DEBTS RECOVERY TRIBUNAL No.1, MUMBAI

ORDER

In

APPEAL NO.5 OF 2024

(Delivered on 15.07.2026)

RUTVIJ CHEMICALS LTD. ... Applicant

Versus

BANK OF BARODA ... Respondent

Advocate Rishabh Shah i/b Raval Shah for the Applicant.

Advocate Rajesh Nagory a/w Adv. Vinay Deshpande and Adv. Shobha Chavan i/b V. Deshpande & co. for the Respondent no.1.

Advocate Poonam Ketkar for the Respondent No.2.

Advocate Aayush Kothari i/b Adv. Sanjana Ghogare for the Respondent No.6.

ORDER

1. The present Appeal is filed by the Appellant challenging the order dated 17.05.2024 of Ld. Recovery Officer, rejecting the request of appellant to set aside the sale proclamation dated 15.02.2024; for the premises herein which is described as Office premises no.105, no.106 at Raheja Centre, Nariman Point, Mumbai - 400021. By refusing to stay the said sale proclamation the Ld. Recovery officer had confirmed the auction of the premises in favour of the auction purchaser as R6 herein.

2. The appellant contends that, he had been in possession of the premises, since 2006 under leave and licence agreement dated 26.12.1996, and by way of registered mortgage executed by R2 herein, who is the Certificate debtor. The sale proclamation was not served on

the appellant, who occupied the premises herein as a mortgagee, by way of mortgage of the premises by certificate debtor as R2. The Ld. Recovery Officer in disregard of all these aspects, had rejected the request of the appellant, on completely faulty interpretation, of the orders passed by Hon'ble High Court. All interim orders by Hon'ble High Court are recognising the appellant as a mortgagee of the premises. The Ld. RO had passed orders, on the incorrect assumption that, premises was vacant, and had confirmed the sale in favour of R6/auction purchaser.

3. The Appellant further contends that, he had been in possession of the premises for 20 years, and the sale is now conducted without giving notice to him. He had got impleaded in the proceedings before Ld. Recovery Officer . A Leave and Licence agreement agreement, had been executed in favour of the Appellant by R2/Jayanth Vitamins Ltd, and subsequently, mortgage was created for the premises on 04.02.2003, which is registered on 11.02.2023.

4. The sale proclamation had not disclosed possession of the appellant in the premises, and the pending litigation as Suit no. 1513 of 2012, before Hon'ble Bombay High Court. The notice for the said sale proclamation is not furnished to the appellant. The sale is conducted at gross undervaluation and the sale conducted for the premises without giving notice or intimation to the Appellant, is an act violating the basic procedure of the auction. So the order of Ld. Recovery Officer dated 17.05.2024, confirming the auction is to be set aside, and the Certificate Holder is to be restrained from proceeding further, on the wrongly confirmed auction.

5. R1/bank contends that, the contention of the appellant that he was in continuous occupation of the premises is incorrect. The mortgage now alleged to be in existence over the premises and Leave and Licence agreement created are, in violation of the restraint order of Hon'ble High Court, and on that ground itself the mortgage and licence are not legal or valid. Though Appellant is claiming a mortgage since 2003 nothing is even attempted by him to enforce the same. The Appellant is only attempting to create mischief, by raising untenable contentions, and so the appeal should be dismissed with costs.

6. R2, the Certificate Debtor as Jaynath Vitamins Ltd., had furnished a written argument note, stating that, the sale proclamation notice which failed to disclose the suit filed by R2 before Hon'ble High Court, was not served on R2. The notice was served in the address of R2, which R1/bank knew, to be neither the proper or operational address of R2. The Proceedings now effected by R1 are by suppressing material facts and without transparency in the dealing. The sale now effected is irregular and is to be declared as void.

7. Auction purchaser as R6 contends that, all the issues now raised by Appellant had been discussed and decided by Hon'ble High Court Bombay on 23.03.2006 in suit no. 468/99. The said order is not challenged by Appellant. The request by Appellant, to set aside the sale proclamation was also dismissed by Ld. Recovery Officer. As the issues are already decided by Hon'ble High Court in Suit 468/99, which is not challenged by Appellant till date, the Tribunal cannot now have the same issues re-agitated. No material defects are substantiated against the sale proclamation or the auction conducted, and hence the present appeal is only to be dismissed.

8. Before entering into the merits of the contentions, a brief summary of the history of the matter shall be addressed.

9. The Suit No.468/99 was filed by ICICI Bank against R2 herein/Jaynath Vitamins Ltd. & Ors before Hon'ble High Court Bombay. The Appellant is D7 in the said suit. In the notice of motion 1794/02 by ICICI Bank. As per order dated 09.08.2002, the Hon'ble High Court Bombay in the notice of motion 1794/2002 filed by ICICI Bank injunted R2 from dealing with the property in the said plaint and also on assets that may be subsequently disclosed on oath by Jayanth Vitamins Ltd./R2 herein. The said order was made absolute by Hon'ble High Court on 17.03.2003. On 20.02.2023 the officer for R2/Jayanth Vitamins Ltd., filed an affidavit of disclosure of assets, including the present premises herein in this appeal.

10. Pending order of Hon'ble High Court, on 09.08.2002, a registered indenture of mortgage is claimed to be executed, in favour of Appellant herein by R2/Jayanth Vitamins Ltd., on 04.02.2003, alongwith leave and licence agreement dated 08.02.2003 for the premises in this Appeal. The receiver appointed by Hon'ble High Court was directed to take possession of the property, without dispossessing the lessees if any, in the premises. The lessee were directed to make payment of lease amount to the court receiver, which will be subject to the final order in Suit no.468 of 1999.

11. Then DRT-II Mumbai decreed the OA 283/01 filed by Bank of Baroda (assignee IARC) against the defendants, wherein Recovery

proceedings as 409/05 was initiated. The premises herein in this Appeal, though not mortgaged to assignee, got attached in this proceeding by the assignee. On 29.03.2012, DRT Receiver had been appointed, to take charge over the premises herein, and Hon'ble High Court by order dated 09.08.2012 discharged the receiver appointed by Hon'ble High Court.

12. On 11.09.2012, the Hon'ble Bombay High Court, disposed off the Appeal by Appellant raised against the order dated 09.08.2012, with direction to continue the order dated 17.03.2003, in notice of motion no.1794/02, upto 31.12.2012. Both the bank and appellant, were given the right to move DRT to give direction to DRT Receiver and Recovery Officer respectively for continuing the order dated 17.03.2003.

13. Then Applicant/bank filed a petition before the Ld. Recovery Officer, for direction to DRT Receiver to take physical possession of the premises herein. The Appellant had filed a petition for continuation of direction given by Hon'ble High Court Bombay in order dated 17.03.2003 in order of motion no.1794/2002. After considering the leave and licence agreement dated 08.02.2003 produced by Appellant, and after considering his contention of being a mortgagee of the premises, Ld. Recovery Officer had rejected the petition.

14. The Ld. Recovery Officer then had passed order in the petition filed by applicant assignee, for direction to receiver for forceful possession. The said order states that, such a request can be entertained only on the applicant facing hurdle, in taking possession, after sale if

any, is conducted. It also stated that, if the premises is vacant, physical possession can be effected. The said application by applicant was then kept pending, and the request by appellant for stay of the aforestated order of Ld. Recovery Officer was rejected. Both the aforesaid orders by applicant and appellant were passed by Ld. Recovery Officer on 04.07.2014.

15. As per order dated 07.06.2024, the Ld. Recovery Officer had rejected the application by appellant-intervener in RP 808/16 requesting to set aside the sale proclamation. Ld. Recovery officer then had confirmed the auction with respect to the premises herein in favour of the auction purchaser. The present appeal is now filed by the appellant against the said order of Ld. Recovery Officer. The aforestated aspects are the background of this case.

16. The only points that arise for consideration are:-

1) Whether the order of Ld. Recovery Officer suffers from any infirmity?
2) Relief and costs.

Points 1 and 2.

17. The contentions of the appellant in this appeal is that, he was in active possession of the premises herein for twenty years. As his business went down, he was not in the premises when the applicant came over to take possession of the premises. Despite him being in possession, no notice of sale is given to him. At the most the applicant can only be stated as an unsecured creditor.

18. The second ground urged is that, the premises are grossly undervalued for the conduct of auction. The appellant on earlier occasions was only trying to protect his possession over the premises. His present contention is that the sale is bad for want of notice to him as he was in possession of the same throughout. So according to the appellant, the contentions of res judicate now raised by Respondent no. 1 will not apply.

19. R1 urges that, despite the contention of applicant that, he is a licence and had paid rent upto 2012, it is not clarified by him, as to what had happened after 2012. His leave and licence agreement had expired by efflux of time. He is not a lessee but his claim is that, he is a licencee. The appellant has no locus now in this matter. The present appeal is only to be dismissed.

20. The contentions of R2 herein are in the same line with that of the appellant. The spirit of his contentions, are also to the effect of requesting, to set aside the order of Ld. Recovery Officer.

21. The auction purchaser as R6 contends that, the appellant should have applied under Rule 60 and Rule 61 of Income Tax Act to set aside the sale. His contention of possession, raised before Ld. Recovery Officer in 2014, was negatived. His present contention that, his belongings are in the premises now, is not sufficient to prove his actual possession over the same. Now before this forum, he is urging contentions which are not raised by him before Ld. Recovery Officer.

22. Considering the contentions of both sides, the first point to be decided is, as to, whether the Appellant can be stated to be in valid possession of premises herein. There is no denial by him that, JDI/R2 herein was restrained by order of Hon'ble High Court on 9.08.2002 in notice of motion 1794/02, from dealing with assets including those, which shall be disclosed subsequently.

23. Subsequent to the said order of Hon'ble High Court on 09.08.2002, affidavit is seen filed before Hon'ble High Court by one Sri Sadanand More for R2, disclosing its assets on 20.02.2003, which include the present premises as premises no.105 and 106 at Raheja Center, Nariman Point, Mumbai described as office premises. So it has to be taken that, the order passed by Hon'ble High Court on 09.08.2002, directing R2/Jayanth Vitamins Ltd., not to deal with assets, including those which shall subsequently be disclosed on oath, will include the aforesaid office premises also.

24. Despite the said direction of Hon'ble High Court on 09.08.2002 an alleged indenture of mortgage is stated to be executed between Jayanth Vitamins Ltd/R2. and Appellant on 04.02.2003. The leave and licence agreement between them was executed on 08.02.2003. The Appellant is claiming possession on the basis of these two documents which are seen executed in violation of the order Hon'ble High Court on 09.08.2002. On that ground itself the possession of the premises by the appellant cannot be said to be valid or proper.

25. It is next seen that, the protection ordered by Hon'ble High

Court, directing the Receiver not to dispossess lessee, is seen to be for lessee and not for licencee. Lessee and licencee are not one and the same. Lessee is a tenant who pays rent to a lease property gaining exclusive possession and a legal interest in the land. But a licencee is a person who is granted personal, revocable permission to use a property for a specific purpose without acquiring any ownership stake or exclusive right.

26. In other words, lessees can exclude everyone, from the premises. Licencee shares the property with the owner or other licencees, and has no exclusive control over the premises. Now even the contention of possession of the premises by appellant by way of mortgage and licence, cannot be taken as a valid possession in view of the order of Hon'ble High Court on 09.08.2002 in notice of motion 1794/02, with the court receiver being appointed on 17.03.2003 for all assets of Jayanth Vitamins Ltd./R2 including the present premises herein.

27. The order of Hon'ble High Court on 17.03.2003 directs the Receiver to take possession of the premises, but not to dispossess any person in possession, if they are in possession as lessee. In the appeal filed by appellant as Appeal 606/12, Hon'ble High Court directs that the order given by Hon'ble Single Judge of High Court in notice of motion 1794/2002, will continue for a period of three months i.e. upto 31.12.2012.

28. From the aforesaid two orders, it has to be taken that, it is for the Ld. Recovery Officer to decide as to the continuation of the order

with respect to the office premises, while considering the said issue. So to establish the possession over the premises, the appellant is seen to have filed an application under Rule 11 of the second schedule of Income Tax Act. There is no effective denial by appellant, to the point that, the leave and licence agreement dated 08.02.2003 was only for 33 months and has expired on 07.11.2005.

29. As stated above, the execution of this agreement itself, was not valid or proper, as it was done pending the restraint passed by Hon'ble High Court on 09.08.2002. So it is seen that, the said leave and licence agreement executed in violation of order of Hon'ble High Court does not create or confer any right or interest over the premises to the appellant herein. The said invalid document therefore will not help appellant to establish his claim of possession over the premises herein.

30. Again, as stated earlier, the Hon'ble High Court had protected only the lessees in the premises and not the licencees. Admittedly appellant has no case that he is a lessee of the premises. As rightly stated by the Ld. Recovery Officer in his order dated 04.07.2014 no acceptable or reliable documents, apart from the records created in violation of order of Hon'ble High Court dated 09.08.2002, are produced by appellant, to show his possession over the premises herein.

31. The statement showing the payment of rent, stated to be made by appellant to court receiver, is not helpful to establish his independent lawful possession of the premises at any point of time. Appellant then relies on indenture of mortgage dated 04.02.2003, which

also was effected during the pendency of the restraint order of Hon'ble High Court on 09.08.2002.

32. From the order dated 23.06.2006 passed, in notice of motion 1034/05 by appellant, it is seen that Hon'ble High Court had turned down his prayer made therein. The prayer therein by the appellant was to discharge the receiver and for direction to have the sale of the premises herein, to him. The said order is not challenged by appellant, and it has attained finality. Now the contention of R1/bank and R6 that they cannot be sought by appellant to be urged again to be cannot be ignored.

33. For the very same reason, the premises now sold in auction on 26.03.2024, cannot be challenged by appellant on the very same grounds, again which are already seen decided by Hon'ble High Court. The contention of appellant is that, in earlier proceedings, he was trying to protect his possession over the premises. Now his claim is that he is challenging the sale on the ground of not being issued with notice of sale on the basis of his alleged possession over the premises. Both contentions cannot be taken as different issues, as both nettle down to the one and same point, of his claim of possession of the premises.

34. It is seen that, the appellant had filed the application, to set aside the sale proclamation dated 15.02.2024, claiming mortgage and possession over the premises herein, which were auctioned on 26.03.2024. He is claiming first charge over the premises and as stated above, is seeking to set aside the auction, for want of notice to him.

35. The intervention application by appellant is seen filed before Ld. Recovery Officer after the date of sale. It is seen, from the order passed by Ld. Recovery Officer on 07.06.2024 that, the premises herein was sold for Rs.7.50 crores and R6 had to pay more than 4.5 crores outstanding dues which were not paid by the borrower/defendants. The 2nd unnumbered para from the last page of the order of Ld. Recovery Officer passed on 07.06.2024 shows that, no application was filed for setting aside the sale under Rule 60, 61 and 62 of Second Schedule of Income Tax Act, and that R6 had deposited the entire auction price.

36. Before the Ld. Recovery Officer, the appellant did not raise a contention that he is challenging the sale as sale proclamation was not issued to him. But now such a contention is raised in this appeal, which cannot be entertained by this forum. Further, it is not explained by appellant, as to why he was not aware of the sale proclamation, which was pasted in the premises herein which is claimed to be in his continuous possession.

37. The order of Ld. RO, does not bring out any material irregularity warranting the same to be set aside. The appellant is claiming possession of the premises, on the basis of invalid records as mortgage deed and leave and licence agreement stated to be executed between him and R2/Jayanth Vitamins Ltd., in violation of restraint order by Hon'ble High Court on 09.08.2002. So his alleged initial possession itself is seen to be based on invalid records, which cannot be accepted by a legal forum. Apart from claim of possession based on

invalid records no other aspects are satisfactorily brought out by the appellant against the sale proclamation or the sale conducted herein.

38. The report of the receiver appointed by the Tribunal shows that the premises was locked under the lock of Tahsildar, who had handed over possession to receiver as directed by Ld. Recovery Officer. Apart from claiming alleged possession of premises on invalid records, nothing is offered by appellant to prove his actual or lawful possession of the premises which entitles him to notice of settlement of proclamation in this case. He is seen to be a third party without any valid locus in this matter.

39. The Hon'ble Apex Court had directed in K. Kumara Gupta v. Sri Markendaya and Sri Omkareswara Swamy Temple & Ors (2022) 5 SCC 710, that unless and until substantial material irregularities or illegality in holding public auction are brought out, the same shall not be set aside, on representation made by third parties.

40. As stated above, here, the appellant admittedly is a third party. He is claiming possession on invalid records which are executed during the pendency of a restraint order by Hon'ble High Court on 09.08.2002. No sufficient materials are offered to show his locus and hence none of the averments in the appeal can be entertained. The order passed by Ld. Recovery officer does not suffer from any infirmity and is confirmed. In furtherance of order of Ld. Recovery officer the Respondent/bank shall take steps to handover the possession of the auctioned premises to R6. The Appeal now presented by the appellant

is dismissed off as follows.

41. Appeal No.5 of 2024 stands dismissed.

42. The order Ld. RO dated 17.05.2024 is confirmed.

43. The Respondent/bank shall take steps to handover the possession of the auctioned premises to R6.

44. Parties to suffer costs.

(Dictated to my Stenographer, transcribed by her, corrected and signed by me and pronounced in open forum on 15.07.2026).

Place:- Mumbai
Date:- 15.07.2026

Presiding Officer,
DRT-1, Mumbai
(Sreekala Suresh)