

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11417 OF 2015

Shri. Sunil Sitaram Mahajan,]
Age 48 years, Occu: Business,]
R/at: Radhakrishna Colony,]
Ichalkaranji, Taluka Hatkanangale,]
District Kolhapur.].. Petitioner

Versus

1. Suryakant Pandurang Badave,]
Age Adult, Occu: Business,]
R/at. 5/606, Date Mala, Ichalkaranji,]
District Kolhapur.]
2. District Deputy Registrar,]
Co-operative Societies, Kolhapur.]
3. Recovery Officer,]
Shahu Corner Nagari Sahakari]
Path Sanstha Maryadit,]
5/44, Shau Corner, Ichalkaranji,]
District Kolhapur.]
4. Sou. Pooja Annaso Jadhav,]
Age Adult, Occu: Household,]
R/at. Mahavir Housing Society,]
Kolhapur Road, Ichalkaranji.]

5. Joint Registrar,]
Co-operative Societies,]
Kolhapur Division, Kolhapur.].. Respondents

Mr. A. B. Borkar, for the Petitioner.

Mr. Tanaji Mhatugade, for the Respondent No.1.

Mrs. Vaishali S. Nimbalkar, AGP for the Respondent Nos.2 & 5.

CORAM : R.M. SAVANT, J.
DATE : 18th MARCH 2016

ORAL JUDGMENT

1. At the outset, the Learned Counsel for the Petitioner seeks deletion of the Respondent No.4 as in the context of the challenge raised in the above Petition the said Respondent is a formal party. The Respondent No.4 is accordingly allowed to be deleted at the risk of the Petitioner.

2. Rule, with the consent of the Learned Counsel for the parties made returnable forthwith and heard.

3. The writ jurisdiction of this Court is invoked against the order dated 20.01.2015 passed by the Divisional Joint Registrar, Co-operative Societies, Kolhapur Division, Kolhapur, by which order, the Revision Application filed by the Respondent No.1 came to be allowed and resultantly, notice of hearing dated 23.01.2014 came to be set aside.

4. The factual matrix involved in the above Petition in brief can be stated thus :-

The Respondent No.4 who has now been deleted i.e. Sou. Pooja Annaso Jadhav was the borrower of the Respondent No.3 i.e. Shahu Corner Nagari Sahakari Path Sanstha Maryadit. The Respondent No.1 was guarantor to the loan taken by the Respondent No.4 . On default being committed by the Respondent No.4 proceedings under Section 101 of the Maharashtra Co-operative Societies Act (for short “the said Act”) came to be initiated by the Respondent No.3. The said proceedings culminated in the certificate being issued on 01.06.2010 for an amount of Rs.11,09,258/- with interest at 16% per annum from 01.10.2005. In view of the fact that the Respondent No.4 did not pay the amount, the property of the Respondent No.1 who was the guarantor was put to auction. The said auction was conducted on 26.12.2012 and the bid of the Petitioner for Rs.36,50,000/- being the highest was accepted. It seems that in terms of the rules, the Petitioner deposited an amount of Rs.5,47,500/- which is 15% of the amount with the Special Recovery Officer i.e. Respondent No.3. Thereafter it seems that the balance 85% amount i.e. Rs.31,02,500/- was paid by the Petitioner on 07.01.2013. The Respondent No.3 put up a proposal for confirmation of sale to the District Deputy Registrar, Co-operative Societies, Kolhapur on 26.02.2013. The District Deputy Registrar

by his letter dated 21.12.2013 refused to confirm the sale for the reasons mentioned in the said letter. The said reasons were inter-alia to the effect that the names of the witnesses to the auction were not mentioned with the auction purchaser and the auction purchaser has not paid 15% of the auction price within the stipulated time. The said letter of the District Deputy Registrar was replied to on behalf of the Respondent No.3 by his letter dated 06.01.2014. The Special Recovery Officer in the reply has mentioned the names of the witnesses who were present at the time of auction as also mentioned that the Petitioner herein has paid an amount of Rs.15% in terms of the rule and had also forwarded a xerox copy of the cheque which was issued by the Petitioner for the said amount. It seems that pursuant to the said reply a notice of hearing was fixed on 23.01.2014 as regards the confirmation of sale in favour of the Petitioner. It is the said notice which was taken exception to by the Respondent No.1, who as indicated above was the guarantor by filing a Revision Application before the Divisional Joint Registrar which was Revision Application No.51 of 2014.

5. The said Revision Application was allowed by the Divisional Joint Registrar by the impugned order and the notice of hearing for confirmation of sale was set aside on the ground that once the proposal for confirmation of sale has been rejected by the District Deputy Registrar

he has no authority to review his own order. As indicated above, it is the said order dated 20.01.2015 which is taken exception to by way of the above Petition. The Petition also takes exception to the order dated 21.12.2013 whereby the District Deputy Registrar has refused to sanction the proposal for confirmation of sale.

6. The principal contention of the Learned Counsel for the Petitioner Mr. A. B. Borkar is whether the revisionary jurisdiction under Section 154 of the Maharashtra Co-operative Societies Act could have been invoked by the Respondent No.1. It was the submission of Mr. A. B. Borkar that the notice of hearing does not constitute a decision or an order so as to enable the Respondent No.1 to invoke the revisionary jurisdiction. The Learned Counsel in support of the said contention placed reliance on the judgment of a Learned Single Judge of this Court reported in **2012(2) Bom. C. R. 163** in the matter of **Manager, Adarsh Mahila Nagri Sahakari Bank Ltd. & anr. Vs. State of Maharashtra & ors.** It was the submission of Mr. A. B. Borkar that the Respondent No.1 has not challenged any of the steps in the auction prior to the said notice of hearing being issued. It was the submission of the Learned Counsel that once a notice of hearing for confirmation of sale is issued the Registrar has no other option but to confirm the sale.

7. Per contra, the Learned Counsel appearing on behalf of the Respondent No.1 i.e. proponent of the Revision Application would contend that the Petitioner having not challenged the order dated 21.12.2013 is estopped from questioning the impugned order. It was also the submission of the Learned Counsel that the Respondent No.1 has filed a Civil Suit for declaration and injunction in respect of the property which is the subject matter of auction.

8. Having heard the Learned Counsel for the parties. The question that arises in the instant case is whether the revisionary jurisdiction could have been exercised by the Divisional Joint Registrar. A reading of Section 154 of the said Act discloses that the jurisdiction under the said provision can be invoked against a “decision” or an “order”. It is required to be noted that the auction proceedings have taken place pursuant to the certificate issued under Section 101 of the said Act. The record does not disclose that any recourse was taken against the said certificate. The auction was held on 26.12.2012 wherein the offer of the Petitioner was the highest. The Petitioner paid an amount of Rs. 5,47,500/- within the time stipulated for the same i.e. deposited 15% of the amount. The Petitioner has thereafter paid the balance 85% amounting to Rs. Rs.31,02,500/- on 07.01.2013. It is thereafter that the Special Recovery Officer sent a proposal to the District Deputy Registrar

for confirmation. As indicated above, the District Deputy Registrar has refused to confirm the same which has been communicated by the communication dated 21.12.2013. The sale has not been confirmed inter-alia for the reasons mentioned in the order dated 21.12.2013 which revolves around two reasons, that the names of the witnesses to the auction were not mentioned and that the auction purchaser has not paid 15% of the amount upfront after auction. Both the objections were replied to by the Special Recovery Officer vide his reply dated 06.01.2014. It is also pertinent to note that the Respondent No.1 did not challenge the auction notice or the auction sale which recourse was available under Rule 107 of the Maharashtra Co-operative Societies Rules.

9. In my view, therefore the objections as mentioned in the said letter dated 21.12.2013 prima-facie do not have any substance. The notice for confirmation of sale can be said to be only a sequitur to the auction sale that had taken place pursuant to which the purchase price has been paid by the Petitioner. The notice of hearing for confirmation of the sale is therefore a logical consequence of the said auction proceedings and cannot be said to be a “decision” or “order” so as to enable the Respondent No.1 to invoke the revisionary jurisdiction. The word “decision” appearing in Section 154 would take its colour from the word “order” appearing in the said provision and therefore in the instant case the notice regarding

confirmation of sale is neither a “decision” or an “order”. A reference could be made to the judgment of the Learned Single Judge of this Court in the matter of *Manager, Adarsh Mahila Nagri Sahakari Bank Ltd.*'s case (*supra*) wherein a Learned Single Judge of this Court has held that the order confirming a sale was not an order which was capable of being challenged under Section 154 of the said Act. In the instant case, the notice of hearing issued by the District Deputy Registrar by no stretch of imagination can be said to be a “decision” or “order” so as to entitle the Respondent No.1 to invoke Section 154 of the said Act. In my view, therefore, the Divisional Joint Registrar has exceeded his jurisdiction under Section 154 of the said Act when none was vested in him and therefore erred in setting aside the notice of hearing dated 23.01.2014. In my view, the letter dated 21.12.2013 of the District Deputy Registrar would also have to be set aside as the District Deputy Registrar has erroneously refused permission on grounds which as indicated above are untenable. The said letter dated 21.12.2013 is accordingly set aside. Since the letter dated 21.12.2013 has been set aside, the Deputy Registrar is directed to proceed on the basis of the notice of hearing dated 23.01.2014 and conclude the proceedings. The Petition is allowed to the aforesaid extent. Rule is accordingly made absolute with parties to bear their respective costs.

[R.M. SAVANT, J]