

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 149 OF 2017**

Rushali Rajesh Sawant ...Petitioner
Versus
The Special Recovery & Sales Officer CKP Co-op
Bank Ltd & Ors ...Respondents

Mr NN Gavankar, *a/w Mr MN Gawankar, for the Petitioner.*
Mr SV Ghaisas, *i/b BV Samant, for Respondent No. 1.*
Mr Swapnil R Patil, *for Respondents Nos. 3 & 4.*
Mr Sachin V Masurkar, *a/w Shashank Choudhary & Sunitha*
Perumal, for Respondents Nos. 5 & 6.
Mr Manish Upadhyay, AGP, *for Respondent No. 8-State.*

CORAM: G.S. PATEL, J
DATED: 2nd November 2017

PC:-

1. Rule. Respondents waive service. By consent, rule made returnable forthwith and taken up for hearing and final disposal.

2. The challenge in this writ petition is to an order dated 26th May 2016 passed by the Divisional Joint Registrar, Co-operative Societies, Mumbai Division, Mumbai. That order allowed the revision application made by the present respondent No. 5, Bindu Rajesh Desai. She claims that she and her husband, Rajesh Sudhakar Desai, respondent No. 6 are the owners of, or are otherwise entitled

to, Flat No. 503, A-Wing, Azad Nagar Ekta (Venus Tower) Co-operative Housing Society Ltd, Veera Desai Road, Andheri (West), Mumbai 400 053. The 3rd respondent to the revision application was M/s Milind Developers, presently respondent no. 3 to this writ petition.

3. By the impugned order the Divisional Joint Registrar allowed the application and directed the 2nd respondent bank and its Special Recovery and Sales Officer to accept from Bindu Rajesh Desai arrears along with 5% of an auction amount from the developers and directed the cancellation of an auction already held. The present petitioner, Rushali Sawant, claims she is the *bona fide* purchaser of the flat at that auction. She bid Rs. 50 lakhs for this flat and this being the highest bid, the auction sale was confirmed in her favour. It is significant that despite this, Rushali was not made a party to the revision application and was, therefore, not served with it nor heard. There is no mention in the impugned order of her being given notice or heard. It was urged that Rushali, the petitioner, was 'aware' of the revision proceedings, but that is surely immaterial. She was required to be served, given notice and heard since she had already made payment and was declared the successful auction purchaser.

4. On this limited ground, the impugned order will have to be quashed and set aside. Rule is made absolute in terms of prayer clause (a). The Revision Application No. 236 of 2014 is restored to file.

5. Parties will appear before the Divisional Joint Registrar, Co-operative Societies, Mumbai Division, Mumbai on 20th November 2017 with an authenticated copy of this order. The applicant, Bindu Rajesh Desai, will amend the revision application to join the present petitioner Rushali as respondent No. 4, M/s MA Developers as respondent No. 5 and Mr Milind Bhalchandra Nikarge, its managing partner as respondent No. 6. The Divisional Joint Registrar will allow Rushali sufficient time to file an affidavit in reply to the revision application but not exceeding two weeks.

6. The Divisional Joint Registrar is requested to dispose of the revision application afresh without being influenced by the previous orders at his earliest convenience and if possible by 12th January 2018.

7. Rule is made absolute in these terms. There will be no order as to costs.

(G. S. PATEL, J)