REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3469 OF 2022

M/s. R.S. Infra-Transmission Ltd. …Appellant

Versus

Saurinindubhai Patel and Ors. …Respondents

J U D G M E N T

M.R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 22.12.2015 passed by the High Court of Gujarat at Ahmedabad in Special Civil Application No. 17981 of 2015 by which the High Court has allowed the said petition preferred by the respondent Nos. 1 and 2 herein – original writ petitioners before the High Court and has set aside the order passed by the Debts Recovery Appellate Tribunal, Mumbai (hereinafter referred to as "DRAT") dated 07.09.2015 in Appeal No. 223 of 2007 and has consequently confirmed the sale in

favour of the original writ petitioners, respondent No.5 – subsequent purchaser – M/s. R.S. Infra-Transmission Ltd. has preferred the present appeal.

2. The facts leading to the present appeal in nutshell are as under:-

2.1 A Bank namely, IndusInd Bank Ltd. (hereinafter referred to as the "Bank") filed an O.A. bearing No. 424 of 1999 before the Debt Recovery Tribunal, Ahmedabad (hereinafter referred to as "DRT") on 25.05.2006 for recovery of debt and enforcement of security against the original respondent Nos. 3 to 5 (original borrowers). Recovery Certificate bearing RP No.153/2006 was issued in favour of the Bank for recovery of an amount of Rs.71,88,819.87/- recoverable from the original borrowers - respondent Nos. 3 to 5 with further interest payable at the rate of 12% p.a. from 27.12.1999 till realization and the costs, charges and expenses of the proceedings for recovery thereof.

2.2 The immovable properties, being Survey No.188/P admeasuring 36,735 square meters owned by respondent No.3 (borrower) and Survey No.187/P admeasuring 8280.51 square meters owned by respondent No.5 (borrower) situated at Mauje Karan Nagar, Tehsil Kadi, District Mehsana got attached in pursuance of the above Recovery Order/Certificate.

2.3 A proclamation of sale of the properties came to be issued by the Recovery Officer, DRT on 28.11.2006 fixing the public auction on

08.01.2007. As per the proclamation of the sale, the amount due and payable was Rs.1,27,30,527/- including interests as on 30.06.2006. In the auction held on 08.01.2007, the bid of respondent Nos. 1 and 2 herein (original writ petitioners) being the highest offer being Rs.1.35 crores came to be accepted by the Recovery Officer. The successful bidders – respondent Nos. 1 and 2 herein deposited the bid amount on 22.01.2007.

2.4 That the original borrowers thereafter filed an application under Rule 60 of the Second Schedule of the Income Tax Act, 1961 read with Sections 25 to 29 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 for setting aside the above auction vide application dated 25.01.2007 and submitted a Demand Draft for an amount of Rs.1,27,30,527/- as specified in the sale proclamation. Respondent No.3 herein (borrower) also submitted a Demand Draft for Rs.6,75,000/- for payment to the purchaser as penalty, a sum equal to 5% of the purchase money and a Demand Draft for Rs.3,01,290/- towards interest @ 15% from the date of the sale proclamation to the date of deposit, i.e., 25.01.2007. The Recovery Officer adjourned the matter to 06.02.2007 directing the respondents to serve a copy of the order and the application on the Bank and the auction purchaser. In the meantime, the appellant herein expressed its interest in purchasing the properties

which were the subject matter of the auction sale and entered into a Memorandum of Understanding with respondent No.3 (borrower).

2.5 The Bank filed its reply on 06.02.2007 before the Recovery Officer in response to the application of the respondent No.5 (on the 29th day from the date of auction). In its reply, the Bank claimed that there was some shortfall in the amount deposited by the borrower but no calculation sheet was attached to the reply. The matter was adjourned for filing of reply by the auction purchaser and the Bank was also directed to file compliance affidavit. The auction purchasers - respondent Nos. 1 and 2 herein filed its objection/reply to the application. The borrower also filed its rejoinder to the reply filed by the Bank. The matter got adjourned to 15.02.2007 with the following order passed by the Recovery Officer:-

- "…….the bank had still not served the copy of the calculation sheet.

- "Further, he submits a DD for an amount of Rs.2.80 lacs towards difference in calculations, if any. He farther submits that the CH Bank be directed to serve a copy of the calculation sheet on the CDs, so that, any further difference in interest, etc. in calculation may be paid. Request is allowed. CH Bank is again directed to serve a· copy of the calculation sheet on the CDs, so that, the CDs may be able to pay the difference in payment, if any. "

2.6 Thereafter, the Bank submitted a calculation sheet before the Recovery Officer on 12.02.2007. According to the calculation sheet, the

borrower - respondent No.3 deposited a further sum of Rs.77,647/- with the Recovery Officer, which was over and above Rs. 2.80 lakhs deposited as per the order dated 15.02.2007. The Recovery Officer thereafter passed an order dated 15.02.2007 allowing the application submitted by the respondent No.3 – borrower by holding that the borrower had deposited the requisite amount for setting aside the sale under Rule 60 of the Second Schedule of the Income Tax Act. Accordingly, the sale of the properties in question came to be set aside. The Recovery Officer also directed the Bank to hand over all the original documents pertaining to the immovable properties in question to the borrower immediately. In compliance of the order passed by the Recovery Officer, the Bank handed back to the original borrowers the documents pertaining to the properties in question on 19.02.2007 and on release of the documents, the request of the Bank to release the amount deposited was allowed by the Recovery Officer. Immediately on 19.02.2007 itself, the borrowers – respondent Nos.3 to 5 herein executed two sale deeds in favour of the appellant herein for a sale consideration of Rs.1,40,89,855/-. That after the sale deeds were executed in favour of the appellant dated 19.02.2007, the auction purchasers – respondent Nos. 1 and 2 preferred an appeal bearing No.11 of 2007 before the DRT, Ahmedabad on 20.02.2007.

2.7 The DRT Ahmedabad by order dated 18.05.2007 allowed the said Appeal No.11 of 2007 and set aside the order passed by the Recovery Officer passed in Recovery Proceedings No.153 of 2006. The borrowers then preferred the appeal bearing No.233 of 2007 before the DRAT, Mumbai against the order dated 18.05.2007 passed by the DRT in Appeal No.11 of 2007. The appellant herein moved an application bearing M.A. No.704 of 2007 seeking impleadment in Appeal No.223 of 2007.

2.8 Prior to the borrower preferring Appeal No.223 of 2007, respondent Nos.1 and 2 herein moved an application before the Recovery Officer on 31.05.2007 for seeking a direction to the appellant to maintain status quo over the properties in question and to appoint the receiver to take possession of the same from the appellant. The said application came to be rejected by the Recovery Officer vide order dated 31.05.2007. Against the order passed by the Recovery Officer dated 31.05.2007, rejecting the application seeking status quo order in regard to the properties in question, respondent Nos. 1 and 2 herein preferred appeal before the DRT being Appeal No. 34 of 2007, which came to be dismissed by the order dated 08.02.2008. Thereafter respondent Nos. 1 and 2 herein filed an Appeal No.43 of 2008 before the DRAT, Mumbai against the order dated 08.02.2008.

2.9 Further, respondent Nos. 1 and 2 moved cross objections in Appeal No.223 of 2007 aggrieved by certain observations in the order dated 18.05.2007 pertaining to the right of redemption of the mortgagers till the time conveyance is not executed in favour of the successful auction purchaser.

2.10 By order dated 07.09.2015, the DRAT, Mumbai allowed Appeal No.223 of 2007 preferred by the borrowers and set aside the auction sale dated 08.01.2007, which was in favour of the respondent Nos. 1 and 2 herein.

2.11 Feeling aggrieved and dissatisfied with the order passed by the DRAT, Mumbai dated 07.09.2015, allowing the Appeal No.223 of 2007 and setting aside the auction sale, respondent Nos. 1 and 2 herein (the auction purchasers) preferred the writ petition before the High Court being Special Civil Application No.17981 of 2015. By the impugned judgment and order, the High Court has allowed the said writ petition and has quashed and set aside order dated 07.09.2015 passed by the DRAT, Mumbai in Appeal No.223 of 2007 and consequently confirmed the sale in favour of respondent Nos. 1 and 2 herein (the auction purchasers).

2.12 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court, the subsequent purchaser - respondent No.5 – M/s. R.S. Infra-Transmission Ltd. has preferred the present appeal.

3. Shri Guru Krishnakumar, learned Senior Advocate appearing on behalf of the appellant – subsequent purchaser has vehemently submitted that in the present case, as such, the appellant can be said to be a bona fide purchaser, who purchased the property in question on payment of full sale consideration. It is submitted that at the time when the appellant purchased the properties in question, the judgment debtor had already exercised the rights under Rule 60 of the Second Schedule of the Income Tax Act, 1961 and after the Recovery Officer passed the order in favour of the Judgement Debtor and directed the Bank to hand over the original documents pertaining to the properties in question and at the time when the appellant purchased the properties in question, the documents pertaining to the properties in question were handed back to the judgment debtor. It is submitted that therefore as such any subsequent order cannot defeat the rights of the appellant, who is a bona fide purchaser, who purchased the properties in question pursuant to the order passed by the Recovery Officer dated 15.02.2007.

3.1 On merits, the learned Senior Advocate appearing on behalf of the appellant has vehemently submitted that if at all there was any mistake in the proclamation, in not mentioning the correct amount due and payable by the judgment debtor, it was that of the Recovery Officer. It is submitted that therefore, any lacuna in the proclamation would not

defeat the rights of the judgment debtor when the judgment debtor acted in a bonafide manner and deposited the entire amount mentioned in the proclamation of sale.

3.2 It is submitted that in the present case, the judgment debtor deposited the amount specified in the sale proclamation, i.e., Rs.1,27,30,527/- alongwith 5% of the purchase money as penalty for payment to the auction purchaser and 15% interest from the date of sale proclamation till the date of deposit as per Rule 60. In fact, an additional sum of Rs.2.80 lakhs was also paid on 09.02.2007 (anticipated shortfall) and further a sum of Rs.77,647/- on 13.02.2007 towards the purported shortfall (after being supplied with the calculation sheet by the Bank).

3.3 It is further submitted that the judgment debtor had on 25.01.2007 (about 17 days after auction) preferred an application under Rule 60 of the Second Schedule of the Income Tax Act, 1961 seeking to set aside the auction sale and he, in compliance thereof, had deposited the amount as above. It is submitted that the Bank filed its reply before the Recovery Officer on 06.02.2007 and in its reply, the Bank claimed that there was some shortfall in the amount deposited by the judgment debtor but no calculation sheet was supplied. It is submitted that the same was on the 29th day from the date of auction. That if, on 06.02.2007, the Bank would have submitted the calculation sheet and would have pointed out the shortfall in the amount deposited by the

judgment debtor, the latter would have deposited the balance shortfall amount on the 29th day itself, i.e., within 30 days. That however, the bank submitted the calculation sheet before the Recovery Officer on 12.02.2007 and immediately on the very next day, i.e., 13.02.2007, the judgment debtor deposited Rs.77,647/-, which was the shortfall as per the calculation sheet. Therefore, it can be said that the judgment debtor had substantially complied with the Rule 60.

3.4 It is submitted that the provisions of the statute and the legislative intent embodied in Rule 60 of the Second Schedule of the Income Tax Act, 1961 provides a course of last resort to the judgment debtor to save his property. That once Rule 60 is exercised in letter and spirt, then the rights of the judgment debtor are crystallized and correspondingly, the rights of the auction purchaser reach a vanishing point. That the salient objective of Rule 60 is to provide a judgment debtor a last and final opportunity to save/retain his asset. It is urged that such right should not be defeated on a highly pedantic and hyper technical construction. Therefore, in the facts and circumstances of the case, the High Court ought to have appreciated that in the present case, the judgment debtor had complied with Rule 60 in letter and spirit.

3.5 It is contended that in the present case, the Recovery Officer ought to have specifically mentioned the exact amount due and payable in the sale proclamation. That it was the Recovery Officer, who was required

to determine the entire amount alongwith the interest, which was due till the date of issuance of the proclamation. It is submitted that the Recovery Officer would be in a better position to know the actual value of the property and to indicate the correct upset price.

3.6 It is urged that it is the duty of the Recovery officer to apply his mind for determining all the necessary particulars that should be inserted in the proclamation of sale. Reliance is placed on the decision of this Court in the case of **Gajadhar Prasad Vs. Babu Bhakta Ratan, (1973) 2 SCC 629**.

3.7 It is submitted by learned senior counsel that in the present case, at the most, it can be said that there was an ambiguity in the sale proclamation to extent that in the sale proclamation, it was mentioned that the amount due and payable is Rs.1,27,30,527/- including interests as on 30.06.2006. That however, it was the duty cast upon the Recovery Officer to mention the exact amount alongwith interest as interest is paid upto the date of sale proclamation. Therefore, the judgment debtor has virtually believed that he is required to deposit a sum of Rs.1,27,30,527/- and therefore, he deposited the same alongwith 5% of the purchase money as penalty for payment to the auction purchaser and 15% interest from the date of sale proclamation till the date of deposit. However, there was a shortfall of Rs.77,647/- towards

the interest for the period between 30.06.2006 to 08.01.2007, which the judgment debtor deposited as soon as he was informed by the Bank.

3.8 It is further submitted that a mistake/inaccuracy in the amount specified in the proclamation, as recovery through sale was ordered, cannot prejudice the application filed under Rule 60. That a person, who makes an application under Rule 60 cannot be made to suffer due to the fault/shortfall, if any, in the computation of the amount sought to be recovered. It is submitted that the applicant is bound to go by the amount specified in the proclamation. That the borrower/judgment debtor cannot be caused to suffer on account of a mistake on the part of the Court/Executing Officer/Recovery Officer.

3.9 It is further submitted that Rule 60 is to be read with Rule 53. That as per Rule 60, an application to set aside a sale/auction must be made to the Recovery Officer by depositing, inter alia, the amount specified in the proclamation, as that with the recovery of which the sale was ordered. That as per Rule 53, the proclamation shall be drawn by the Tax Recovery Officer, after notice to the defaulter. The proclamation shall state the time and place of sale and shall specify as fairly and accurately as possible the amount for the recovery of which the sale is ordered. It is submitted that therefore the legislative intent is that the amount to be specified in the proclamation of sale must be a fair estimate of the amount due from the borrowers. That once the provision

provides that a specific amount prescribed in the proclamation is to be deposited and the same is deposited, it would be unjust to hold that the provisions have not been complied with. It is submitted that an applicant/judgment debtor cannot be compelled to deposit any unspecified demands.

3.10 It is further submitted by the learned senior counsel appearing on behalf of the appellant that even the bona fides of the judgment debtor are also required to be considered. That in the present case, the auction of the subject properties took place on 08.01.2007. On the 17th day of the auction sale, the borrower filed the requisite application under Rule 60 and deposited the amount specified in the proclamation alongwith other amounts to be deposited under Rule 60, i.e., interest @ 15% p.a. from the proclamation of date of sale to the date when the deposit is made and a sum equal to 5% of the purchase money as penalty. That on 28th/29th day of the auction, the Bank filed its reply to the application under Rule 60. However, in its reply, the bank did not specifically state the exact amount of shortfall. That upon the request of the borrowers, vide order dated 09.02.2007, the Recovery Officer directed the Bank to serve a copy of the calculation sheet so that the judgment debtor may be able to pay the amount of difference, if any. In fact, even without waiting for the supply of the calculation sheet, the borrower deposited Rs.2.80 lakhs in anticipation of the shortfall. Subsequently, the Bank submitted

the calculation sheet on 12.02.2007 and it was found that an amount of Rs.77,647/- was the shortfall. Therefore, immediately on the very next day, i.e., 13.02.2007, the judgment debtor deposited the shortfall amount, i.e., Rs.77,647/- with the Recovery Officer. It is submitted that therefore, all throughout the judgment debtor acted promptly and in a bonafide manner. Therefore, it cannot be said that there was any deliberate and/or wilful non-compliance of the provisions of Rule 60, which defeats the valuable right of the judgment debtor provided under Rule 60.

3.11 It is further submitted by the learned counsel appearing on behalf of the appellant that the provisions of Rule 60 ought to be interpreted in favour of the borrower liberally, as it is the last chance to save his property without assigning any cause. Reliance is placed upon the decision of Bombay High Court in the case of **Hotel Paras Garden, Balapur & Anr. Vs. Central Bank of India, Balapur & Ors., 2015 SCC Online Bom 3398**.

3.12 Relying upon the decision of the Punjab & Haryana High Court in the case of **M/s. National Rice and General Mills, Jagraon and Ors. Vs. Bank of India and Ors., C.W.P. No. 19113 of 2005**, it is submitted that as observed and held by the High Court while considering compliance of Rule 60, the Court has to consider, firstly, that the deposit has been made in compliance of Rule 60 with regard to the deposit of

the money and then, to see, whether, such irregularity, which has surfaced has caused any substantial injury to the objector.

3.13 It is submitted that in any case, there has been substantial compliance of Rule 60. From the aforesaid facts, it can be seen that the borrower has substantially complied with the provisions of Rule 60 so as to accomplish the reasonable objectives for which the provision was passed. Reliance is placed upon the decision of this Court in the case of **Commissioner of Central Excise, New Delhi Vs. Hari Chand Shri Gopal and Ors., (2011) 1 SCC 236** and **Excise Commissioner & Ors. Vs. Ajith Kumar and Anr., (2008) 5 SCC 495**.

3.14 It is submitted that in the present case, the alleged deficit amount was nominal and in fact was due to the mistake on the part of the Recovery Officer in specifying the accurate amount for the recovery of which the sale was ordered. Therefore, the right of the borrower to save his property conferred under Rule 60 can be said to be a valuable right and the same shall not be affected on the technical ground and/or should not be made to suffer due to the mistake on the part of the Recovery Officer.

3.15 It is further submitted on behalf of the learned counsel appearing on behalf of the appellant that the right of redemption of mortgage under Section 13(8) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 is to enable the

borrower to protect his constitutional right guaranteed under Article 300A of the Constitution of India. That in fact the borrower's right to redeem his property survives till there has been completion of the sale by the mortgagee, i.e., the bank by registered deed. That in the present case, the auction sale was not confirmed in favour of the auction purchasers as the title and ownership of the subject property has been crystallised in favour of the appellant and sale deeds have been executed and registered in favour of the appellant.

3.16 Making the above submissions, it is prayed to allow the present appeal and quash and set aside the impugned judgment and order passed by the High Court.

4. Present appeal is vehemently opposed by learned counsel appearing on behalf of the respondent Nos. 1 and 2. It is submitted by the learned counsel appearing on behalf of respondent Nos. 1 and 2 – auction purchasers that in the present case, the Hon'ble High Court has rightly observed and held that there was a non-compliance of Rule 60, in as much as, the entire amount mentioned in the sale proclamation was not deposited and there was a shortfall.

4.1 That in the present case, in the said proclamation itself, it was mentioned that as on 30.06.2006, the amount due and payable would be Rs.1,27,30,527/- including interest. Therefore, it was for the borrower to calculate and deposit the amount alongwith the interest on

Rs.1,27,30,527/- from the date of recovery certificate till the date of deposit. It is contended that it is an admitted position that the borrower deposited a sum of Rs.1,27,30,527/- only and did not deposit the interest from the date of recovery certificate till the actual deposit. Therefore, there was a shortfall and hence, it can be said that there was non-compliance of Rule 60.

4.2 It is further submitted that in the present case, the notice on the application under Rule 60 was issued on 06.02.2007 itself, which was within 30 days as contemplated by Rule 60. That on the returnable date, the Bank filed a reply pointing out that the amount paid by the judgment debtor was less than what was required to be paid and annexed a calculation sheet. It is submitted that despite the fact that the judgment debtor was having knowledge about what was the shortfall, he made a statement before the DRT that he was not aware of the amount/difference claimed by the Bank and offered to pay Rs. 2.8 lakhs and no basis of the said amount was shown. It is submitted that this attempt was clearly dishonest. That according to the Bank, Rs. 4.63 lakhs was outstanding, which the borrower refused to pay. Therefore, the amount, which was due and payable was Rs. 4.63 lakhs, which was not deposited by the judgment debtor. That as there was a breach of Rule 60, the High Court has not committed any error.

4.3 It is further submitted by the learned counsel appearing on behalf of respondent Nos. 1 and 2 – auction purchasers that even the acquisition is also in favour of the respondents. It is submitted that respondent Nos. 1 and 2 have deposited a sum of Rs. 1.35 crores in 2007. It is urged that the land in question is a very valuable land so far as the respondent Nos. 1 and 2 are concerned, as they purchased the land through Court auction for their business purpose as it already has a factory adjacent to this plot of land. That on the other hand, the appellant is a buyer by an internal agreement between the borrower and the appellant whereas the auction purchaser bought it by auction in court and by following due process of law. It is submitted that even the borrower and the appellant did not wait for the appeal period against the order passed by the Recovery Officer and the appellant and the borrower executed the sale deeds without waiting for appeal period to defeat the rights of auction purchaser.

4.4 Making the above submissions, it is prayed to dismiss the present appeal.

5. We have heard the learned counsel appearing for the respective parties at length.

6. At the outset, it is required to be noted that by the impugned judgment and order, the High Court has set aside the order passed by the DRAT and has confirmed the sale in favour of respondent Nos. 1 and

2 – auction purchasers by dismissing the application submitted by the judgment debtor under Rule 60 of the Second Schedule of the Income Tax Act, 1961 by observing that as there was a shortfall in the deposit of the amount while exercising the right under Rule 60 and hence, there was non-compliance of the provisions of Rule 60.

6.1 However, it is required to be noted that in the sale certificate, the amount mentioned was Rs.1,27,30,527/- including interest as on 30.06.2006. The judgment debtor while exercising the right under Rule 60 deposited Rs.1,27,30,527/- alongwith Rs. 6,75,000/- for payment to the purchaser as penalty, a sum equal to 5% of the purchase money and also further deposited Rs. 3,01,290/- towards interest @ 15% from the date of sale proclamation to the date of deposit i.e., 25.01.2007. However, it was the case on behalf of the auction purchasers that there was a shortfall in not making the payment of interest from 30.06.2006 to 25.01.2007. However, at this stage, it is required to be noted that as such it was the duty cast upon the Recovery Officer to mention the exact amount in the sale certificate. The Recovery Officer mentioned the amount in the Sale Certificate of Rs.1,27,30,527/- including the interest as on 30.06.2006, however, did not specify any further amount towards the interest for the period between 30.06.2006 till the date of the sale proclamation, i.e., 08.01.2007, which the Recovery Officer ought to have mentioned specifically. The aforesaid mistake and/or inaccuracy on the

part of the Recovery Officer led to the shortfall in the deposit of the amount, which was towards the interest for the period between 30.06.2006 to 08.01.2007, otherwise, the judgment debtor had substantially complied with Rule 60. The shortfall was Rs.3,57,647/-. When the judgment debtor deposited the substantial amount of Rs. 1,27,30,527/- and other amounts due and payable under Rule 60 including the penalty and the interest, there was no reason for the judgment debtor not to deposit Rs. 3,57,647/- which is a very small amount as against the amount deposited. At this stage, it is required to be noted that though the Bank filed its reply before the Recovery Officer in response to the application made by the judgment debtor - borrower made under Rule 60 and in which it was stated that there was some shortfall in the amount deposited, but according to the judgment debtor, no calculation sheet was attached to the reply and/or supplied to the judgment debtor.

6.2 At the time of hearing of the application under Rule 60 on 09.02.2007, a grievance was made before the Recovery Officer as to why the Bank had not served a copy of the calculation sheet and in the meantime, the judgment debtor had himself deposited a further sum of Rs.2.80 lakhs towards the difference in calculation, if any. The Recovery Officer directed the Bank to supply the calculation sheet and the Bank submitted the calculation sheet before the Recovery Officer on

12.02.2007 and on that day, a sum of Rs.77,647/- was the shortfall, which the judgment debtor deposited on the very next day, i.e., on 13.02.2007. If the Bank would have submitted the calculation sheet earlier alongwith the reply on 06.02.2007, which was 29th day from the date of auction, the judgment debtor would have deposited the balance shortfall amount. Therefore, in the facts and circumstances of the case, it can be said that there was a substantial compliance/ compliance of Rule 60. If the Recovery Officer would have been accurate in submitting the exact amount in the sale proclamation due and payable on the date of sale proclamation then the eventuality which has arisen in the present case would not have arisen. There was an absurd misconduct on the part of the Recovery Officer for which the judgment debtor should not be made to suffer.

6.3 At this stage, it is required to be noted that the right available to the judgment debtor under Rule 60 is a valuable right and the last resort/opportunity to the judgment debtor to save his property. It is a right available to the judgment debtor after his property is sold in a court auction. Therefore, such a valuable right available to the judgment debtor to save his property should not be affected on the technical ground and/or for the mistake and/or the bona fide mistake for which he was not at all responsible.

6.4 The legislative intent of Rule 60 has been dealt with and considered in detail by the Bombay High Court in the case of **Hotel Paras Garden, Balapur & Anr. (supra).** In the aforesaid case, it is observed that the legislative intent of Rule 60 is to give the defaulter as much latitude as possible till the end and he can, under Rule 60, without assigning any cause but after depositing the sum therein mentioned as mentioned in the sale proclamation within the stipulated time, avoid the auction and protect his property. Thus, the right which is available to the judgment debtor under Rule 60 is a most valuable right available and the same shall not be permitted to be affected on the technical ground and/or bona fide mistake for which he cannot be said to be at fault.

6.5 Now, so far as the submission on behalf of respondent Nos. 1 and 2 that according to the Bank, a sum of Rs.4.63 lakhs was the balance amount due and payable against which even subsequently the borrower has deposited Rs. 3,57,647/- and therefore, still there is a shortfall is concerned, the aforesaid has no substance. At this stage, it is required to be noted that on deposit of the aforesaid amount of Rs. 3,5,7647/-, (i.e., Rs.2,80,000/- + Rs.77,647/-) as on 13.02.2007, the Recovery Officer directed the Bank to hand over the original documents pertaining to the impugned properties and file compliance affidavit and thereafter the Bank was allowed to appropriate the decretal amount deposited by the judgment debtor and that on 19.02.2007 itself, the Bank complied

with the order passed by the Recovery Officer dated 15.02.2007 and handed back to the judgment debtor the documents pertaining to the properties in question and requested to release the amount deposited, which came to be allowed by the Recovery Officer. At that time, no dispute was raised by the Bank that any further amount was due and payable. The Bank was satisfied with the deposit of the amount by the judgment debtor.

7. In view of the above discussion and for the reasons stated above, the High Court has committed a grave/serious error in quashing and setting aside the order passed by the DRAT and the Recovery Officer by which the Recovery Officer and the DRAT set aside the sale in favour of the auction purchasers. The view taken by the High Court is too technical. The High Court has not at all considered the facts narrated hereinabove in its true perspective. The High Court has not at all appreciated and considered the fact that for the inaccuracy and/or mistake on the part of the Recovery Officer, the judgment debtor cannot be made to suffer for no fault of his. The High Court has also not properly appreciated and considered the valuable right available to the judgment debtor under Rule 60. As observed and held hereinabove, when the substantial amount was deposited, there was no reason for the judgment debtor not to deposit the shortfall, which as such can be said to be very meagre amount. As and when the judgment debtor was made

aware about the shortfall, immediately, the shortfall amount has been deposited by the judgment debtor.

Under the circumstances, the impugned judgment and order passed by the High court is unsustainable and the same deserves to be quashed and set aside.

8. In view of the above and for the reasons stated above, present appeal succeeds. The impugned judgment and order passed by the High Court is hereby quashed and set aside. The order passed by the DRAT dated 07.09.2015 setting aside the auction sale dated 08.01.2007 is hereby restored. The amount deposited by respondent Nos. 1 and 2 shall be returned to them alongwith the interest accrued thereon, if not received by them so far. To do the substantial justice, we also direct that the appellant shall pay a further sum of Rs. 10,00,000/- (Rupees Ten Lakhs) to respondent Nos. 1 and 2 by Demand Draft within a period of four weeks from today.

Present appeal is allowed accordingly. However, in the facts and circumstances of the case, there shall be no order as to costs.

……..J.
[M.R. SHAH]

NEW DELHI;
JULY 11, 2022.

……..J.
[B.V. NAGARATHNA]

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