

2023 LiveLaw (SC) 846

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
ANIRUDDHA BOSE; J., BELA M. TRIVEDI; J.**

October 04th, 2023

**MISCELLANEOUS APPLICATION NO.1735 OF 2022 IN CIVIL APPEAL NO.1902 OF 2020
UNION BANK OF INDIA versus RAJAT INFRASTRUCTURE PVT. LTD. & ORS.**

Constitution of India 1950 - Article 142 cannot be invoked to override statutory provisions. The inherent powers though wide in its amplitude, cannot be exercised to supplant the substantive law applicable to the case or to the cause under consideration of the court. (Para 17)

Security Interest (Enforcement) Rules, 2002; Rule 9 - Multiple applications for extension of time to deposit the outstanding sale amount and interest – Held, the Miscellaneous Application was not maintainable in light of the applicant's failure to comply with the court's orders and statutory provisions - The Court discouraged the practice of filing repeated Miscellaneous Applications without legal foundation and stressed the importance of adhering to statutory procedures. (Para 18)

For Petitioner(s) Mr. O. P. Gaggar, AOR

For Respondent(s) Mr. Rishi Sehgal, Adv. Mr. Nikhil Jain, AOR Mr. Keshavam Chaudhri, Adv. Ms. Arveen Sekhon, Adv. Ms. Hargun Sandhu, Adv. Ms. Nikita Gill, Adv. Ms. Divya Jain, Adv. Ms. Monika Dhingra, Adv. Ms. Mrinmayee Sahu, AOR Mr. Birendra Kumar Mishra, AOR Mr. Samman Vardhan, Adv. Ms. Poonam Atey, Adv. Mr. Hemendra, Adv. Mr. Sirajuddin, Adv. Mr. Dushyant A. Dave, Sr. Adv. Mr. Jaideep Gupta, Sr. Adv. Mr. Aditya Kr. Choudhary, Adv. Mr. Gurmehar Vaan Singh, Adv. Mr. Sandeep Pandey, Adv. Mr. Rajesh Singh Chauhan, AOR Mr. Siddhartha Sinha, AOR Mr. Tushar Singh, AOR

J U D G M E N T

BELA M. TRIVEDI, J.

1. M.A. No.1735 of 2022 is filed in the Civil Appeal No.1902 of 2020 (arising out of Special Leave Petition (Civil) No.28608 of 2019), by the Applicant (original Respondent No.6-M/s. Sunview Assets Pvt. Ltd.) seeking directions to Union Bank of India (original Appellant) to issue Sale letter in favour of the Applicant in respect of the property bearing House No.7, Survey No. Old 168 and 169 (New No.306 & 307) of Village Palasiayana, Manormagank, Tehsil and District Indore admeasuring 109754 Sq. Ft. (2.18 Acres) (hereinafter referred to as the 'Subject Property') on the ground that the Applicant/ Auction Purchaser has made the full and final payment of the auction amount alongwith interest in terms of the order dated 12.05.2020 passed by this Court in M.A. No.922 of 2020.

2. The chequered history of the long-drawn litigation between the parties may be summarized as under: -

(i) The appellant in the Civil Appeal No.1902 of 2020 is a bank, a body Corporate constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970. The Respondent No.1-Rajat Infrastructure Pvt. Ltd. claimed to be the owner of the Subject Property, the Respondent No.2-Manindra Chandrasen and Respondent No.3-Sharad Chandrasen claimed to be in the possession of the subject property, Respondent No.4-Zoom Developers Pvt. Ltd. and Respondent No.5-Zoom Vallabh Steel Ltd. were the borrowers. In order to secure the credit facilities/ loan granted by the Appellant Bank to the Respondent No.4 and 5, the Respondent No.1 on 15.04.2005 had mortgaged its interest in the subject property to the Appellant Bank.

(ii) The Respondent No.4 & 5 having failed to repay the credit facilities/ loan granted by the appellant bank, the proceedings under Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the 'SARFAESI Act') were initiated by the Appellant Bank in respect of the Subject Property mortgaged with it.

(iii) After certain proceedings before the Debt Recovery Tribunal (DRT) and Bombay High Court having taken place between the parties, the Appellant on 13.06.2019 had issued a notice for e-auction sale of the said property under the SARFAESI Act, scheduling the auction sale on 04.07.2019.

(iv) The Respondent no.1-Rajat Infrastructure preferred a Securitization Application No. 115 of 2019 on 30.06.2019, before the DRT for restraining the Appellant Bank from taking any further steps including the sale and confirmation of sale in respect of the Subject Property, on the ground that the Bank-the secured creditor had failed to make proper valuation of the Subject Property before proceeding with the auction sale as contemplated under sub Rule (5) of Rule 8 of the Security Interest (Enforcement) Rules, 2002 (for short, 'the said Rules').

(v) In the said Securitization Application No. 115 of 2019, the Respondent no.1 Rajat Infrastructure had also filed an Interlocutory Application No. 822 of 2019 seeking interim relief restraining the Appellant Bank from proceeding further with the proposed auction sale, pending the main application. The DRT Mumbai vide the order dated 11.11.2019 refused to grant the *ad interim* relief as prayed for in I.A. No. 822 of 2019.

(vi) The Respondent no.1 being aggrieved by the said order passed by the DRT, preferred a Writ Petition being (ST No.29319 of 2019). The Bombay High Court vide the order dated 25.11.2019 relegated the Respondent no.1 to the statutory remedy of appeal before the Debt Recovery Appellate Tribunal (for short 'DRAT'). It was observed in the said order by the High Court that: -

"the petitioner has an efficacious alternate remedy of appeal before the learned DRAT, where no pre-deposit is required."

(vii) Pending the said Writ Petition before the High Court, the auction having taken place, the Respondent no.6 M/s. Sunview Assets Pvt. Ltd. (the Applicant herein) claimed to be the highest bidder for a sum of Rs.65.62 Crores. The Bombay High Court therefore vide the order dated 20.11.2019 permitted the Respondent no.6 to be impleaded in the said Writ Petition.

(viii) The Respondent no.6, on the High Court disposing of the Writ Petition observing that the Respondent no.1 had an efficacious alternative remedy of appeal before the DRAT, where no pre-deposit was required, had filed a review petition before the High Court. The said review petition came to be dismissed by the High Court vide the order dated 16.12.2019.

(ix) The Appellant Bank, being aggrieved by the observations made by the High Court in the order dated 25.11.2019, with regard to the pre-deposit, preferred an appeal being Civil Appeal No.1902 of 2020 (arising out of SLP (C) No.28608 of 2019), and the Respondent no.6 also being aggrieved by the order of the High Court passed on 16.12.2019 dismissing its review petition, preferred an appeal being the Civil Appeal No.1903 of 2020 (arising out of SLP (C) No.1753 of 2020) before this Court.

(x) This Court by a common judgment and order dated 02.03.2020 allowed both the said appeals by setting aside the orders dated 25.11.2019 and 16.12.2019 passed by the

High Court in so far as it was observed therein that pre-deposit was not required. This Court to be precise, passed the following order: -

“11. In view of the above discussion, we set aside both the orders dated 25.11.2019 and 16.12.2019 of the High Court in so far as they hold that predeposit is not required and allow the appeals. We reiterate that we have not gone into the merits of the contentions raised by the parties which shall be decided by the DRAT when it entertains the appeal and is called upon to do so. We extend the time given to the auction purchasers, respondent no.6 to deposit the balance of the sale amount till 20.03.2020. We also direct that in case respondent no.1 files an appeal within 30 days of the pronouncement of this order it shall not be rejected on the ground of limitation.”

A corrigendum order directing some corrections was passed by the court on 04.03.2020.

(xi) The Applicant–Auction Purchaser preferred M.A. No.894 of 2020 in the said disposed of Civil Appeal No.1902 of 2020 seeking extension of time for payment of balance sale price of Rs.49,21,50,000/- (Rupees Forty-Nine Crores Twenty-One Lakhs Fifty Thousand Only) on the ground that due to Covid-19 pandemic the Applicant could not raise the required balance sale price. The Court vide order dated 20.03.2020 allowed the extension of time to deposit the balance sale consideration by 30.04.2020, further observing that: -

“No further extension shall be granted.”

(xii) Another M.A. No.922 of 2020 came to be filed by the Applicant/ Auction Purchaser seeking further extension of time on the ground that there was no improvement in the pandemic situation. This Court vide order dated 12.05.2020 considering the lockdown declared on account of the Covid-19, extended the time to deposit the remaining amount till two months after lifting of lockdown. In the said order the court directed the Applicant to pay interest at the lending rate for the period starting from 20.03.2020 till the date of deposit.

(xiii) The Applicant deposited Rs.4,80,00,000/- (Rupees Four Crores and Eighty Lakhs) on 30.03.2021, Rs.5,00,00,000/- (Rupees Five Crores) on 21.08.2021 and Rs.5,00,00,000/- (Rupees Five Crores) on 15.03.2022.

(xiv) The Applicant again filed M.A. No.1126 of 2022 seeking extension of time to deposit the remaining amount of Rs.34,41,50,000/- (Rupees Thirty-Four Crores Forty-One Lakhs Fifty Thousand Only).

(xv) The Respondent No.1 i.e., Rajat Infrastructure therefore filed M.A. No.1164 of 2022 seeking recall of the order dated 12.05.2020 passed by the court in M.A. No.922 of 2020 and sought directions against the Appellant Bank to initiate the proceedings in terms of Section 14 of the SARFAESI Act. The Respondent No.1 in the said application had also sought action against the officials of the Respondent-Bank and the Applicant M/s. Sunview Assets Pvt. Ltd. alleging fraud, collusion, and conspiracy.

(xvi) On 11.07.2022, the court passed an interim order in the said applications directing to list the matter on 26.07.2022 and observed:

“As at present, we have not passed any order, whether on the prayer for enlargement of time, as sought for by the respondent no.6 or on the other prayer for not granting any other enlargement but, we still leave it open for the respondent no.6 to make the requisite payment before the next date. We see no more at present.”

(xvii) In view of the said order passed by the court on 11.07.2022, the Applicant deposited further amount of Rs.34,41,50,000/- (Rupees Thirty-Four Crores Forty-One

Lakhs Fifty Thousand Only) after deducting 1 percent TDS of the total auction purchase value with the bank on 22.07.2022.

(xviii) The Applicant (original Respondent No.6) thereafter filed an application being I.A. No.107669 of 2022 praying for waiver or reduction of interest amount as earlier directed in the order dated 12.05.2020. However, during the course of hearing on 10.08.2022, the learned counsel appearing for the Applicant did not press for the said I.A. and submitted that the Applicant shall make payment of the requisite amount of interest to the bank. He also did not press for the M.A. No.1126 of 2022. The learned counsel appearing for the Respondent No.1 – Rajat Infrastructure also did not press for the M.A. No.1164 of 2022, however, sought liberty to take recourse to other appropriate remedies in accordance with law. The court taking note of the submissions of the respective parties passed following order on 10.08.2022.

“..... We have only taken note of the submissions of the respective parties in this regard and are not making any comments on the merits of the submissions either way.

Suffice it to observe for the present purpose that with disposal of M.A. No. 1126 of 2022, no further orders are required on the pending applications in this matter. Hence, they stand disposed of as such.

It goes without saying that other pending matters shall be dealt with on their own merits and strictly in accordance with law.

The other applications for intervention, permission for filing the application for intervention (I.A. No.100718 of 2022 and I.A. No.10713 of 2022) as also the application for direction, being I.A. No.100735 of 2022 are also rendered redundant and stand disposed of as such.”

(xix) The Applicant/ Auction Purchaser thereafter deposited with the Appellant Bank a sum of Rs.7,17,02,859.45/- (Rupees Seven Crores Seventeen Lakhs Two Thousand Eight Hundred Fifty-Nine and Forty-Five Paise) towards the interest amount. The Appellant Bank vide letter dated 26.08.2022, acknowledged the receipt of the said amount.

3. The Applicant (original respondent no.6 in C.A. No. 1902 of 2020) has now filed the instant M.A. No.1735 of 2022 seeking the directions as stated hereinabove. The application has been resisted by the Respondents by filing their respective replies. The Respondent no.1 Rajat Infrastructure has mainly contended that the Miscellaneous Application filed in the disposed of Civil Appeal, seeking directions to the bank for issuing the sale certificate is not maintainable, more particularly when the Applicant has failed to comply with the orders passed by this Court from time to time and when the Applicant has also not complied with the provisions contained in Rule 9 of the said Rules. The Respondent no.1 has also alleged collusion between the Applicant and the Appellant Bank. The other Respondents no.2 to 5 have also broadly supported the contentions raised by the Respondent no.1. The Appellant Bank has filed the affidavit in reply on 23.11.2022 relying upon its earlier affidavit filed with regard to the status report dated 06.08.2022 (Annexure A7 of the M.A. paper book). It has been contended *inter alia* that even if the lockdown was considered to be in operation till the end of February 2022, then also the full payment as per the Court’s order dated 12.05.2020 should have been made on or before 30.04.2022, but the same was not made.

4. It may be noted that none of the parties has placed on record any material to show as to on which particular date the lockdown was lifted in the state of Maharashtra. However, taking note of the orders passed by this Court in Suo Motu Writ Petition (C) No.03 of 2020, extending period of limitation in all proceedings before the Courts and Tribunals, including this Court, on account of the outbreak of the Covid-19 pandemic, it

may be safely presumed that the time limit whenever was to expire in the proceedings was extended upto February 2022, and that in the instant case, therefore the Applicant was required to deposit the amount as directed by this Court in the order dated 12.05.2020, two months after February 2022 i.e., on or before 30.04.2022.

5. Before adverting to the contentions raised by the learned counsels for the Respondents, with regard to the maintainability of the instant Miscellaneous Application seeking directions against the Appellant-Bank for issuance of sale letter in favour of the Applicant, let us first address the issue whether the extension of time sought by the Applicant in the successive applications was permissible in the eye of law, and even if permissible, whether the Applicant had in fact complied with the orders passed by the Court from time to time in the said applications.

6. At this juncture, it would also be necessary to refer to Rule 9 of the said Rules which deals with “Time of sale, issue of sale certificate and delivery of possession etc.,” with regard to the sale of immovable secured assets through e-auction mode. Rule 9 of the Rules reads as under: -

“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 authorized 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 [rule8]:

Provided further that if the authorized 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 percent 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 authorized 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 [to the secured creditor] and the property shall be resold and the defaulting purchaser shall forfeit 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 authorized 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 authorized 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 the money deposited by the purchaser such surplus shall be paid to the purchaser within fifteen days from the date of finalization of the sale.]

(8) On such deposit of money for discharge of the encumbrances, the authorized 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 payments accordingly.

(9) The authorized 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.”

7. As discernible from the afore-stated sub-rule (4) of Rule 9, the balance amount of purchase price payable by the purchaser to the authorized Officer has to be paid 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. Sub-rule (5) thereof states that in default of payment within the period mentioned in sub-rule (4), the deposit shall be forfeited to the secured creditor and the property shall be resold, and that defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may be subsequently sold. As per sub-rule (6) thereof, on the confirmation of sale by the secured creditor and if the terms of payment have been complied with, the authorized Officer exercising the power of sale would issue a certificate of sale of the immovable property in favour of the purchaser in the form prescribed under the Rules.

8. Now, it is well settled proposition of law that when a statute requires a particular thing to be done in a particular manner, it must be done in that manner or not at all, and other methods of performance are necessarily forbidden.¹

9. In the instant case, out of the total bid amount of Rs.65.62 Crores finalized on the date of auction sale i.e., 11.11.2019, the Applicant had deposited an amount of Rs.31,20,50,000/- (Rupees Thirty-One Crores Twenty Lakhs Fifty Thousand) only with the bank and was required to deposit the balance amount with the authorized officer of the bank on or before the fifteenth day of the confirmation of sale of the subject property i.e., on or before 26.11.2019 as per Rule 9(4) of the said Rules. However, this Court while disposing of the said Civil Appeals Nos. 1902 & 1903 of 2020 vide the order dated 02.03.2020 permitted the Respondent No.6 (Applicant herein) to deposit the balance of sale amount till 20.03.2020.

10. As per the chronology of events stated hereinabove, the Applicant did not deposit the balance sale amount on or before 20.03.2020. Thereafter, the Applicant projecting the cause of Covid-19, sought extension of time for payment of the balance sale price by filing

¹ *Taylor vs. Taylor*, [L.R.] 1 Ch.426 approved by the Supreme Court in *Rao Shiv Bahadur Singh and Another vs. The State of Vindhya Pradesh* AIR 1954 SC 322; *State of Uttar Pradesh vs. Singhara Singh and Others* AIR 1964 SC 358 and in *Babu Verghese and Others vs. Bar Council of Kerala and Others* (1999) 3 SCC 422.

the M.A. No.894 of 2020. The court vide the order dated 20.03.2020, extended the date upto 30.04.2020, clarifying that no further extension shall be granted.

11. Again, the Applicant filed another M.A. No.922 of 2020 seeking further extension of time on the ground that there was no improvement in the Covid19 pandemic situation, and the court passed an order on 12.05.2020, extending the time to deposit the remaining amount till two months after lifting of lockdown. In the said order, the court directed the Applicant to pay interest at the lending rate for the period starting from 20.03.2020, till the date of deposit.

12. However, the Applicant, instead of making the said deposit of the entire balance amount with interest (which at the relevant time had accrued to more than fifty crores) deposited Rs. 4,80,00,000/- (Rupees Four Crores Eighty Lakhs) on 30.03.2021, Rs.5,00,00,000/- (Rupees Five Crores) on 21.08.2021 and another Rs.5,00,00,000/- (Rupees Five Crores) on 15.03.2022.

13. The Applicant thereafter again filed M.A. being No.1126 of 2022 seeking extension of time to deposit the remaining amount. The said application was strongly resisted by the Appellant Bank and by the other Respondents and therefore, the court passed the interim order on 26.07.2022 observing that “the court had not passed any order either accepting the prayer or rejecting the prayer for enlargement of time, however, it was left open for the applicant – respondent no.6 to make requisite payment before the next date.”

14. The Applicant thereafter deposited with the bank a sum of Rs.33,75,88,000/- (Rupees Thirty-Three Crores Seventy-Five Lakhs Eighty-Eight Thousand Only) on 22.07.2022 after deducting 1 percent TDS of the total auction purchase value. The Applicant thereafter deposited with the bank a sum of Rs.7,17,02,859.45/- (Rupees Seven Crores Seventeen Lakhs Two Thousand Eight Hundred Fifty-Nine and Forty-Five paise) towards the interest amount on 26.08.2022.

15. From the afore-stated state of affairs, it appears that the extension of time granted by the court vide the order dated 12.05.2020, which was selflimiting, had lapsed or expired at least by 30.04.2022 as per the version of the Appellant Bank. Thereafter, there was no order passed by the court specifically extending the time limit. Significantly, there is no clarification made by the Applicant M/s. Sunview Assets Pvt. Ltd., as to how the deposit of Rs.34,41,50,000/- on 22.07.2022 and the deposit of Rs.7,17,02,859.45/- on 26.08.2022 made with the Appellant Bank were in due compliance of the orders passed by the Court from time to time and particularly of the order dated 12.05.2020. When the Court had passed the order on 12.05.2020 extending the time to deposit the remaining amount till two months after lifting of the lockdown and to pay interest at the lending rate for the period starting from 20.03.2020 till the date of the deposit, it was incumbent on the part of the Applicant to state as to when exactly the lockdown was lifted, what was the lending rate of interest at the relevant time, and how much amount the Applicant was required to pay towards the balance sale price and towards the interest for the period starting from 20.03.2020 till the deposit was made.

16. Even if a lenient view is taken considering the orders passed by this Court in the Suo Motu Writ Petition (C) No.3 of 2020 that the period of limitation had stood extended upto February, 2022 on account of the outbreak of Covid-19 pandemic, then also the Applicant was required to make deposit of the entire balance amount with interest within two months thereafter as per the order passed by this Court on 12.05.2020 in M.A. No.922 of 2020, which the Applicant had failed to comply.

17. The submission of the learned Senior Advocate Mr. Dushyant Dave for the Applicant that this Court should treat the deposits made by the Applicant on 22.07.2022 and on 26.08.2022 as due compliance of the order dated 12.05.2020, extending the time limit by exercising the inherent powers of the Supreme Court under Article 142 of the Constitution of India or exercising the powers conferred on the court under Section 148 of the Civil Procedure Code, cannot be accepted in view of the statutory provision contained in Rule 9 of the said Rules. As per the sub-Rule (4) of Rule 9, the balance amount of purchase price payable has to be paid by the purchaser to the authorized officer on or before the fifteenth day of the confirmation of sale or such extended period as may be agreed upon in writing between the purchaser and the secured creditor, in any case not extending three months. Even if by liberal construction of the said sub rule, and in view of the orders passed by this Court from time to time in the successive applications filed by the Applicant, it is presumed that the time to deposit the balance amount with interest had stood extended two months after February, 2022, i.e., upto 30.04.2022, no further extension of time as such was granted by the Court nor was it permissible to extend under the said statutory provision contained in Rule 9 of the said rules. It cannot be gainsaid that the court in exercise of powers under Article 142 cannot ignore any substantive statutory provision dealing with the subject. The plenary powers of the Supreme Court under Article 142 are inherent in nature and are complementary to those powers which are specifically conferred on the court by various statutes. These powers though are of a very wide amplitude to do complete justice between the parties, cannot be used to supplant the substantive law applicable to the case or to the cause under consideration of the court. As observed by this Court in **Supreme Court Bar Association vs. Union of India and Another**², Article 142 even with the width of its amplitude cannot be used to build a new edifice where none existed earlier, by ignoring the express statutory provisions dealing with a subject and thereby to achieve something indirectly which cannot be achieved directly. Even Section 148 of CPC does not permit the court to extend the time limit beyond thirty days of the time limit fixed by the court earlier.

18. It is pertinent to note that the instant Miscellaneous Application has been filed by the Applicant seeking substantive prayer/ direction against the Appellant Bank for the issuance of the sale certificate on the ground that the Applicant has made full and final payment of auction amount with interest in terms of the order dated 12.05.2020 passed in M.A. No.922 of 2020. Apart from the fact that the Applicant had not complied with the orders passed by this Court from time to time in the successive applications filed by it, and more particularly the order dated 12.05.2020 passed in M.A. No.922 of 2020, such an application in the disposed of Civil Appeal No.1902 of 2020, to pursue its strategies and to avoid judicial adjudication in the substantive proceedings, would not be even maintainable in the eye of law. Such a trend emerging in this Court of filing repeated applications, styled as Miscellaneous Applications, without any legal foundation has been strongly deprecated by this Court in **Supertech Limited vs. Emerald Court Owner Resident Welfare Association and Others**³, in which it was observed as under: -

“A disturbing trend has emerged in this court of repeated applications, styled as Miscellaneous Applications, being filed after a final judgment has been pronounced. Such a practice has no legal foundation and must be firmly discouraged. It reduces litigation to a gambit. Miscellaneous Applications are becoming a preferred course to those with resources to pursue strategies to avoid compliance with judicial decisions. A judicial pronouncement cannot be subject to modification once the judgment has been pronounced, by filing a miscellaneous application. Filing

² (1998) 4 SCC 409

³ 2021 SCC Online SC 3422

of a miscellaneous application seeking modification/clarification of a judgment is not envisaged in law. Further, it is a settled legal principle that one cannot do indirectly what one cannot do directly [*“Quando aliquid prohibetur ex directo, prohibetur et per obliquum”*]

19. It is also pertinent to note that there is nothing on record to suggest as to whether the Respondent No.1 – Rajat Infrastructure Pvt. Ltd. and Others had preferred any appeal before the DRAT in view of the order passed in Civil Appeal No.1902 of 2020 on 02.03.2020, and if preferred whether the same is pending or not. There is also no clarity about the final outcome of the main Security Application preferred by the Respondent No.1 Rajat Infrastructure Pvt. Ltd. and Others before the DRT. Be that as it may, the instant Miscellaneous Application seeking substantive prayers filed in the said disposed of Civil Appeal No.1902 of 2020 being not maintainable cannot be entertained and deserves to be dismissed. We may however clarify that it would be open to the applicant to take recourse to any other remedy that may be permissible under the law for the prayers sought in the present application, or to file appropriate proceedings seeking refund of the amount deposited with the appellant-bank, as may be permissible under the law.

20. In that view of the matter, the Miscellaneous Application No.1735 of 2022 is dismissed.

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