

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

WRIT PETITION NO. 4629 OF 2014

Vikas Vasantryao Patil

..Petitioner.

Vs

State of Maharashtra and Ors

.. Respondents

Mr.A.S.Khandeparkar i/b Lokesh D. Zade, Advocate for Petitioner.
Ms.Vaishali Nimbalkar, A.G.P for Respondents no. 1 and 2.
Mr U.R.Mankapure, Advocate for Respondent no.3.
Mr. S.S.Patwardhan, Advocate for Respondent no.4.

CORAM : **R.G.KETKAR,J.**
RESERVED ON: **24/04/2017**
PRONOUNCED ON: **03/05/2017**

PC:

1. Heard Mr. A.S.Khandeparkar, learned counsel for the petitioner, Ms Vaishali Nimbalkar, learned A.G.P for respondents no.1 and 2, Mr. U.R.Mankapure, learned counsel for respondent no.3 and Mr. S.S. Patwardhan, learned counsel for respondent no.4 at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the Judgment and order dated 20.3.2014 passed by respondent no.2-Divisional Joint Registrar, Co-operative Societies, Kolhapur Division, Kolhapur (for short, 'Registrar') in Revision Application No. 348 of 2010. By that order, the Registrar allowed the Revision Application preferred by respondent no.3 against the auction sale proceedings dated 14.6.2010 and sale confirmation dated 30.8.2010. The Registrar

set aside the auction sale dated 14.6.2010 and sale confirmation dated 30.8.2010. The facts and circumstances, giving rise to the filing of the present petition, briefly stated, are as under.

3. The petitioner and respondent no.3 had purchased the property bearing Survey no. 952, admeasuring 90 R from one Jotiram Madhu Kamble on 21.2.1994. The petitioner and respondent no.3 have equal share therein. On 9.3.2000, respondent no.3 mortgaged his share to respondent no.4 and had borrowed Rs.2,50,000/-. Respondent no.4 initiated proceedings on 15.1.2009 against respondent no.3 under Section 101 of the Maharashtra Co-operative Societies Act, 1960 (for short, 'Act') on 10.6.2009. The Assistant Registrar issued recovery certificate under section 101 of the Act against respondent no.3 on 10.6.2009. On 4.8.2009, Special Recovery Officer attached the said property. On 6.5.2010, District Deputy Registrar, Sangli fixed the upset price of the said property at the rate of Rs.85,000/-. On 13.5.2010, Special Recovery Officer issued sale proclamation under Rule 107(11) of the Maharashtra Co-operative Societies Rules, 1961 (for short, 'Rules') and declared that the auction will be conducted at 5 pm on 14.6.2010. The petitioner participated in the auction held on 14.6.2010 and had submitted bid of Rs. 5,14,500/-. The petitioner was declared as the highest bidder on 14.6.2010. On 14.6.2010, the petitioner paid 15% of the amount, i.e. Rs. 80,000/- to respondent no.4 and the remaining amount of

Rs. 4,34,500/- was paid during the stipulated period. On 30.8.2010, Deputy Registrar of Co-operative Societies issued certificate of auction sale and confirmed the auction under Rule 107(14)(iii) of the Rules. On 9.9.2010, the sale certificate was confirmed and sale deed was executed in favour of the petitioner. On 4.10.2010, the petitioner made application to the Special Recovery Officer for handing over possession of the property. On 13.9.2010, respondent no.3 instituted Revision Application challenging the auctions sale as also issuance of sale certificate dated 30.8.2010. On 21.2.2012, respondent no.2- Registrar set aside the auction sale dated 14.6.2010 and sale confirmation dated 30.8.2010 subject to payment of recoverable dues plus 5 percent of bid amount as also expenses borne by respondent no. 4 for auction within a period of one month from the date of receipt of the order. In the Revision Application, respondent no.3 intentionally did not implead the petitioner as a party respondent and obtained the order behind his back.

4. Aggrieved by the order passed by the second respondent, respondent no. 4 instituted Writ Petition No. 3198 of 2012 in this Court. The petitioner filed Civil Application in that petition for impleading himself as a party. The application was allowed and the petitioner was impleaded in that petition. Respondent no.3 also instituted Writ Petition No.10928 of 2012 before this Court. The petitioner was impleaded in pursuance of the order passed in

Civil Application taken out by him. Both these petitions were disposed of by common order dated 24.10.2013. The order dated 21.2.2012 passed by the second respondent was set aside. Revision Application was restored to the second respondent. This Court directed respondent no.2 to permit respondent no.4 to carry out amendment for impleading petitioner as a party respondent in the Revision Application and decide the Revision Application by keeping all contentions of the parties on merits open.

5. After the remand, by the impugned order, respondent no.2 has allowed the Revision Application and set aside auction sale dated 14.6.2010 and sale confirmation dated 30.8.2010. It is against this order, the petitioner has instituted this petition.

6. In support of this petition, Mr. Khandeparkar strenuously contended that respondent no.4 has followed due process of law in holding the auction. As respondent no.3 failed to repay the loan amount with interest within the stipulated period and further has not paid the amount along with interest and surcharge and expenditure incurred by the fourth respondent for conducting the auctions sale, the second respondent was not justified in allowing the Revision Application. He submitted that auction was held on 14.6.2010 and the third respondent did not adopt appropriate proceedings as contemplated by Rule 107. In fact, respondent no.3 withdrew application filed under Rule 107

(13). Respondent no.3 claims that the application dated 3.7.2010 was made under Rule 107(14). However, a perusal of that application does not indicate that respondent no.3 made out a case of a material irregularity or mistake or fraud in conducting the auction. In case it is assumed that respondent no.3 made out a case of a material irregularity or mistake or fraud in conducting the auction, respondent no.3 has not satisfied that he has sustained substantial injury by reason of such irregularity, mistake or fraud.

7. Mr.Khandeparkar submitted that respondent no.2 committed serious error in holding that the upset price was not correctly fixed. Respondent no.2 also failed to consider that the petitioner is a bonafide purchaser of the said property from respondent no.4. Respondent no.2 also failed to consider that the petitioner had paid entire consideration amount fixed in auction sale and that sale deed is executed in his favour. He, therefore, submitted that the impugned order deserves to be set aside.

8. On the other hand, Mr. Mankapure supported the impugned order. He submitted that on 13.5.2010 Special Recovery Officer issued sale proclamation under Rule 107(11) of the Rules. A perusal of notice dated 13.5.2010 shows that in respect of the property in question, the first bid was to be conducted on Monday, 14th June, 2010 at 5 pm, second bid on Monday,

4.10.2010 at 5 pm and third bid on Monday 8.11.2010 at 5 pm. He submitted that respondent no.3 was present on 14.6.2010 at 5 p.m. However, no auction in respect of the property in question was held. He further submitted that though the auction was supposed to be conducted at 5 pm on 14.6.2010, the Special Recovery Officer, by communication dated 14.6.2010 addressed to the third respondent called upon him to deposit Rs.6,04,999/- plus interest plus surcharge plus penalty plus 5% within 30 days as per Section 156 of the Act read with Rule 107 of the Rules. The said letter was sent through post and was received by the third respondent the very next day, i.e. 15.6.2010. In other words, the Special Recovery Officer could not have dispatched the letter dated 14.6.2010 itself after office hours as the auction was to be conducted at 5 pm on 14.6.2010. It also could not have been received by the third respondent by post on 15.6.2010. In other words, he submitted that letter was posted prior to 14.6.2010.

9. Mr. Mankapure has invited my attention to the letter dated 3.7.2010 addressed by the third respondent to (1) Manager of the 4th respondent and (2) Special Recovery Officer of the 4th respondent, reiterating his stand that though he was present at the time of auction on 14.6.2010, no auction was held on that day. On 5.7.2010, respondent no.3 addressed a letter to Divisional Joint Registrar, Co-operative Societies, Kolhapur

Division, Kolhapur, setting out therein that though the auction was proposed to be held on 14.6.2010 at 5 pm, he was present at that time. However, no auction was held. By letter dated 14.6.2010, Special Recovery Officer informed him that auction was conducted. In short, Mr. Mankapure submitted that auction was not at all conducted on 14.6.2010.

10. Mr. Mankapure further submitted that the application dated 3.7.2010 made by the third respondent was replied by District Deputy Registrar on 31.8.2010. By that letter, District Deputy Registrar informed the third respondent that the prayer made in the application dated 3.7.2010 cannot be considered as the authority has no power to suspend or keep in abeyance auction. Respondent no.3 was instructed to file Revision Application under Section 154 of the Act before the Divisional Joint Registrar.

11. Mr. Mankapure submitted that respondent no. 3 is maternal uncle of the petitioner. Petitioner has instituted Suit being R.C.S.No. 80 of 2006 in the Court of Civil Judge, Junior Division, Tasgaon in respect of the suit property. Application taken out by the petitioner therein restraining the third respondent from making permanent construction in the suit property was rejected on 18.12.2006. He submitted that the Recovery Certificate under Section 101 was obtained without issuing notice to the third respondent. Recovery Certificate does not show that Survey no. 952 was part and parcel in order under Section 101. He

submitted that City Survey No.952 was not mortgaged for availing loan. The petitioner is a political person having good connections with officers of the fourth respondent which is a cooperative Bank. As the petitioner failed to obtain any relief in civil proceedings, in collusion with officers of the fourth respondent, proceedings under section 101 were initiated even prior to the period of repayment. Proceedings under section 101 was filed on 11.10.2008, i.e. prior to the expiry of one year loan period.

12. Mr. Mankapure further submitted that the upset price was also not properly fixed. He relied upon the decision of Orissa High Court in Swastik Agency Vs. State Bank of India, 2009(2) Bankers' Journal 111. He has also taken me through the impugned order.

13. Mr. Patwardhan supported the petitioner and submitted that the auction was conducted after following due procedure of law. He, therefore, submitted that no case is made out for invocation of powers under Article 227 of the Constitution of India.

14. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. A perusal of the impugned order shows that the Divisional Joint Registrar held that respondent no.3 had deposited 50% of the amount as required by section 154(2A) of the Act. After perusing the loan documents, it was observed that the suit property was not mortgaged for availing loan. Sale

proclamation dated 13.5.2010 published in Daily Dainik Sakal did not reflect the encumbrances for which the property was liable to be sold. The amount for the recovery for which sale was ordered was also not reflected in the sale proclamation. In the sale proclamation, three dates for auction were given which is not contemplated under Rule 107(11)(e). It was, therefore, observed that the sale proclamation is not as per the said Rule. The Divisional Joint Registrar further observed that the upset price of Rs. 85,000/- was fixed on 6.5.2010. As against this, the highest bid offered was Rs. 5,14, 500/-. Relying upon the decision of Swastik Agency (supra), it was observed that as the property was sold more than six times of valuation, the valuation is not properly done by the authority.

15. Apart from above, it is also relevant to note that it is the case of the petitioner that auction was held on 14.6.2010 at 5 pm. It is inconceivable that the Special Recovery officer could post communication dated 14.6.2010 and the third respondent could receive the same on the very next date, i.e. 15.6.2010. In the case of Swastik Agency (supra) the Division Bench Orissa High Court has observed in paragraph 71 thus:

“71. It is evidence that the property has been assessed at Rs. 4.15 lacs and reserve price was fixed at Rs. 3.95 lacs, but it has fetched the value to the tune of Rs. 13.95 lacs. The difference between the value assessed and value received is more than three times. Therefore, even by stretch of imagination, it cannot be held that the valuation has been made correctly. As a consequence reserve price had been fixed at a lower side and auction on the basis of

such report cannot be held to be fair and reasonable as large number of persons who might have indulged in purchasing property of higher value like instant, had been misled and they did not participate. Thus, the auction sale is stood vitiated.”

As noted earlier, even the petitioner had instituted the suit against the third respondent in respect of the suit property. In view thereof, I find merit in the submission of Mr. Mankapure that without following due procedure of law, the auction was conducted. The auction was held collusively with malafide intention.

16. Mr. Mankapure states that respondent No.3 will bear the amount of interest accrued on the amount of the auction money deposited by the petitioner with respondent No.4-Bank. The interest will be paid on the said amount from the date of such deposit on auction money till the date of refund of said amount by the petitioner @ 12% per month. The petitioner will produce authenticated copy of this order before the fourth respondent. Respondent No.4 will thereafter refund the principal amount of auction money deposited by the petitioner with it within a period of two weeks from the date of service of the order by the petitioner upon respondent No.4. Respondent No.4 is at liberty to proceed with the recovery of the loan amount in accordance with law.

17. In the light of the above discussion, I do not find any merit in this petition. The petitioner was not in a position to

demonstrate that the findings recorded by the Divisional Joint Registrar are perverse being based upon no material or that it is contrary to the material on record. Hence, no case is made out for invocation of powers under Article 227 of the Constitution of India. Petition fails and the same is dismissed.

(R.G.ketkar, J.)