

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6675 OF 2014**

Maruti Pandurang Salekar

..Petitioner

Vs.

Mauli Krupa Co-op Credit Society Ltd & Ors.

..Respondents

Mr. Sampatrao Pawar for the Petitioner

Mr. D.W. Bhosale for the Respondent Nos.1 & 2

Ms P. S. Cardozo AGP for the Respondent Nos.3 & 4

Mrs. Priti Shah for the Respondent No.5

CORAM : R. M. SAVANT, J.

DATE : 10th June, 2015

P.C.

1 The Writ Jurisdiction of this Court under Article 227 of the Constitution of India is invoked against the order dated 8-5-2014 passed by the Divisional Joint Registrar, Co-operative Societies, Mumbai, by which order, the Revision Application No.424 of 2013 filed by the Petitioner came to be dismissed.

2 The Respondent No.1 which is a credit society had initiated the proceedings under Section 101 of the Maharashtra Co-operative Societies for recovery of the loan amount which was advanced to the Petitioner. The Petitioner it seems had mortgaged Gala No.D-493 situate at Bazar Sankool Sector 19, Turbhe, Navi Mumbai, with the Respondent No.1 society against the said loan facility. In view of the fact that the Petitioner has defaulted in repayment of the loan that the Respondent No.1 society initiated the said

proceedings under Section 101 of the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as the said Act). A recovery certificate in the sum of Rs.24,71,461/- came to be issued against the Petitioner. It is pertinent to note that the Petitioner did not take exception to the said recovery certificate by taking recourse to the remedy by way of revision available under Section 154 of the said Act. In furtherance of the said recovery certificate, steps were taken by the Respondent No.1 to auction the mortgaged property. The property came to be attached by panchanama dated 24-7-2012. The Petitioner aggrieved by the same filed Revision Application No.433 of 2012. The Divisional Joint Registrar by order dated 31-8-2012 allowed the said Revision Application and directed the Respondent No.1 society and the Special Recovery Officer to hand over possession to the Petitioner in view of the judgment of this Court in Writ Petition No.6836 of 2008. It appears that the said order was passed in view of the fact that the reserve price for the property in question was not fixed to facilitate the auction of the property.

3 It seems that thereafter the Special Recovery Officer obtained the valuation from the Government Valuer on 7-8-2012 and also got the said upset price fixed from the Commissioner for Co-operation and Registrar of Co-operative Societies who accordingly fixed the upset price as Rs.55.50 lacs and which was communicated to the Respondent No.1 society by letter dated 29-10-2012. It appears that the Special Recovery Officer by notice dated 30-10-

2012 called for the objections from the Petitioner. The Special Recovery Officer thereafter published notice on 1-11-2012 for auction to be held on 1-12-2012 and in terms of the said auction notice, the auction was held on 1-12-2012 and the offer of the Respondent No.5 to the tune of Rs.83,50,000/- being the highest, was accepted. It appears that thereafter a sale certificate came to be issued in favour of the Respondent No.5 which has been duly registered on 15-3-2013. The suit property i.e. Gala No.D-493 also came to be transferred in favour of the auction purchaser on 16-8-2013.

4 It is long thereafter that the Petitioner filed the instant Revision Application challenging the auction notice dated 1-11-2012. However, the said Revision Application was filed without complying with Section 154 (2A) of the Maharashtra Co-operative Societies Act in the matter of making the predeposit. The Divisional Joint Registrar has by the impugned order dismissed the said Revision Application. The dismissal is on the ground that firstly that the Revision Application could not be entertained in view of the non compliance of Section 154(2A) in the matter of making the predeposit and secondly on the ground that there was no infirmity in the auction carried out by the Special Recovery Officer. The Divisional Joint Registrar has also referred to the fact that the remedy under Rule 107 (13)(14) or (19) was available to the Petitioner at the relevant time when the auction was to take place. However, the said remedy was not availed and it is only after the sale was confirmed that

the Revision Application came to be filed.

5 The Learned Counsel appearing on behalf of the Petitioner Mr. Pawar, would contend that by the letters dated 5-12-2012, 12-12-2012 and 25-12-2012, objection was taken to the said auction. It is the contention of the Learned Counsel for the Petitioner that the said letters are referable to the application under Rule 107(14) of the said Rules and that the Special Recovery Officer ought to have taken cognizance of the said letters.

6 In my view, it is not possible to accept the said contentions of the Learned Counsel for the Petitioner. It is required to be noted that the auction has taken place on 1-12-2012 and the said letters are post the said auction having taken place. Secondly a reading of the said letters discloses that the Petitioner had only sought information as regards the name of the auction purchaser and the amount deposited by him. There is nothing in the said letters questioning the manner in which the auction was carried out save and except stating that the reserve price was not fixed. In so far as the reserve price is concerned, the Commissioner for Co-operation and Registrar of Co-operative Societies had fixed the reserve price at Rs.55.50 lacs and it is on the said basis that the auction was held in which auction the highest offer of the Respondent No.5 to the tune of Rs.83,50,000/- has been accepted. As indicated above the sale certificate in favour of the Respondent No.5 has also been issued and the

property has also been transferred in favour of the Respondent No.5. In my view, there is no infirmity or illegality in the order passed by the Revisionary Authority for this Court to interfere in its Writ Jurisdiction. The Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]