

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.3851 OF 2013

Mrs. Harsada Pramod Pandit And Another ... Petitioners
Versus
The Manager,
The Palus Sahkari Bank Ltd. And Others ... Respondents

.....

Mr. Prashant D. Patil for the Petitioners.
Mr. V.B. Rajure for Respondent Nos. 1 and 2.
Mr.PD. Pise for Respondent No.4.

.....

CORAM : R.M. BORDE, J.

DATE : 19 SEPTEMBER, 2016

P.C. :

. The Petitioners are objecting to the sale certificate issued in favour of Respondent No.4. It is admitted that the Petitioners had borrowed loan from The Palus Sahakari Bank Ltd., Tasgaon Branch, Sangli and failed to repay the amount borrowed from the bank. The Assistant Registrar, Co-operative Societies issued recovery certificate facilitating the recovery of the amount due towards a loan recoverable from the Petitioners. In execution of the recovery certificate landed property belonging to the Petitioners was put to auction and Respondent No.4 purchased the same. In pursuance to the auction proceedings, the sale price has also been deposited by Respondent No.4 and he has also been put in possession of the property.

2 An application was moved on behalf of Respondent No.2 for issuance of the sale certificate which has been issued by the Competent Authority i.e. Respondent No.3. The Petitioners, without objecting to the sale proceedings, in accordance of provision of Rule 107 of the Maharashtra Co-operative Societies Rules, 1961 ("the Rules") directly presented the instance Writ Petition raising the objection to the sale certificate issued in favour of Respondent No.4. It is not in dispute that the Petitioners did not follow procedure prescribed under Rule 107 for raising objection to sale. Sub-rule 13(i) of Rule 107 of the Act provides that when immovable property has been sold by the Recovery Officer, any person either owning such property or holding any interest therein by virtue of a title acquired before such sale may apply to have the sale set aside on his depositing with the Recovery Officer :-

(a) for recovery to the purchaser a sum equal to 5 per cent of the purchase money; and

(b) for payment to the applicant, the amount of arrears specified in the proclamation of sale as that for the recovery of which the said was order together with interest thereon and the expenses of attachment, if any, and sale and other costs due in respect of such amount, less amount which may since the date of such proclamation have been received by the applicant.

3 In the instant matter, admittedly, the Petitioners have not deposited the amount as provided under Clauses (a) and (b) of sub-rule 13(i) of Rule 107 of Maharashtra Co-operative Societies Rules, 1961. Since the Petitioners have not raised challenge to the proceedings of sale in conformity with the relevant rules, challenge raised by the Petitioners in

the instant Petition, does not deserve consideration.

4 The Petitioners makes grievance that the amount recoverable by the bank was far less than the price fetched on account of the sale of the property. It is the contention of the Petitioner that the Bank has appropriate the excess amount towards the satisfaction of the loan liability arising out of the different accounts. The aforesaid objection is not liable to be considered in the instant Petition and it would be open for the Petitioners to take appropriate steps as permissible in law in that regard. The Writ Petition is devoid of merits and hence, stands dismissed.

5 The Petitioners have deposited the amount of Rs.1,57,770/- in this Court, in pursuance to the order passed on 19 August 2013. The Petitioners are entitled to withdraw the said amount deposited by them. The Registry is directed to refund the aforesaid amount to the Petitioners unconditionally.

(R.M. BORDE, J.)