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

SECOND APPEAL NO. 335 OF 2011
WITH
CIVIL APPLICATION NO. 15727 OF 2010

Kantrao s/o. Anantrao Kulkarni,
Age 80 years, Occu. Agriculture,
R/o. Gawalipura, Hingoli,
Taluka and District Hingoli. **....Appellant.**

Versus

1. People's Cooperative Bank Ltd.
Hingoli (Main Office),
Akola Road Hingoli
(Registration No. PBN/Bank/906/
1982) Hingoli, District Hingoli.

2. Special Recovery Officer/Manager,
People's Cooperative Bank Ltd.,
Hingoli, District Hingoli.

3. Avinash s/o. Kantrao Kulkarni,
Age 30 years, Occu. Business,
R/o. Deo Galli, Hingoli, District
Hingoli.

4. Shri. Registrar Saheb,
Cooperative Societies,
Central Kings Building,
Pune.

5. Mirza Asad Baig s/o. Mirza Rashid
Baig, Age 32 years, Occu. Business,
R/o. Talabkatta, Hingoli,
District Hingoli **....Respondents.**

Mr. V.G. Sakolkar, Advocate for appellant.

Mr. V.A. Bagdiya, Advocate for respondent Nos. 1 and 2.

Mr. A.G. Dalal, Advocate for respondent No. 5.

CORAM : T.V. NALAWADE, J.
DATED : 1st July, 2016.

JUDGMENT :

1) The appeal is filed by original plaintiff of Regular Civil Suit No. 112/1998, which was pending in the Court of Civil Judge, Junior Division, Hingoli. The suit was filed by present appellant for relief of declaration that the auction sale made at the instance of defendant No. 1 bank in favour of defendant No. 5 was illegal and that is not binding on him. Relief of injunction was also claimed. The suit was decreed in his favour, but in the appeal filed by Bank viz. R.C.A. No. 35/2004, which was pending in the Court of Ad-hoc District Judge, Hingoli, the decision of the Trial Court is set aside and the suit is dismissed. Both the sides are heard.

2) The suit was filed in respect of plot No. 1/23 situated at Old Ward No. 1 (New Ward No. 5) of Gawalipura, Hingoli. This property was owned by father of plaintiff. It is the case of plaintiff that after the death of his father, he has become owner of the property and it is in his possession. It is his case that this property was never mortgaged with defendant bank by his father, but the property was put to an auction by bank and in the auction, it was sold to defendant No. 5. It is contended that this

sale is not binding on plaintiff as property was never mortgaged for security of any loan.

3) Defendant bank filed written statement and contested the matter. It is contended that defendant No. 3, son of plaintiff, had taken loan of Rs. 10,000/- from the bank and the grandfather of defendant No. 3, who was father of plaintiff had mortgaged the suit property for security of this loan. It is contended that as defendant No. 3 committed default in making repayment of the loan, the proceeding was started under section 101 of Maharashtra Co-operative Societies Act and certificate was issued by the authority under the said section for recovery of the amount. It is contended that the amount due from defendant No. 3 was around Rs. 38,000/- and for recovery of that amount, the suit property was put to an auction sale and after following due procedure, property has been sold to defendant No. 5.

4) Defendant No. 3, debtor of the bank has also appeared in the suit. He contended that he had taken loan from the bank, but his grandfather had not given the property by way of mortgage to the bank. He took other defences like account was not properly maintained etc. The suit was contested by

defendant No. 5, the auction purchaser.

5) The Trial Court dismissed the suit by holding that there was no record of mortgage and there was no signature of grandfather or of defendant No. 3 on the document and held that the sale certificate issued in favour of defendant no. 5 is illegal.

6) The First Appellate Court has considered the relevant provisions of Maharashtra Cooperative Societies Act like sections 137 and 139 (2) and has held that proper procedure was followed and there was no scope to the Civil Court to interfere in the auction sale order or the sale certificate issued in favour of defendant No. 5. The procedure laid down under Maharashtra Cooperative Societies Rule like Rule 107 is also considered by the First Appellate Court.

7) Maharashtra Cooperative Societies Act is self contained Code. When certificate is issued under section 101 of Maharashtra Cooperative Societies Act, forum is created to challenge the certificate on all the grounds including the grounds mentioned in the suit. When certificate is issued under section 101, after that the procedure for attachment and sale follows.

When sale certificate is issued, in ordinary course, it needs to be presumed that the procedure laid down under the Act and Rules framed under the Act is followed by the authority. The procedure laid down for auction sale is similar to the provisions of Order 21 of Civil Procedure Code and at every stage, there is opportunity to person like present appellant to take objection. The record of the property could not have been there with the bank if the property was not mortgaged. In view of these circumstances, it was necessary for Civil Court to presume that procedure was followed by the authority before issuing certificate under section 101 and for attachment and auction sale.

8) The learned counsel for appellant placed reliance on one case reported as **2008 (4) Mh.L.J. 495 [Ambajogai Peoples Co-opearative Bank Ltd. Ambajogai Vs. Shrimauli Builders, Pune and Ors.]** and submitted that appellant was a stranger to transaction and certificate issued under section 101 of Cooperative Societies Act is not binding on him. This submission is not at all acceptable. The property was standing in the name of father of appellant and the provision of section 137 of Cooperative Societies Act show that action can be taken against the mortgagor by the office of Registrar, Cooperative Societies.

9) This appeal was admitted on 7.9.2011 by this Court (other Hon'ble Judge) by formulating following substantial question of law :-

> "If the Courts below concurrently found that the act of respondent No. 1 / Co-operative Society, which gave rise to the cause of action was per se wrongful, whether such act committed by respondent No. 1 - Society could be said to be an act touching the business of the society, as contemplated under Section 91 of the Maharashtra Co-operative Societies Act and whether such suit requires prior notice under Section 164 of the Act ?"

The aforesaid discussion and facts mentioned show that there was no need of consideration of provisions of section 91 of Maharashtra Cooperative Societies Act. The First Appellate Court has decided the matter in favour of bank and so, it was necessary for the present appellant to show that the certificate was not binding on him. He cannot be called as stranger. The property was owned by his father, who was mortgagor and after the death of his father, he has stepped in to the shoes of his father and so, it was necessary for him to take steps when the proceeding was started under section 101 of The Cooperative Societies Act. It cannot be believed that he had no notice of that proceeding as his son was party to the proceeding and certificate was issued against him. The son did not challenge that proceeding. It is clear that only to create complication, the father has taken aforesaid stand. It was the property of his father and the decision was binding on mortgaged property. Thus, no substantial question of law as such is involved in the matter. In the result, the appeal stands dismissed. Civil Application is disposed of.

[T.V. NALAWADE, J.]

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