IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
LETTERS PATENT APPEAL NO.401 OF 2011 IN
WRIT PETITION NO.3511 OF 2011

Smt. Pratibha w/o Pradip Ghanekar Appellant

Versus

The State of Maharashtra & others Respondents

Mr.R.T.Nagargoje, advocate for the appellant.
Mr.N.B.Patil, A.G.P. for Respondents No.1 to 3.
Mr.Dilip Patil Bankar, advocte for Respondent No.6.

CORAM : R.M.BORDE &
P.R.BORA, JJ.
DATE : 07th August, 2015

PER COURT:

1 Appellant is taking exception to the order dated 13.10.2011, passed by the learned Single Judge in Writ Petition No.3511 of 2011.

2 Appellant herein availed of loan facility in the year 2004 from Respondent-Bank and did not repay the loan amount. The Bank, as such, initiated proceedings under Section 101 of the Maharashtra Co-operative Societies Act, 1960 and secured Recovery Certificate for an amount of Rs.31,77,627/- together with interest @ 18% p.a. The appellant tried to challenge Recovery Certificate by presenting Revision Application, however, since the appellant did not fulfill requirement of 50% deposit of the amount, Revision was not entertained.

3 The Bank, in order to recover the amount under the Recovery Certificate, proceeded to issue a proclamation for sale and sold out the property belonging to the appellant. The appellant is objecting to the sale of the property on various grounds.

4 It is contended that the purchasers failed to deposit the amount within time specified under the Rules and as such, the sale is vitiated. It is contended that the amount of recovery, claimed by the bank, is exorbitant and since the appellant has repaid major amount against loan, the Bank is not liable to claim the amount as recorded in the Recovery Certificate.

5 The objection raised by the appellant in respect of entitlement of the Bank to recover the amount, as specified in the Recovery Certificate, is not liable to be considered in this proceeding since challenge raised by the appellant to the Recovery Certificate has been turned down on account of his failure to fulfill statutory requirement in respect of pre-deposit. The Recovery certificate issued by Bank has attained finality.

6 Apart from this, it would be impermissible for the appellant to challenge the sale without fulfilling the requirement laid down under sub-rules (12) and (13) of Rule 107 of the Maharashtra Co-operative Societies Rules, 1961. The appellant did not challenge the proclamation issued by the Bank for sale of the property by adhering to the procedural requirement of making deposit of amount, as provided under sub-rule (12) of Rule 107 of the Maharashtra Co-operative Societies Rules. After sale of the property, in view of sub-rule (13) of Rule 107, the appellant has to apply to have the sale set aside on making deposit with the Recovery Officer. However, without complying with the mandatory requirements laid down under Rule 107 of the Maharashtra Cooperative Societies Rules, the appellant has proceeded to challenge the sale. Sub-rule (13) of Rule 107 reads thus:

> **107 Procedure for attachment and sale of property under Section 156**.
>
> 13(i) Where immovable property has been sold by

> the Recovery Officer, any person either owning such property or holding any interest therein by virtue of a title acquired before such sale may apply to have the sale set aside on his depositing with the Recovery Officer:-
>
> (a) for payment to the purchaser a sum equal to 5 per cent of the purchase money; and
>
> (b) for payment to the applicant, the amount of arrears specified in the proclamation of sale as that for the recovery of which the sale was ordered together with interest thereon and the expenses of attachment, if any, and sale and other costs due in respect of such amount, less amount which may since the date of such proclamation have been received by the applicant.
>
> (ii) If such deposit and application are made within thirty days from the date of sale, the Recovery Officer shall pass an order setting aside the sale and shall repay to the purchaser, the purchase money so far as it has been deposited, together with the 5 per cent deposited by the applicant.
>
> Provided that if more persons than one have made deposit and application under this sub-rule, the application of the first depositor to the officer authorised to aside the sale, shall be accepted.
>
> (iii) If a person applies under sub-rule (14) to set aside the sale of immovable property, he shall not be entitled to make an application under this sub-rule.
>
> Provided that, in case the Recovery Officer fails to handover, possession of the property for any reason within six months from the date of confirmation of the sale to the purchaser, amount deposited by the purchaser may be refunded to him on his demand.

7 The appellant, admittedly, has not deposited for payment to the applicant, the amount of arrears specified in the proclamation of sale as that for the recovery of which the sale was ordered together with

interest thereon and expenses of attachment, if any, nor the appellant has deposited the sum equal to five per cent of the purchase money, as required under sub-rule (13)(i)(a) of Rule 107 of the Maharashtra Co-operative Societies Rules.

8 Since the appellant has not complied with the prerequisites, referred to above in respect of deposit of amount, the objection raised by appellant was not liable to be considered. We do not find any inconsistency or irregularity in the order passed by the learned Single Judge in dismissing the writ petition. Letters Patent Appeal is devoid of substance.

9 Hence, Letters Patent Appeal stands dismissed. Pending Civil Applications do not survive and stand disposed of.

P.R.BORA
JUDGE

R.M.BORDE
JUDGE

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