

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

903 WRIT PETITION NO. 4508 OF 2016

SHOBHABAI BALASAHEB SHIRKE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioner : Patil Vijay B.
AGP for Respondent/State : S.N. Kendre
...

CORAM : T.V. NALAWADE, J.
DATED : 18th August, 2016.

ORDER :

1. The petition is filed to challenge the orders made under provisions of Maharashtra Co-operative Societies Act (hereinafter referred to as 'the Act' for short) in favour of present respondent No. 4 - Co-operative Credit Society. It is against the judgment and order of District Deputy Registrar, Jalgaon dated 12.9.2014 and the order dated 24.8.2015 passed by Divisional Joint Registrar, Co-operative Societies, Nashik, Division Nashik under the Act. Heard the learned counsel for petitioner.

2. The petitioner is member of respondent No. 4 - Society and she had taken loan by mortgaging her immovable property to the Society. Loan was not taken for agriculture purpose. As she was defaulter, the proceeding was started by the Society for getting certificate under section 101 of the Act.

Prior to that, many notices were given to the petitioner by the Society as default was committed in making repayment of loan and time was also granted on the applications made by the petitioner and the sureties. Certificate was then issued u/s. 101 of the Act for recovery of the loan. On the basis of this certificate, immovable property mortgaged was attached and then it was put to auction sale in the year 2011. The property is residential plot situated at Yawal, Tahsil Yalwal, District Jalgaon. Prior to publication of the notice of auction sale upset price was fixed and it was Rs. 2,18,357/-. The orders under challenge are only in respect of the process started after issuing of certificate under section 101 of the Act.

3. Certificate under section 101 of the Act was issued in the year 2008 and the first auction was declared in February 2011. By mortgaging this property, loan was taken from various institutions and so, nobody was coming forward to purchase the property. Many attempts were made to sell the property by public auction. As nobody was coming forward, the creditor, respondent No. 4 - Society itself came forward to purchase the property and such proposal was made in the year 2011 itself. As per the procedure, the permission was sought of District Deputy Registrar of Co-operative Societies and permission was granted

on 12.9.2014. It was submitted by the learned counsel for petitioner that no opportunity was given to the petitioner when this order under challenge was made. The order shows that there is no force in this submission. Further, when there was the permission to sell by auction, further proceeding was only procedural formality. It can be said that the petitioner had the knowledge of all the previous auctions in view of the procedure which is required to be followed for auction sale, but she did not show readiness and willingness to pay any amount which could have been deposited for stopping further process as per the Rules provided for auction sale. In view of these circumstances, the revision is dismissed by the Divisional Joint Registrar, Nashik and the order made by the District Deputy Registrar is confirmed. Divisional Joint Registrar It is held that necessary procedure was followed. There are observations with regard to procedure followed like issuing of notice under Rule 85 (3) of the Rules framed under the Act by the Office of District Deputy Registrar and for more than 22 dates, matter was adjourned by Deputy Registrar for hearing of the matter and then after hearing of the parties, the order was made as per the record.

4. In view of the aforesaid circumstances, this Court made query to the learned counsel for petitioner and asked as to

whether even today the petitioner is ready to deposit the upset price. The learned counsel for the petitioner submitted that the petitioner wants relief of setting aside all the orders in proceeding and so, the petitioner is not ready for depositing upset price. It can be said that the petitioner somehow succeeded in protracting the matter from 2008 to till today and even today the petitioner is not interested to repay the loan taken by her. Present proceeding is nothing, but an attempt to protract the things more. Writ jurisdiction cannot be exercised in favour of such persons as it is the discretionary relief. In view of these circumstances, this Court holds that it is not fit case where such exercise is warranted. In the result, petition stands dismissed.

[T.V. NALAWADE, J.]

SSC/