IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.197 OF 2015

Ajit Dhanpal Bhore .... Petitioner

Vs.

The State of Maharashtra & Ors. .... Respondents

Mr. Pradeep D. Dalvi, Advocate for the Petitioner.

Ms. M.S. Bane, AGP for Respondents no.1 to 3.
Mr. Sachin R. Pawar, Advocate for Respondent no.4.
Mr. Mithun Mahajan, Advocate for Respondent no.5.

Coram : **Smt. R.P. SondurBaldota, J.**
Date : 4th July, 2016

P.C.

1 This petition challenges the order dtd. 19th November, 2014, by which the Divisional Joint Registrar, Co-operative Societies, Kolhapur Division, Kolhapur dismissed Revision Application under Section 154 of the Maharashtra Co-operative Societies Act, 1960 ("The Societies Act" for short) of the petitioner for non-compliance of Section 154 (2A) of the Societies Act.

2 The brief facts of the petition are that respondent no.4-Society had obtained recovery certificate dtd. 6th February, 2008 in

respect of the dues recoverable from the petitioner. Pursuant to the recovery certificate, it put property of the petitioner to the auction on 16th January, 2009 and in that auction, respondent no.5 purchased the property. Accordingly, the sale-deed was executed on 4th April, 2009. The petitioner, however, failed to vacate the premises and has continued to enjoy the same till date to the prejudice of respondent no.5. Five years thereafter i.e. on 20th May, 2014, he filed revision application to challenge the auction along with the application for condonation of delay. That delay was condoned on 23rd July, 2014. Thereafter on 16th September, 2014, he forwarded an amount of 4,55,000/- to respondent no.4 being 50% of the amount in non-compliance of Section 154(2A) of the Societies Act. Respondent no.4 refused to accept that amount contending that the sale certificate and sale confirmation had been done by the concerned authority as far back as 23rd March, 2009 and revision application preferred by the petitioner as regards the confirmation of sale had been rejected on 30th January, 2013. Since the loan account of the applicant was closed in the year 2009 itself on completion of sale, the amount could not be accepted by the society. Thus, on the date of the revision application, there was no deposit by the petitioner of 50% of the amount.

3 Mr. Dalvi, the learned advocate for the petitioner submits that refusal by the society to accept the amount of deposit cannot be treated as failure on the part of the petitioner in depositing the same. He submits relying upon a decision of the

Apex Court in D. Nageswar Rao vs. State Bank of India and others, reported in 2016 Supreme Appeals Reporter (Civil), page 321, that after all, respondent no.4 needs only get its money. Therefore even if the auction is confirmed in favour of the auction purchaser and if the petitioner is willing to deposit the amount due under the recovery certificate, respondent no.4 cannot refuse the same.

4 Mr. Dalvi next refers to the provisions of Rule 107 of Maharashtra Co-operative Societies Rules ("The Societies Rules" for short), which provides that where immovable property has been sold by Recovery Officer, any person either owning such property or holding any interest therein by virtue of a title acquired before such sale may apply for setting aside of the sale on his depositing with the Recovery Officer, for the payment to the purchaser a sum equal to 5% of the purchase money. Therefore, the right of the petitioner to make the payment to the purchaser and retain the property is not extinguished. According to him, the petitioner is willing to pay 5% of the purchase money to respondent no.5.

5 The arguments of Mr. Dalvi are too simplistic. Firstly the petitioner seeks to challenge the recovery certificate eight years after it's issuance. Though the delay in filing the revision application to challenge the same is condoned, that condonation is relevant only for maintenability of the revision application. The fact of delay would continue to be relevant while considering the

other merits of the case. His argument that respondent no.4 should only be concerned with recovery of money also cannot help the petitioner because respondent no.4 has already received the money as far back as the year 2009 and after receipt of it's dues, it has closed the account of the petitioner. Therefore, there can be no question of it receiving money again from the petitioner.

6 In the facts of the present case, the revision filed by the petitioner under Section 154 of the Societies Act must be considered along with Rule 107 of the Societies Rules, it's Sub-Rules 13(i) and (ii) in particular. Rule 107, Sub-Rules 13 (i), (ii) requires that the deposit of 5% of the purchase money and the application to set aside the sale must be made within a period of 30 days from the date of the sale. Since that period expired in the year 2009, itself, there cannot be any recourse by the petitioner to Rule 154 of the Societies Act. In these circumstances, there is no substance in the petition. Hence, the petition is dismissed with costs. The petitioner shall pay costs quantified at Rs.25,000/- to respondent no.5 within a period of six weeks from today.

7 At the request of Mr. Dalvi, the ad-interim order granted on 3rd February, 2015 is extended for a period of six weeks from today.

(Smt. R.P. SondurBaldota, J.)