

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

WRIT PETITION NO.9859 OF 2014

Dattatraya M. Salokhe .. Petitioner.
v/s.
Krishna Sahakari Bank Ltd.,
& Others .. Respondents.

Ms. Pooja Joshi i/b. S. R. Ganbavale, for the Petitioner.
Mr. Anand Shalgaonkar, for Respondent Nos.1 and 2.
Mr. S. D. Rayrikar, AGP for Respondent No.3.
Mr. Saurabh Kurade, for Respondent No.4.

CORAM: M.S.SANKLECHA, J.
DATE : 28th NOVEMBER, 2017.

P.C:-

At the request of the learned Counsel for the parties, this
Petition has being disposed of finally at the stage of admission.

2 On 4th October, 2017, following order was passed:-

“1. This petition under Articles 226 and 227 of the Constitution of India, challenges the order dated 13th December, 2012 passed by the Divisional Joint Registrar, Kolhapur. The impugned order dated 13th December, 2012 has been passed in exercise of powers of revision under section 154 of the Maharashtra Co-operative Societies Act, 1960 (Act). By the impugned order, the revision application filed by the auction purchaser- Respondent No.4 herein was allowed. As a consequence, Respondent No.4 became entitled to the conveyance of auction property.

2. The Petitioner's grievance is that the auctioned property belongs to him and at no point of time any notice of his property being

subjected to sale was given to him. It was only on receipt of communication in July, 2014 from Respondent No.1 – Bank he learnt that his property has been put up for auction sale. It is the Petitioner's contention that at no point of time i.e. before the recovery proceeding under section 101 of the Act or even during the sale proceedings any notice was given to the Petitioner. This Court had on 25th July, 2014 adjourned this petition for a period of two weeks to enable filing of affidavit, as it was the contention of Respondent No.1 Bank that the Petitioner was a party to the proceeding initiated under section 101 of the Act by Respondent No.1 Bank. However, till date no affidavit has been filed nor does anybody appear on behalf of Respondent No.1 Bank.

3. In the above view, the petition is being adjourned to Monday i.e. to 9th October, 2017. It is made clear that on the next occasion, the petition is likely to be disposed of finally. The Petitioner is directed to communicate a copy of the order to Respondent No.1 Bank.

S.O. to 9th October, 2017.”

On 9th October, 2017, following order was passed:-

“ On 4th October, 2017, this petition was adjourned to today as Respondent No.1 Bank was not represented. In the above order, it was recorded that on 25th July, 2014, the advocate appearing for Respondent No.1 was granted two weeks adjournment to file an affidavit to bring on record the fact that the proceedings under section 101 of the Maharashtra State Co-operative Societies Act (Act) had also been initiated even against the Petitioner leading to the Recovery Certificate. However, no affidavit was filed till 4th October, 2017. Today also no affidavit has been filed.

2. Mr. Mangaonkar, learned counsel appearing for Respondent Nos.1 and 2 states that Mr. Shalgaonkar, learned advocate who appears for Respondent No.1 and 2 is in personal difficulty today.

3. It is only in view of the personal difficulty of the Advocate of Respondent Nos. 1 and 2 that the petition is being adjourned to 21st November, 2017.”

3 Respondent No.1-Bank has filed an affidavit. However, both

Mr. Shalgaonkar, learned Counsel for Respondent No.1-Bank and Mr. Kurade, learned Counsel for Respondent No.4-Auction Purchaser, are agreed that effective notice was not given to the Petitioner before the Revisional Authority namely – Divisional Joint Registrar, Kolhapur. Thus, it is an undisputed position before me that the impugned order dated 13th December, 2012 passed by the Divisional Joint Registrar, Kolhapur is in breach of natural justice.

4 Accordingly, the impugned order dated 13th December, 2017 passed by the Divisional Joint Registrar, Co-operative Societies, Kolhapur Division, Kolhapur is, quashed and set aside. The Revision Application dated 18th April, 2012 filed by Respondent No.4- Auction Purchaser, is restored to the file of the Divisional Joint Registrar, Co-operative Societies, Kolhapur Division Kolhapur, for passing a fresh order. Needless to state that the Revisional proceedings will be disposed of after following the principles of natural justice which would necessarily include hearing and considering the Petitioners herein.

5 The Divisional Joint Registrar, Co-operative Societies, Kolhapur Division Kolhapur is directed to dispose of the Revision Application dated 18th April, 2012 filed by Respondent N.4 i.e. Auction Purchaser, as expeditiously as possible and preferably within six months from today.

6 **Writ Petition disposed of** in the above terms. No order as to costs.

(M.S.SANKLECHA,J.)