



NON-REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. 11693 OF 2024

(Arising out of Special Leave Petition (C) No. 5464 of 2023)

SALIL R. UCHIL

...APPELLANT

VERSUS

VISHU KUMAR & ORS.

...RESPONDENTS

J U D G M E N T

ABHAY S. OKA, J.

1. Leave granted.

FACTUAL ASPECT

2. The 4th respondent is a Co-operative Bank. The 1st, 2nd, 5th and 6th respondents had taken a business loan of Rs.25,00,000/- from the 4th respondent. 7th to 9th respondents guaranteed re-payment of the said loan.

3. As the 1st, 2nd, 5th and 6th respondents committed defaults in payment of instalments, the 4th respondent bank filed a dispute before the 3rd respondent for recovery of the loan amount with interest. The 3rd respondent is the Assistant

Registrar of Co-operative Societies and Recovery Officer. The dispute was allowed. The 4th respondent was held entitled to a sum of Rs.21,92,942/- with further interest and costs from the borrowers. In recovery proceedings, on 10th June 2019, a sale proclamation was issued by the 3rd respondent for the sale of property held by the 1st and 2nd respondents. The value of the property subject matter of auction was fixed at Rs.80,67,500/- . The sale proclamation of the auction sale fixed on 22nd July 2019 was published in the local newspapers on 4th July 2019. In the auction sale, the highest bid of Rs.81,20,000/- offered by the appellant was accepted. A sale confirmation certificate was issued on 5th September 2019 by the 3rd respondent to the appellant. The amount of Rs.81,20,000/- was deposited by the appellant on 21st July 2019 with the 3rd respondent. The excess amount of Rs.59,64,600/- was sought to be refunded to the borrowers by the 3rd respondent by a cheque along with a letter dated 5th September 2019. It appears that the cheque was returned due to *inter se* dispute amongst the borrowers.

4. The 1st and 2nd respondents invoked the writ jurisdiction of the High Court of Karnataka for setting aside the auction. By judgment dated 17th March 2022, the learned Single Judge proceeded to set aside the auction sale made in favour of the appellant. The learned Single Judge held that the 4th respondent bank was entitled to the awarded amount along with interest, and the 1st and 2nd respondents are liable to pay the said amount to the bank. The learned Single Judge noted that the amount of Rs.25,61,400/- was deposited by the 1st and

2nd respondents within three months of filing the writ petition. The learned Single Judge allowed the 4th respondent bank to withdraw the said amount together with interest accrued thereon. The learned Single Judge directed the 4th respondent to refund the entire auction amount paid by the appellant along with an additional amount of 5 per cent of the said amount in the light of sub-rule 4(b) of Rule 38 of the Karnataka Co-operative Societies Rules, 1960 (for short, 'the Rules').

5. Being aggrieved by the judgment of the learned Single Judge, the appellant preferred Writ Appeal before the Division Bench, which was dismissed by the judgment dated 5th September 2022.

6. The decisions of the learned Single Judge and the Division Bench are the subject matter of challenge in this appeal.

7. Though the direction to set aside the auction sale was challenged in this appeal, as can be seen from the order dated 17th March 2023 passed by this Court, notice was issued only on the issue of adequately compensating the appellant. The said order records that the 4th respondent bank retained the sum of Rs.81,20,000/- paid by the appellant from 21st July 2019. Order dated 4th January 2024 records the statement of the learned counsel appearing for the 4th respondent that the amount deposited by the appellant was received by the said respondent on 13th October 2022. Till that date, it was lying with the 3rd respondent. The order dated 12th January 2024

passed by this Court records that the appellant was claiming interest from the 3rd and 4th respondents.

SUBMISSIONS

8. We have heard the learned counsel appearing for the appellant and the learned counsel for the 4th respondent. Notice has been duly served to the 3rd respondent.

9. The submission of the learned counsel appearing for the appellant is that solatium at 5 per cent of the amount deposited by the appellant granted to the appellant is inadequate. He submitted that the appellant was deprived of the use of the sum of Rs.81,20,000/- from 21st July 2019. Therefore, the appellant was deprived of interest on the said amount. He would, thus, submit that the appellant is entitled to receive interest on the said amount from the date of its deposit till the date of refund.

10. The learned counsel appearing for the 4th respondent submitted that as per the said Rules, while setting aside the auction, 5 per cent of the amount deposited by the appellant has been ordered to be paid to the appellant by way of compensation. The learned counsel submitted that in view of the payment of the 5 per cent amount, the appellant had been adequately compensated. He submitted that, in any case, the 4th respondent bank received the amount deposited by the appellant on 13th October 2022, and therefore, liability, if any, to pay interest cannot be fastened on the 4th respondent for the period prior to 13th October 2022.

CONSIDERATION OF SUBMISSIONS

11. We have perused the impugned judgments. The learned Single Judge, in paragraph 7 of the impugned judgment, has noted that within a period of three months from the date of filing of the Writ Petition, the 1st and 2nd respondents deposited the due amount of Rs.25,61,400/- in the Court. The learned Single Judge observed that the award against the 1st and 2nd respondents was in the sum of Rs.21,92,942/- along with interest at the rate of 15 per cent and costs. Accordingly, the 1st and 2nd respondents had deposited a sum of Rs.25,61,400/- in terms of the award. Therefore, the learned Single Judge concluded that the 1st and 2nd respondents were not wilful defaulters. The learned Single Judge placed reliance on sub-rules 4(a) and 4(b) of Rule 38 of the said Rules. Clause (b) of sub-rule 4 of Rule 38 provides that when an owner of a property sold in auction makes an application within 30 days from the date of sale and deposits the arrears specified in the sale proclamation within the said period of 30 days, the Recovery Officer shall pass an order setting aside the sale. While doing so, the Recovery Officer shall refund the purchase money to the auction purchaser together with 5 per cent of the amount deposited by the person applying for setting aside the auction. As the 1st and 2nd respondents did not apply for setting aside the auction within 30 days, clause (b) of sub-rule 4 of Rule 38 had no application. However, the learned Single Judge, while exercising discretionary jurisdiction under Article 226 of the Constitution of India, directed that the appellant be

compensated by paying 5 per cent of the amount deposited by him as the auction purchaser. In law, there was no basis for the said direction. The Division Bench has confirmed the said direction by holding that payment of the additional amount of 5 per cent adequately compensates the appellant. The 4th respondent bank has not challenged the impugned orders and has thus accepted the finding that the appellant must be compensated.

12. In short, the High Court set aside the auction sale not based on the provisions of the said Rules or on the ground that the auction was illegal. The High Court set aside the auction on equitable considerations, as the entire amount due and payable to the 4th respondent bank, including interest, was deposited by the 1st and 2nd respondents with the High Court within three months from filing the Writ Petition.

13. Therefore, there is no doubt that the appellant must be compensated as he was deprived of using the amount of Rs.81,20,000/- from 21st July 2019 till the date of actual refund due to no fault on his part. As stated earlier, the amount was transferred by the 3rd respondent to the 4th respondent on 13th October 2022.

14. In our view, the appellant was entitled to receive interest on the said amount of Rs.81,20,000/- at the rate of 6 per cent per annum from the date of deposit of the said amount till the date of refund. It is an admitted position that the 3rd respondent conducted the auction of the property claimed by

the 1st and 2nd respondents at the instance of the 4th respondent. Admittedly, the 4th respondent bank has not challenged the impugned orders and has thus accepted the finding that the appellant must be compensated. Therefore, the 4th respondent bank will be liable to pay interest to the appellant. The fact that the amount was lying deposited with the 3rd respondent is irrelevant as the auction was at the instance of the 4th respondent. Though there was nothing illegal about the auction, 4th respondent did not challenge the impugned orders. Therefore, the impugned judgments need modification in the peculiar facts and circumstances of the case for adequately compensating the appellant.

15. Accordingly, we pass the following order:

- a) The impugned judgments dated 5th September 2022 and 17th March 2022 are hereby modified by setting aside direction to pay an amount equivalent to 5 per cent of Rs.81,20,000/- to the appellant;
- b) We direct the 4th respondent to pay simple interest at the rate of 6 per cent per annum on the sum of Rs. 81,20,000/- to the appellant from 21st July 2019 till the date of the actual refund of the amount of Rs. 81,20,000/- to the appellant; and
- c) The entire interest amount shall be paid by the 4th respondent to the appellant within a period of six weeks from today.

d) The appeal is, accordingly, partly allowed on above terms.

.....J.
(Abhay S. Oka)

.....J.
(Ujjal Bhuyan)

**New Delhi;
October 18, 2024**