

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4950 OF 2014
WITH
CIVIL APPLICATION 9128 OF 2014

Ashok S/o Narayan Kakde
Age – 46 years, Occ. Agriculture,
R/o. Vadkha, Taluka and
District Aurangabad.

...Petitioner

versus

1. The State of Maharashtra,
Through the Secretary,
Co-operation and Textile Department,
Maharashtra State, Mantralaya,
Mumbai.
 2. The Divisional Joint Registrar,
Co-operative Societies,
Anjuman Banglow, Adalat Road,
Aurangabad.
 3. Shaikh Muktar S/o Sk. Chand
Age : 53 years, Occ : Business,
R/o. Karmad, Taluka and District
Aurangabad.
 4. Adarsh Mahila Nagari Sahakari Bank Ltd.
A Bank registered under the M.C.S. Act 1960,
having its branch office at 31, Shivjyoti Colony,
N-6, CIDCO, Aurangabad
Through its Manager
Mr. Sunil S/o Ambadas Patil
 5. Special Recovery Officer,
Adarsh Mahila Nagari Sahakari Bank Ltd.
having its branch office at 31, Shivjyoti Colony,
N-6, CIDCO, Aurangabad.
- ... Respondents

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Mr. S.G. Dodya, advocate for the petitioner
Mr. N.B. Patil, A.G.P. for respondent Nos. 1 and 2
Mr. S.P. Brahme, advocate for respondent No.3.
Mr. P.K. Lakhotiya, advocate for respondent Nos. 4 and 5
Mr. M.P. Gude, advocate for applicant in C.A. No. 9128 of 2014.

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CORAM : V. K. JADHAV, J.

**Date of Reserving
the Judgment : 16.02.2016**

**Date of pronouncing
the Judgment : 02.03.2016**

JUDGMENT :-

1. Rule. Rule returnable forthwith. By consent of parties, heard finally at admission stage.

2. Being aggrieved by the order dated 9.5.2014, passed by the Divisional Joint Registrar, Co-operative Societies, Aurangabad in Revision Application No. 25 of 2013, the petitioner, auction purchaser, has filed present writ petition.

3. Brief facts, giving rise to the present writ petition are as under:-

(a) On 26.1.2012, a proclamation of sale was published by respondent No.4-bank calling upon the public at large to submit tenders regarding sale of two pieces of land in auction. It was also mentioned that the said sale is in accordance with a compromise decree passed in R.C.S. No. 453 of 2006 dated 2.1.2007 in terms of compromise arrived at between respondent No.3-original revision petitioner and respondent No.4-bank. Respondent No.3-original

revision petitioner had challenged the said auction notice by filing writ petition (st.) No. 3651 of 2012 in this Court. However on 9.2.2012, this Court has dismissed the said writ petition for non compliance of the order. In the said tender process, the petitioner was declared as highest bidder and accordingly as per the resolution of respondent No.4-bank, sale deed of said property came to be executed in favour of petitioner by respondent No.4-bank through respondent No.5. Being aggrieved by the same, respondent No.3 had preferred revision application No. 25 of 2013 alongwith an application for condonation of delay. Since respondent No.2-Divisional Joint Registrar, Co-operative Societies, Aurangabad has condoned the delay, respondent No.4-bank had filed writ petition No. 5385 of 2013 in this Court. The said writ petition was dismissed on the basis of statement made on behalf of respondent No.3 to the effect that the revision petitioner has challenged the sale certificate and not auction notice. While elaborating the said statement, it was submitted that the sale certificate is dated 6.6.2012 and the revision is filed in the month of October, 2012 and as such there is no much delay in filing revision against the sale certificate. The petitioner, earlier, was not party to the revision petition when the delay was condoned. The petitioner was made party by respondent No.2-Divisional Joint Registrar *suo-moto*, by order dated 1.1.2014. The petitioner accordingly appeared in the said revision application and filed his

reply alongwith relevant documents. By order dated 9.5.2014, respondent No.2 was pleased to allow said revision No. 25 of 2013 by setting aside the sale proceeding as well as sale certificate dated 6.6.2012 executed by respondent Nos. 4 and 5 in favour of the petitioner. Being aggrieved by the said order passed by respondent No.2 in Revision No. 25 of 2013, dated 9.5.2014, as aforesaid, the petitioner has preferred this writ petition.

4. Learned counsel for the petitioner submits that respondent No.2 had no jurisdiction to deal with and decide the validity of sale deed or tender process followed, for that purpose, by respondent Nos. 4 and 5. Respondent No.2 failed to consider that the revision application is not within limitation. Respondent No.3 original revision petitioner had no *locus standi* to challenge the sale deed executed by respondent Nos. 4 and 5 in favour of the petitioner.

5. As per the compromise decree executed between respondent No.3 - original revision petitioner and respondent Nos. 4 and 5, the land under sale was exclusively vested with respondent No.4 bank for recovery of its loan amount. Respondent No.3 herein has unequivocally agreed that he will not challenge sale of said land and he has no right in respect of said land or in respect of sale or recovery by sale of said land. Respondent No.3 herein has also

agreed that the bank shall sale the said land as per their wish and he will never object to the sale. The sale deed under challenge is executed by respondent No.4 bank in favour of petitioner as per compromise decree executed in R.C.S. No.453 of 2006 and therefore, the sale ought not to have been considered as sale under the Maharashtra Co-operative Societies Act and Rules framed thereunder. Respondent No.2 has thus no jurisdiction to decide the validity of the sale deed.

6. Learned counsel submits that the land under sale is purchased by the petitioner in auction sale. The petitioner has purchased the said land for consideration of Rs.65,00,000.00 (Rupees sixty five lacs only) and respondent Nos. 4 and 5 as per the Resolution passed by the Board of the Bank, have executed the sale deed in favour of the petitioner. Respondent No.3 has not challenged the sale proceeding within 30 days of the sale and thus, the revision is barred by limitation. Respondent No.2 has condoned the delay prior to appearance of petitioner in the proceeding. In view of this, the impugned order is liable to be set aside on the ground of delay. Learned counsel submits that respondent No.3 sought to condone the delay on the ground of knowledge of the said publication dated 26.1.2012 on 17.10.2012. Learned counsel submits that the same is false and baseless as respondent No.3 had filed writ petition (st.) No.

3651 of 2012 on 4.2.2012 thereby challenging the paper publication dated 26.1.2012 and the said writ petition is dismissed by this Court. The said fact itself indicates that respondent No.3 was having knowledge at the time of proclamation that the property under sale deed was put for auction. Learned counsel further submits that respondent No.3 has challenged the sale certificate only and not auction notice or confirmation of sale.

7. Learned counsel for the petitioner submits that issuance of sale certificate or sale deed is ministerial act and no any order is required for that purpose or it relates back to the date of sale. Learned counsel submits that the revision under Section 154 of the Co-operative Societies Act therefore, is not maintainable and respondent No.2 has no jurisdiction to set aside the sale deed. Learned counsel submits that revision petitioner has not challenged the sale on the ground of irregularity or fraud. This is merely on the basis of allegations that the valuation of property is not proper, the sale cannot be set aside. Learned counsel submits that the impugned order is against the principles of natural justice. The petitioner was not provided proper hearing as respondent No.3- original revision petitioner had not argued the case after appearance of the petitioner. Moreover, no prior notice was issued to the petitioner before condoning the delay. Learned counsel submits that

the sale deed came to be executed by respondent Nos. 4 and 5 in view of compromise decree passed in R.C.S. No. 453 of 2006 and therefore, it is only the Civil Court which has jurisdiction to deal with the issue of sale effected as per the compromise decree.

Learned counsel for the petitioner, in order to substantiate his submissions, places reliance on the decisions in the following cases:-

- I) ***Radhy Shyam vs. Shyam Behari Singh, reported in 1971 SC 2337,***
- II) ***Sri Ram Maurya vs. Kailash Nath and others, reported in AIR 2000 SC 3402,***
- III) ***P. Mohanreddy and ors. vs. Debts Recovery Appellate Tribunal, Mumbai and others, reported in AIR 2004 Andhra Pradesh 94,***
- IV) ***Rajmuni Devi and Ors. vs. Ram Naresh Singh and Anr, reported in AIR 2011 Patna 30,***
- V) ***Order dated 25.04.2014 passed by this Court in Revision application No. 24 of 2014 in writ petition No. 9713 of 2013,***
- VI) ***Order dated 7.8.2015 passed by the Division Bench of this Court in Letters Patent Appeal No. 401 of 2011 in writ petition No. 3511 of 2011,***

8. Learned counsel for respondent No.3-original revision petitioner submits that the Recovery Officer has no power to publish the auction notice and he has not followed mandatory provisions of Rule 107 of the Rules 1961. Learned counsel submits that notice was published on 26.1.2012 and date of auction was kept within 30 days, the same is not permissible. Learned counsel submits that in terms of compromise decree passed in R.C.S. No. 453 of 2006, it was agreed between the parties that the procedure as contemplated under Rule 107 of the Rules of 1961 for auction of sale will be followed.

9. Learned counsel for respondent No.3 submits that the sale is complete within 30 days without calling upset price of the property at the relevant time nor the petitioner has deposited 15% of the amount of auction of sale of his land. Learned counsel submits that the respondents illegally completed the sale proceeding and issued sale certificate. Learned counsel submits that respondent No.2 has thus rightly quashed and set aside the auction with liberty to the respondent bank to take further action in tune with the provisions of Rule 107 of Rules of 1961. Learned counsel submits that in the present case, upset price was called in the month of October, 2006 and thereafter no upset price is called in the year 2012 when the

respondent bank decided to sell the property in auction. In the year 2007 one Zuber Amanulla Motiwala has deposited an amount of Rs.17,00,000/- with the respondent bank for recovery of amount against respondent No.3.

10. Learned counsel for respondent No.3 submits that before making publication of auction notice, a demand notice is necessary to the borrowers stating therein that the amount due against the borrowers and to deposit it within particular period. Learned counsel submits that in this case there was no demand notice by respondent Bank. Learned counsel submits that as per provisions of Rule 107, minimum 30 days are provided from the date of publication of notice and the date of actual auction. In this case, notice was published on 26.1.2012 and auction was kept on 4.2.2012. The entire proceedings are required to be set aside on this count alone. Learned counsel submits that after deposit of Rs.17,00,000/- by said Zuber Amanulla Motiwala, the amount due and recoverable against respondent No.3 was necessary to be published and stated in the auction notice.

11. Learned counsel for respondent No.3 submits that as per the provisions of Rule 107, it was necessary to the purchaser to deposit 15% amount of price at the time of sale. Learned counsel submits

that after completion of auction process by the Sale Officer, the Recovery Officer has power to confirm the sale. In the present case, the Recovery Officer has published the notice and completed the proceedings. Learned counsel submits that the same is not permissible and the person cannot be a judge for his own cause. Learned counsel further submits that revisional authority has rightly considered the illegality committed by respondent authority and non compliance of Rule 107 (11) (e) and (g). Learned counsel thus submits that the writ petition is devoid of any merits and the same is liable to be dismissed with costs.

Learned counsel for respondent No.3, in order to substantiate his contentions, places reliance on the decisions in following cases:-

- I) ***Smita Janak Thacker vs. Commissioner of Registrar, Madeavarti Karyalaya & Ors, reported in 2001 (4) Bom.C.R. 730,***
- II) ***Niranjan D. Woody vs. South Indian Co-operative bank Limited & Ors, reported in 2006 (5) Bom.C.R. 587.***

12. Learned A.G.P. appearing for respondent Nos. 1 and 2

submits that in the compromise effected between the parties, it was agreed by respondent Nos. 3 to 5 that the property of respondent No.3 which was attached in terms of recovery certificate, issued under Section 101 of the Societies Act 1960 and respondent No.5 Special Recovery Officer will sell the property as per the powers delegated to him. Learned A.G.P. thus submits that it cannot be therefore, stated that the property was sold by respondent No.4 bank as per compromise effected between the parties. Learned A.G.P. submits that respondent No.4 bank has no role to play in the proceeding of sale of property attached in pursuance to the recovery certificate and it is only respondent No.5 to conduct the sale in terms of provisions of Rule 107 of Rules 1961. It was obligatory on the part of respondent No.5 to sale the property in pursuance to the recovery certificate issued under section 101 by following the procedure as laid down under Section 156 and Rule 107 of the M.C.S. Act and Rules. Learned A.G.P. submits that respondent No.5 has failed to follow the provisions of Rule 107 of M.C.S. Rules 1961, which is elaborately discussed in the impugned order. Learned A.G.P. submits that the order under challenge in revision application is not the sale deed but is only sale certificate issued under Rule 107 of the Societies Rules. Respondent No.2 is empowered to verify legality and propriety of sale certificate. The learned A.G.P. further submits that though respondent No.3 in compromise decree agreed that he

will not challenge the sale proceedings of the said property, however, it was further agreed that respondent No.3 has no objection to the sale of property in terms of provisions of Rule 107. The learned A.G.P. submits that respondent No.5 has sold the property pursuant to the recovery certificate issued under Section 101 without following due procedure, as provided under Rule 107 of the Societies Rules. Learned A.G.P. submits that the petitioner has every opportunity to participate in fresh auction proceedings. The impugned order thus calls for no interference. There is no merit and substance in the writ petition and the same is liable to be dismissed.

13. I have also heard the learned counsel appearing for respondent Nos. 4 and 5.

14. Respondent No.3 herein had instituted R.C.S. No. 453 of 2006 for declaration that the land owned by him bearing Gat No. 249/2 admeasuring 11 R is not liable for attachment and sale at the instance of defendant Nos. 1 and 2 (respondent Nos. 4 and 5 herein) and also prayed for injunction restraining them from auctioning and interfering into peaceful possession in respect of said land. Undisputedly, respondent No.4 bank had sanctioned loan on 24.4.2004 to the wife of respondent No.3. She has borrowed the said loan. It is also not disputed that for security of repayment, the

respondent bank got executed registered mortgage deed by deposit of title for the property owned by respondent No.3. It is also not disputed that wife of respondent No.3 made default in making repayment of loan borrowed by her from respondent bank and accordingly respondent bank obtained recovery certificate from competent authority under section 101 (1) of the Societies Act on 20.3.2006 for recovery of loan amount and on the basis of same, respondent No.5 attached the property as mentioned in the mortgaged deed executed by respondent No.3 in favour of respondent bank. Respondent No.3 had pleaded in the said suit that even though the land bearing Gat No. 249/2 measuring 11 Are, which was not part and parcel of mortgage deed and a plot which was mortgaged in favour of Bank of Baroda-defendant No.3 in the said suit, the respondent No.5 had illegally attached the same. Respondent No.3 therefore, constrained to institute the suit for the aforesaid reliefs.

15. It further appears that the said suit came to be disposed of in terms of compromise arrived at between the parties. As per the terms of compromise, respondent No.3 (plaintiff in the said suit) has accepted that the land Gat No. 249/2 measuring 11 Are and 5 Are with separate boundaries owned and possessed by him came to be attached by respondent No.5 in pursuance to the recovery certificate

and the proceedings of alienation of said land are going on. Respondent No.3 has further agreed that the amount received on alienation of said property, shall be credited to the loan account and no dues certificate be issued to him. It is further agreed that the said property is to be sold entirely except one plot measuring 10x70 ft out of land Gat No. 249/2. It was further agreed that not only the loan account of respondent No.4 bank shall be closed by issuing no dues certificate but the amount outstanding and due of Bank of Baroda shall also be adjusted from the amount received after alienation of the property, owned and possessed by respondent No.3 (plaintiff in the said suit). It was also agreed that the respondent No.3 is ready to execute the sale deed as per the directions of the respondent bank and the same would be binding on him. In para 6 of the compromise petition, it is agreed between the parties that the respondent No.5 Special Recovery Officer shall alienate the land by auction for reasonable price so as to recover entire amount due and outstanding against respondent No.3 as per the recovery certificate issued by the competent authority. In the same para, it has also agreed that due and outstanding amount of Bank of Baroda will also be satisfied and also no dues certificate shall be issued to respondent No.3. Unequivocally, it was further agreed that respondent No.3 herein would not interfere in the process of alienation of said property.

16. In the light of the said compromise petition at Exh.33, R.C.S. No. 453 of 2006 came to be disposed of and accordingly decree was drawn to that effect.

17. It appears that as per compromise decree between the parties the said land was exclusively vested with respondent No.4 bank for recovery of its loan amount. It also appears from the terms of compromise that respondent No.4 bank shall sale the said land and respondent No.3 will not object for the same. It further appears from the documents submitted on record and pointed out by learned counsel for the petitioner that on 16.11.2006 by referring compromise effected in said R.C.S. No. 453 of 2006, the respondent bank issued no dues certificate to respondent No.3.

18. As per the compromise terms, which are acted upon by the parties, the said land was exclusively vested with respondent Nos. 4 and 5 for recovery of its loan amount. Respondent No.3 also agreed that he will not challenge the sale of the said land and he has no right to sale the land. He will never claim any right in respect of sale of the said land. Respondent Nos. 4 and 5 further agreed in the compromise terms that the respondent Nos. 4 and 5 shall sale the said land as per their own will and wish. The said land is purchased by the present petitioner in an auction sale and respondent Nos. 4

and 5 invited tender from public to sale the said land. In the said tender proceedings, the petitioner has been declared as highest bidder. Accordingly, the petitioner has purchased the said land on consideration of Rs.65.00 lacs. In view of this, the compliance of provisions of Maharashtra Co-operative Societies Act and the Rules framed thereunder is not at all applicable to the sale deed executed in favour of the petitioner. The order passed by respondent No.2 thus appears to be without jurisdiction. Apart from other irregularities, while hearing the said revision, the delay was condoned behind back of the petitioner and that all arguments of revision petitioner were already heard prior to causing of appearance by the petitioner in said revision application.

19. In view of the above, in my considered opinion, respondent No.3 has no *locus standi* to file revision application No. 25 of 2013. Respondent No.3 by filing said revision had challenged the execution of sale deed bearing registration No. 4135 of 2012 dated 6.6.2012 and correction of the sale deed bearing registration No. 6641 dated 12.9.2012 executed by respondent No.4 in favour of petitioner under auction sale conducted by calling the tenders. As it appears from the impugned order that respondent No.2 has set aside the auction sale on the ground that there was irregularity in the auction, the Divisional Joint Registrar, Co-operative Societies, Aurangabad in the given

circumstances had no jurisdiction to declare auction sale invalid in the revision filed by respondent No.3.

20. It is also a matter of record that the publication of auction notice was challenged by respondent No.3 herein by filing writ petitioner (st.) No. 3651 of 2012 on 4.2.2012. Thus, there is no substance in the contentions raised in the revision by respondent No.3 herein that he got knowledge of sale publication on 17.10.2012 for the first time. Furthermore, respondent No.3-original revision petitioner has not challenged the sale on the ground of any fraud or material irregularities. The sale in question is mostly challenged on the ground that the valuation of properties is not proper etc. So far as grounds raised in the revision application and considered by the respondent No.2, are concerned, the same lose its significance in terms of compromise arrived at by the parties and the terms further acted upon by the respondent Bank by issuing no dues certificate in favour of respondent No.3/original revision petitioner.

21. In view of the above discussion, the impugned order 9.5.2014 passed by respondent No.2 in Revision application No. 25 of 2013 is not sustainable. Hence, the following order:-

O R D E R

- I. The writ petition is hereby allowed.
- II. The order dated 9.5.2014, passed by respondent No.2 Divisional Joint Registrar, Co-operative Societies, Aurangabad in Revision application No. 25 of 2013, is hereby quashed and set aside.
- III. Revision application No. 25 of 2013 is hereby dismissed.
- IV. Rule is made absolute in the above terms. In the circumstances, there shall be no order as to costs.

(V. K. JADHAV, J.)

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