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HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 1711 of 2013**

- Bikari Adhikari (Sales Officer) Bhilai Nagrik Sahakari Bank Maryadit Sector-6, Police Station, Kotwali Bhilai Tahsil & Civil & Revenue District Durg (C.G.)

---- Petitioner**Versus**

1. Smriti Grih Nirman Sahakari Samiti Maryadit Smriti Nagar, Bhilai, Police Station Supela Tahsil, Civil & Revenue District Durg (C.G.) through Rajiv Choubey, President.
2. State of Chhattisgarh Department of Co-operatives Through Secretary, Department of Cooperatives Mantralaya, New Raipur Police Station, New Raipur, Tahsil, Civil & Revenue District Raipur (C.G.)
3. Registrar, Cooperative Societies Chhattisgarh, Raipur Police Station, New Raipur, Tahsil, Civil & Revenue District Raipur (C.G.)
4. Joint Registrar Cooperative Societies Chhattisgarh, Raipur, Tahsil, Civil & Revenue District Raipur, CG, Police Station Civil Lines Raipur, Tahsil, Civil & Revenue District Raipur (CG)
5. Deputy Registrar Cooperative Societies Chhattisgarh, Raipur, Police Station Civil Lines Raipur, Tahsil, Civil & Revenue District Raipur (C.G.)
6. Smt. Balvinder Kaur, W/o Shri Trilok Singh, aged about 47 years, R/o 7A/1, Neharu Nagar, East Bhilai, PS Supela, Revenue & Civil District Durg (CG)

---- Respondents

For Petitioner : Shri Yashwant Tiwari with Shri Amiyakant Tiwari, Advocates
 For Respondent No.1: Shri Jitendra Pali, Advocate.
 For Respondent No.2: Ms. Smiti Sharma, Deputy Govt. Advocate.
 For Respondent No.6: Shri Shikhar Sharma, Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****11/03/2015**

1. Respondent No.1 society obtained loan in the form of over draft facility of Rs.25 lakhs and bridge loan facility of Rs.30.75 lakhs from Bhilai Nagrik

Sahkari Bank Maryadit, Sector-6 sometime in the year 1983-84. The land measuring 10.04 acres was mortgaged by way of collateral security towards repayment of the loan amount. As the society went in default and could not repay the loan amount, the bank initiated proceeding before the Deputy Registrar, Cooperative Societies, Durg for recovery of the loan amount. The said application for recovery of the loan amount was allowed on 12.03.1999 and the same has attained finality. The bank preferred execution proceeding for recovery of the amount by sale of mortgaged property. The mortgaged property was divided in four blocks for the purpose of conducting auction sale in the following manner:-

Block	Khasra No.	Measuring Area in Square meter
'A'	744 Part	8500
'B'	744 Part	9300
'C'	762 Part	10400
'D'	762 Part	2100
	765 Part	3700

- When the auction proceeded, respondent No.6 offered to purchase the land covered in block-'A' whereas block 'B' & 'C' were offered to be purchased by some other persons. Since the amount under recovery order/decreed was satisfied by auctioning block A, B and C, the remaining part of the land under auction i.e. block-D was not auctioned.
- It appears, the amount recovered by auction of block-B & C satisfied the decree, therefore, respondent No.1 raised an objection that auction of the

land covered in block-A was not at all required and the same should be cancelled. Respondent No.1 has already preferred civil suit for setting aside the sale deed. Respondent No.6 has deposited the amount of Rs.1.61 crores before the Sales Officer who eventually paid it to the Recovery Officer appointed by the Deputy Registrar, Cooperative Society.

4. Learned counsel for the petitioner would submit that the amount deposited by respondent No.6 is lying in a joint account in the name of the petitioner and the recovery officer appointed by the executing Court i.e. the Deputy Registrar Cooperative Society, Durg. The present dispute arose when respondent No.1 preferred an application under Section 64 of the Cooperative Societies Act (henceforth 'the Act') demanding payment of Rs.1.61 crores on the ground that respondent No.6 having already been handed over possession of the area covered in block-A, the society is entitled to the amount obtained by auctioning the said land. The Deputy Registrar, Cooperative Society, Raipur by its order dated 9.11.2012 allowed the prayer and the said order has been affirmed by the Joint Registrar, Cooperative Society, Raipur vide order dated 26.12.2012 and thereafter second appeal preferred by the petitioner before the Registrar has already been dismissed by order dated 12.4.2013 and the revision petition has also been dismissed by the impugned order.
5. Shri Tiwari, learned counsel for the petitioner would submit that when the auction sale was conducted by the recovery officer/sales officer appointed by the Deputy Registrar, Cooperative Society, **Durg**, the application under Section 64 of the Act which emanates from the said execution/recovery proceeding, should not have been entertained by the Deputy Registrar, Cooperative Society, **Raipur**, as it lacks territorial jurisdiction over the issue. He would also submit that since respondent No.1 has already preferred a

civil suit challenging the sale deed of block-A in favour of respondent No.6, return of amount would complicate the matter.

6. Shri Pali, learned counsel for respondent No.1 would submit that the society having already been deprived of the possession of land, as the same has already been handed over to respondent No.6, the society is entitled for the amount which the recovery officer has obtained by auctioning the land covered in block-A. He would submit that the society is neither in possession of the land nor the amount and by nature of affairs undertaken by the society, it needs the amount on recurring basis to meet its expenses.
7. Learned State counsel and learned counsel for respondent No.6 would submit that the issue raised in this petition is purely between the petitioner and the respondent society.
8. Having heard learned counsel for the parties and upon appreciation of nature of dispute as also for the reason that a suit wherein the very legality of the sale deed pertaining to block-A, which has been affirmed in favour of respondent No.6, is pending adjudication before the District Judge, Durg, in Civil Suit No.2A/2010, it appears appropriate that the amount of Rs.1.61 crores kept in joint account in the name of the petitioner and the recovery officer be deposited in the civil Court because in the event the sale is set aside and possession of the land is directed to be handed over to the respondent society, the auction purchaser would be entitled to return of the amount. Likewise, if the suit fails, the society would be entitled to the amount.
9. For the foregoing, the writ petition is disposed of with a direction that the petitioner shall deposit the amount of Rs.1.61 crores along with accrued interest till date in the Court of District Judge wherein the civil suit is pending

and the said District Judge shall thereafter deposit the amount in fixed deposit with the State Bank of India, Main Branch, Durg. Depending upon outcome of the suit, the District Judge shall pass appropriate orders with regard to the said amount while preparing the decree. The District Judge shall decide the suit at the earliest, preferably within a period of 6 months from the date of presentation of certified copy of this order before it.

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