Charitable Endowments or divesting any such Treasurer of any property; or]

(xi) any endorsement on a mortgage-deed acknowledging the payment of the whole or any part of the mortgage-money, and any other receipt for payment of money due under a mortgage when the receipt does not purport to extinguish the mortgage; or

(xii) ***any certificate of sale granted to the purchaser of any property sold by public auction by a Civil or Revenue Officer.***

*[Explanation.—**A document purporting or***

> ***operating to effect a contract for the sale of immovable property shall not be deemed to require or ever to have required registration by reason only of the fact that such document contains a recital of the payment of any earnest money or of the whole or any part of the purchase money.***]
>
> *(3) Authorities to adopt a son, executed after the 1st day of January, 1872, and not conferred by a will, shall also be registered.*"
>
> (Emphasis added)

14. Thus, it is very clear that if Certificate of Sale granted to the Purchaser of any property sold by Public Auction by Civil or Revenue Officer, Section 17(1) (b) and (c) will not apply to such Certificate of Sale. Thus, the sale certificate which has been granted to the purchaser by the Sheriff dated 15th April 2023 is not required to be mandatorily registered.

15. The Supreme Court in the case of ***B. Arvindkumar*** (supra) in Paragraph No.12, has held as under:

> "***12***. *The plaintiff has produced the original registered sale certificate dated 29-8-1941 executed nu the Official Receiver, Civil Station, Bangalore. The said deed certifies that Bhowrilal (father of the plaintiff) was the highest bidder at an auction-sale held on 22-8-1941, in respect of the right, title, interest of the insolvern Anraj Sankla, namely, the leasehold right in the property described in the schedule to the certificate (suit property), that his bid of Rs.8350 was accepted and the sale was*

> *confirmed by the District Judge, Civil and Military Station, Bangalore on 25-8-1941. The sale certificate declared Bhowrilal to be the owner of the leasehold right in respect of the suit property. When a property is sold by public auction in pursuance of an order of the court and the bid is accepted and the sale is confirmed by the court in favour of the purchaser, the sale becomes absolute and the title vests in the purchaser.* ***A sale certificate is issued to the purchaser only when the sale become absolute. The sale certificate is merely the evidence of such title. It is well settled that when an auction-purchaser derives title on confirmation of sale in his favour, and a sale certificate is issued evidencing such sale and title, no further deed of transfer from the court is contemplated or required. In this case, the sale certificate itself was registered, though a sale certificate issued by a court or an officer authorised by the court, does not require registration.*** *Section 17(2) (xii) of the Registration Act, 1908 specifically provides that a certificate of sale granted to any purchaser of any property sold by a public auction by a Civil or Revenue Officer does not fall under the category of non-testamentary documents which require registration under sub-sections (b) and (c) of Section 17(1) of the said Act. We therefore hold that the High Court committed a serious error in holding that the sale certificate did not convey any right, title or interest to plaintiff's father for want of a registered deed of transfer.*"
>
> (Emphasis added)

Thus, the Supreme Court has held that a Sale Certificate is issued to the Purchaser only when the sale becomes absolute. The Auction Purchaser derives title on confirmation of sale in his favor. The Sale Certificate is issued to the Purchaser only when the sale becomes absolute, as evidence of sale. No further deed of transfer from the Court is required and such sale certificate issued by Court or an officer authorized by the Court does not require registration, as Section 17(2) (xii) of the Registration Act specifically provides that Certificate of Sale granted to the purchaser of any property sold by public auction by a Civil or Revenue Officer does not fall under the category of non-testamentary documents which requires compulsory registration under Section 17(1) (b) and (c) of the Registration Act.

16. The said Judgment of the Supreme Court in the case of ***B. Arvindkumar*** (supra) has been further followed in the Judgment of Calcutta High Court in the case of ***Sk. Nuruddin*** (supra), wherein it has been held that the Sale Certificate issued by the Court does not require registration.

17. A learned Single Judge of the Madras High Court in the case of ***Sri Balaji Fibre*** (supra) by relying on the Judgment of the Supreme Court in ***B. Arvindkumar*** (supra) has held that the transfer of property which requires compulsory registration under Section 54 of the *Transfer of Property Act, 1882* can not be applied mechanically to the auction sale.

18. The same position is once again reiterated by the Supreme Court in the case of ***Ferrous Alloy Forgings Ltd.*** (supra) and it has been held as follows in Paragraph Nos.15 to 17:-

> "***15. In Smt. Shanti Devi L. Singh v. Tax Recovery Officer, (1990) 3 SCC 605 : AIR 1991 SC 1880, this Court observed that since the certificate of sale is not a compulsorily registrable document in lieu of Section 17(2)(xii) of the Registration Act, the transfer of title in favour of the auction purchaser would not be vitiated on account of non-registration of the sale certificate.***
>
> ***16. In B. Arvind Kumar v. Govt. of India, (2007) 5 SCC 745, this Court observed that when a property is sold by public auction in pursuance of an order of the court and the bid is accepted and the sale is confirmed by the court in favour of the purchaser, the sale becomes absolute and the title vests in the purchaser. A sale certificate is issued to the purchaser only when the sale becomes absolute. The sale certificate is merely the evidence of such title. It is well settled that when an auction-purchaser derives title on confirmation of sale in his favour, and a sale certificate is issued evidencing such sale and title, no further deed of transfer from the court is contemplated or required. Although in the said case, the sale certificate was registered yet this Court proceeded to observe that a sale certificate issued by a court or an officer authorized by the court, does not require registration.*** *Section 17(2)(xii) of the Registration Act, 1908 specifically provides that a certificate of sale granted to any purchaser of any property sold by a public auction by a civil or revenue officer does not fall under the category of non-testamentary documents which require registration under sub-section (b) and (c) of Section 17(1) of the said Act.*
>
> ***17. The position of law is thus settled that a sale certificate issued to the purchaser in pursuance of the confirmation of an auction sale is merely evidence of such title and does not require registration under Section 17(1) of the Registration Act. It is not the issuance of the sale certificate which transfers the title in favour of the auction purchaser. The title is transferred upon successful completion of the sale and its confirmation by the***

> ***competent authority after all the objections against the sale have been disposed of.***"
>
> (Emphasis added)

Thus, the Supreme Court has held that as per the settled position of law, a Sale Certificate issued to the purchaser in pursuance of the confirmation of an Auction Sale is merely evidence of such title and does not require registration under Section 17 (1) of the Registration Act. It is not the issuance of the sale certificate, transfers the title in favour of the auction purchaser. The title is transferred upon successful completion of the sale and its confirmation by the Competent Authority after all the objections against the same has been disposed of. The Supreme Court has held that the Sale Certificate issued by the Authorized Officer is not compulsorily registrable.

19. Thus, in the facts and circumstance as Sale Certificate does not require compulsory registration, Order dated 13th May 2023 passed by a learned Single Judge in Sheriff Report No.10 of 2023 in Commercial Execution Application No.125 of 2017 is modified in terms of the above settled legal position.

20. Thus, after the Applicant pays the Stamp Duty on the Certificate of Sale dated 15th April 2023 under the provisions of the Maharashtra Stamp Act, the Sheriff is directed to handover the possession of the subject flat to the Applicant.

21. Accordingly, with this clarification, the Interim Application is disposed of in above terms, with no order as to costs.

22. This Court places on record its appreciation for the assistance rendered by Mr. Rahul Narichania, learned Senior Counsel appointed as *Amicus Curiae*.

[MADHAV J. JAMDAR, J.]