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IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

LETTERS PATENT APPEAL NO.105 OF 1998 IN
WRIT PETITION NO.303 OF 1991
WITH
CIVIL APPLICATION NO.1968 OF 1998

Avadabai Adhar Patil,
Since deceased, through L.Rs.

1-a) Sau. Kalpana w/o Dinkar Patil,
Age 45 years, Occu. Household &
Agriculture, R/o Paldi,
Tq. Dharangaon, District Jalgaon

1-b) Sau. Neeta w/o Deelip Patil,
Age 42 years, Occu. Household &
Agriculture, R/o as above.

... **APPELLANTS**
(L.Rs. of Orig. Respdt. No.2)

VERSUS

1. Balkisan s/o Manikchand Zavar,
Since deceased, through L.Rs.

1-A) Radheshyam Balkisan Zavar,
Age 56 years, Occu. Business,
R/o Paldhi (Kh.), Tq. Dharangaon,
District Jalgaon

1-B) Kailaschandra Balkisan Zavar,
Age 53 years, Occu. Business,
R/o Paldhi (Kh.), Tq. Dharangaon,
District Jalgaon

1-C) Satyanarayan Balkisan Zavar,
Age 51 years, Occu. Business,
R/o Paldhi (Kh.), Tq. Dharangaon,
District Jalgaon

1-D) Sau. Sadhana Dilip Aagiwal,
Age 36 years, Occu. Household,
R/o At Post Saykheda, Tq. Niphad,
District Nashik

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2. Somnath Manikchand Zaver,
Age major, Occu. Business,
R/o Paldhi, Taluka Erandol,
District Jalgaon.
3. Madanlal Manikchand Zaver,
Age major, Occu. Business,
R/o Nandurbar, Taluka Nandurbar,
District Dhule
4. Jalgaon Peoples Co-operative Bank Ltd.,
having its office at Jalgaon,
District Jalgaon.
5. Mr. R.N. Patil,
Judge, Co-operative Court,
Jalgaon, District Jalgaon
6. The Members of State Co-operative
Appellate Court,
 - (i) Shri M.H. Jadhav,
 - (ii) Shri S.P. Ghogre

**(Respondent Nos.5 & 6(i) & (ii) deleted
as per leave of Court dated 19.4.2004)**

... **RESPONDENTS**
(No.1 to 3 Orig. Petitioners,
No.4 Orig. Respondent)

.....
Shri V.D. Hon, Senior Counsel with
Shri A.V. Hon, Advocate for appellants
Shri P.D. Bhosale, Advocate holding for
Shri A.B. Kale, Advocate for respondent Nos.1-A to 1-D & 2
Shri M.M. Bhokarikar, Advocate for respondent No.3

.....
WITH

LETTERS PATENT APPEAL NO.106 OF 1998 IN
WRIT PETITION NO.303 OF 1991
WITH
CIVIL APPLICATION NO.1967 OF 1998

((3))

The Jalgaon Peoples Co-operative
Bank Ltd., having its office at Jalgaon,
District Jalgaon, through its ... **APPELLANT**
General Manager (Orig. Respondent No.1)

VERSUS

1. Balkisan s/o Manikchand Zavar,
Since deceased, through L.Rs.
- 1-A) Radheshyam Balkisan Zavar,
Age 56 years, Occu. Business,
R/o Paldhi (Kh.), Tq. Dharangaon,
District Jalgaon
- 1-B) Kailaschandra Balkisan Zavar,
Age 53 years, Occu. Business,
R/o Paldhi (Kh.), Tq. Dharangaon,
District Jalgaon
- 1-C) Satyanarayan Balkisan Zavar,
Age 51 years, Occu. Business,
R/o Paldhi (Kh.), Tq. Dharangaon,
District Jalgaon
- 1-D) Sau. Sadhana Dilip Aagiwal,
Age 36 years, Occu. Household,
R/o At Post Saykheda, Tq. Niphad,
District Nashik
2. Somnath Manikchand Zavar,
Age major, Occu. Business,
R/o Paldhi, Taluka Erandol,
District Jalgaon.
3. Madanlal Manikchand Zavar,
Age major, Occu. Business,
R/o Nandurbar, Taluka Nandurbar,
District Dhule
4. Audabai Adhar Patil,
Died through her L.Rs.
- 4-A) Prabhakar Adhar Patil,
Age 60 years, Occu. Agril,
R/o Paldhi, Tq. Dharangaon,

((4))

District Jalgaon.

- 4-B) Sou. Sankuntala Yadav Mahajan
Age 63 years, Occu. Household,
R/o C/o Y.C. Mahajan,
Kamlakar Nagar, Ambarnath,
District Thane.
- 4-C) Sou. Vimal Raghunath Bhaurao
Age 61 years, Occu. Household,
R/o Sahkar Nagar, Tulsibagh Colony,
Near Gajanan Maharaj Math,
Pune, District Pune.
- 4-D) Sou. Pramlia Suresh Patil,
Age 55 years, Occu. Household,
R/o At Post Paldhi, Tq. Dharangaon,
District Jalgaon
- 4-E) Sou. Indumati Jaiwant Ingle,
Age 56 years, Occu. Household,
R/o Building No.6,
Near Shradha Garden, Jawale Park,
In front of Telco, Chinchwadi, Pune
- 4-F) Dinkar Adhar Patil,
Age 54 years, Occu. Agril,
R/o Paldhi, Tq. Dharangaon,
District Jalgaon
- 4-G) Smt. Pratibha Shyam Khalane,
Age 50 years, Occu. Household,
Near Kala Nagar, Government Colony,
Bandra (East), Mumbai
- 4-H) Deelip Adhar Patil,
Age 48 years, Occu. Agri.,
R/o Paldhi, Tq. Dharangaon,
District Jalgaon
- 4-I) Sou. Kalpana Dinkar Patil,
Age 45 years, Occu. Household,
R/o Paldhi, Tq. Dharangaon,
District Jalgaon
- 4-J) Sou. Nita Deelip Patil,

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Age 45 years, Occu. Household,
R/o Paldhi, Tq. Dharangaon,
District Jalgaon

5. R.N. Patil,
Co-operative Court,
District Jalgaon
6. The Maharashtra State Co-operative
Appellate Court, by its Members:
 - (i) Shri M.H. Jadhav, Member
 - (ii) Shri S.P. Ghogre, Member

**(Respondent Nos.5 & 6(i) & (ii) deleted
as per leave of Court dated 19.4.2004)**

... **RESPONDENTS**

(No.1 to 3 Orig. Petitioners
Rest Orig. Resp.No.2 to 4)

.....

Shri Deelip Patil Bankar, Advocate for appellant
Shri P.D. Bhosale, Advocate holding for
Shri A.B. Kale, Advocate for respondent Nos.1-A to 1-D & 2
Shri M.M. Bhokarikar, Advocate for respondent No.3

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CORAM: T.V. NALAWADE AND
SUNIL K. KOTWAL, JJ.

DATED: 24th January, 2018.

JUDGMENT (PER SUNIL K. KOTWAL, J.) :

1. Letters Patent Appeal No.105/1998 is filed by original respondent No.2 and Letters Patent Appeal No.106/1998 is filed by original respondent No.1. Respondent No.1 to 3 are the original petitioners in Writ Petition No.639/1984. These both Letters Patent Appeals are filed against the order passed by learned Single Judge of this Court, directing the original

respondents to hand over the possession of Survey No.242 (Gat No.403), admeasuring 11 acres and 18 gunthas, situated at village Paldhi, Taluka Erandol, District Jalgaon to the original petitioner.

2. Undisputed facts in between the parties are that, the respondent No.1 to 3 are the legal representatives of Manikchand Zavar, who was a borrower of original respondent Jalgaon People's Co-operative Bank Ltd. and he died on 20.8.1952. An award came to be passed on 20.12.1953 for recovery of Rs.12,195/- (with principal amount of Rs.10,000/- and interest of Rs.2195) under Section 54 of the Bombay Co-operative Societies Act, 1925 against the above land owner. On 14.4.1957, original respondent No.1 Bank obtained a certificate of execution under Section 59(1(b) of the Bombay Co-operative Societies Act, 1925 (hereinafter referred to as the Old Act for short). On 15.7.1961, the Collector, Jalgaon issued certificate of transfer for partial satisfaction of Rs.8000/- and out of Rs.12,195/- under Section 59-A of the Old Act in respect of above said agricultural land. Consequently, the said land came to be transferred to Jalgaon People's Co-operative Bank, in pursuance to the certificate issued by the Collector, Jalgaon.

3. On 15.2.1963, the Bank arranged auction and there

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was no bid. Therefore, the auction was cancelled. Again fresh auction was arranged on 20.2.1964, in which Avadabai Adhar Patil was the highest bidder and, therefore, that bid was accepted by the Bank. On the said day, Avadabai Adhar Patil paid Rs.4325/- to the Bank towards 25% of bid amount. On 21.10.1964, she paid another installment of Rs.6000/- to the Bank. After receiving total amount of Rs.10,325/- towards bid amount, on 24.10.1964, the Bank handed over possession of above said land to Avadabai Patil, without receiving full amount of the bid as well as without executing the sale deed in her favour.

4. As the award amount was not fully satisfied by legal representatives of Judgment Debtor, on 5.9.1969, the Registrar issued certificate under Section 98-A of the Maharashtra Co-operative Societies Act, 1960. The Bank filed Special Darkhast No.7/1969 against the sons of late Manikchand Zavar for recovery of balance amount of Rs.11,191/-. In that Darkhast proceedings, sons of Manikchand Zavar raised objection of limitation, which was accepted by the Court. Against that order, the Bank preferred appeal in the High Court, and on 6.7.1972, the matter was remanded for fresh adjudication by the High Court. Thereafter, the original petitioners filed Writ Petition No.1912/1983, which was re-numbered by this Bench as Writ

Petition No.3206/1989, wherein vires of Section 98-A certificate was challenged. The High Court granted conditional stay in favour of debtor petitioners by directing them to deposit amount of Rs.11,191/-, which was paid by debtor petitioners and subsequently, Writ Petition No.3206/1989 was withdrawn on 25.7.1996. In the result, Special Darkhast No.7/1969 came to an end.

5. On 2.9.1973, petitioners filed Special Civil Suit No.96/1993 in the Court of Civil Judge, Senior Division, Jalgaon for restoration of possession of above said land against the Bank, which was already handed over by the Bank to Avadabai Adhar Patil on 24.10.1964. By filing written statement in the suit, the Bank challenged the tenability of the suit. After realizing the legal position, debtor petitioners filed withdrawal pursis. Learned civil Judge, Senior Division, Jalgaon granted permission for withdrawal of the suit and for filing fresh suit subject to condition precedent that the plaintiff shall pay cost of the suit to the Bank.

6. Thereafter, in the month of November 1974, debtor petitioners submitted an application referring the dispute before the Registrar, Co-operative Societies at Jalgaon, numbered as ABN/JGN/5/1974 for adjudication of rights and prayed the relief including restoration of possession of the above said land. That

dispute was referred to the Court of Officer on Special duty, Co-operative Department, Jalgaon and re-numbered as BAN/7280/1974. The Bank appeared there and filed written statement on 16.1.1975 and raised the objection to the claim. The dispute was listed before the Co-operative Court and re-registered as Arbitration Suit No.ABN/GA/5/1975. After hearing the parties, and after recording necessary evidence, on 30.9.1996, the Co-operative Court allowed the dispute and directed the Bank to render the Accounts to the disputant debtors and to restore the possession of above said land to the debtors if the debt was fully satisfied. It was held that, the claim was within limitation.

7. Against that award, Appeal No.143/1977 was preferred by the petitioners/ debtors and Appeal No.145/1977 was filed by the Bank and auction purchaser of the land. On 11.11.1983, the Co-operative Appellate Court dismissed the Appeal No.143/1977 filed by debtors and allowed the Appeal No.145/1977 filed by Bank and auction purchaser. In the result, the judgment and award passed by Co-operative Court was set aside.

8. That judgment and award was challenged before the learned Single Judge of this Court in Writ Petition No.639/1984

which was renumbered as Writ Petition No.303/1991. The learned Single Judge allowed the Writ Petition and directed the Bank and auction purchaser to restore the possession of the land to the debtors within two months from the date of order and free from any encumbrances. The Collector, Jalgaon was also directed to ensure the implementation of that order.

9. Heard strenuous arguments for appellants as well as learned counsel for respondents. The contention of learned Advocate for the appellants is that, the respondents are all along defaulter in payment of the award amount, which compelled the appellant Bank to file execution proceedings. Even under execution proceedings, when the land of the respondent was put in auction, it could not be sold out and in the result, invoking the powers under Section 100 of the Maharashtra Co-operative Societies Act, 1960 (New Act for short), the Collector transferred the disputed land in favour of the Bank under Section 100(2) of the New Act and the Bank was put in possession of the said agricultural land. According to appellants, even under Rule 85 of the Maharashtra Co-operative Societies Rules, 1961 (hereinafter referred to as the Rules), the Bank is fully empowered to sell the said land and the proceedings of the sale can be applied to defray the expenses of the sale and other expenses incurred by the Society (Bank) and towards the payment of arrears due from

respondent defaulters. Learned Advocates have pointed out that, even the land of respondents was put in for auction at two occasions. Neither respondents nor any legal heir of original debtor had taken pains to pay the balance decretal amount towards satisfaction of the decree. They also pointed out that, in fact, the land was transferred in favour of the society towards partial satisfaction of decretal amount and for balance amount, separate execution proceeding was filed by the Bank. According to learned Advocates for appellants, the respondents have not deposited the balance decretal amount even at the time of auction sale and, therefore, they cannot question the legality of auction sale. Their next limb of argument is that, the dispute was referred in the year 1974 i.e. after more than 10 years from the date of auction sale and, therefore, under Section 92 of the New Act, the reference is barred by limitation. Our attention was drawn towards judgment of this Court in Writ Petition No.3511/2011 **(Smt. Pratibha Ghanekar Vs. State of Maharashtra & others)**.

10. Learned Advocate for respondents submitted that, under Rule 107, in auction sale of defaulter's property, the auction purchaser is under obligation to deposit full price within 15 days from the date of auction. In the present case, the auction purchaser did not deposit the full auction price within 15

days and, therefore, the auction sale is void.

11. His next limb of the argument is that, the dispute in between the parties does not fall within the category of dispute referred in Section 92 of the New Act and, therefore, the limitation for filing dispute before the Co-operative Court is not six years, but as the claim of the respondents is for restoration of possession of the disputed land, Article 65 of the Limitation Act will be applicable. He submitted that, as the possession of the disputed land was delivered to the auction purchaser in the year 1964, the reference filed by the respondents before the Co-operative Court in the month of November 1974 is well within limitation.

12. The next contention of learned Advocate for the respondents is that, under Rule 85(15), on full satisfaction of the due amount out of income of land in possession of the appellant Bank, the respondents are entitled to claim restoration of possession. He placed reliance on **M/s Shilpa Shares & Securities Vs. National Co-operative Bank Ltd.**, reported in **AIR 2007 SC 1874; Narayan D. Woody Vs. South Indian Co-operative Bank Ltd.**, reported in **2006(5) Bom.C.R. 587** and **Chhatrapati Sambhaj Maharaj Sahakari Patsanstha Maryadit Vs. Assistant Registrar, Co-operative Societies &**

anr., reported in **2012(5) Bom.C.R. 773.**

13. The preliminary objection raised by learned counsel for the respondent is regarding tenability of these Letters Patent Appeals. Learned counsel for the respondents submitted that, as the learned Single Judge passed order under Article 227 of the Constitution of India, against such order Letters Patent Appeal is not tenable. He relied on **Jogendrasinhji Vijaysinghji Vs. State of Gujarat & others** reported in **2015(5) ABR 787,** wherein the Hon'ble Apex Court held that, an order passed by Civil Court can only be assailed under Article 227 of the Constitution of India. Therefore, a Letters Patent Appeal in respect of an order passed by Single Judge dealing with an order arising out of proceeding from Civil Court would not lie before the Division Bench.

14. Regarding preliminary objection raised by learned counsel for the respondent, about tenability of these Letters Patent Appeals, it is suffice to say that, the order passed by the Co-operative Appellate Court was challenged by the original Judgment Debtors under Article 226 of the Constitution of India. Therefore, obviously, Letters Patent Appeal against the order passed by learned Single Judge is tenable before this Division Bench. In the result, the preliminary objection raised by learned

Advocate for respondent is dispelled.

15. At the outset, we have put on record the above referred undisputed facts in between the parties and the events which ultimately resulted into filing of these Letters Patent Appeals. Thus, it is evident that, on 20.12.1953, award was passed against the original land owner Manikchand Zavar, who was the borrower of land from Bank and the award amount was of Rs.12,195/-. The Bank obtained certificate of execution under Section 59(1)(b) of the Old Act and at last on 15.7.1961, the Collector, Jalgaon issued transfer certificate for partial satisfaction of Rs.8000/- in respect of the disputed agricultural land and the said land was transferred to Bank in pursuance to this certificate. Subsequently, for partial satisfaction of this outstanding decretal amount, the suit land was put in auction on 15.2.1963; for want of bid, the auction was cancelled. At last on 20.2.1964, in the fresh auction, appellant Avadabai Patil was the highest bidder at Rs.17,251/- and on the date of auction, she paid 25% amount to the Bank. Undisputedly, at the time of these both auctions, the legal representatives of original land owner were present and they had every opportunity to purchase the disputed land in auction on payment of the balance decretal amount, as under Rule 85(13), first option is given to the defaulter to purchase his own own property. However, on

20.2.1964 i.e. the date of second auction, the respondents did not take opportunity to purchase the suit land in auction. Rule 85(15) provides that, when Society has realized all its dues under the order in execution, of which the property was transferred, from the proceeds of management of property, if the property is unsold, it shall be restored to the defaulter. Thus, Rule 85(15) makes it clear that, once the property is sold in auction under Rule 85(13) read with Rule 107, in that event, the original owner cannot claim for restoration of possession by offering due amount to the decree holder.

16. Rule 107(13) of the Maharashtra Co-operative Societies Rules, 1961 reads as under :

“13(i) Where 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 payment 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 sale was ordered together with interest therein and the expenses of attachment, if any, and sale and

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other costs due in respect of such amount, less amount which may since the date of such proclamation have been received by the applicant.

(ii) If such deposit and application are made within thirty days from the date of sale, the Recovery Officer shall pass an order setting aside the sale and shall repay to the purchaser, the purchase money so far as it has been deposited, together with the 5 per cent deposited by the applicant.

Provided that, if more persons than one have made deposit and application under this sub-rule, the application of the first depositor to the officer authorised to set aside the sale, shall be accepted.

(iii) If a person applies under sub-rule (14) to set aside the sale of immovable property, he shall not be entitled to make an application under this sub-rule.

Provided that, in case the Recovery Officer fails to handover, possession of the property for any reason within six months from the date of confirmation of the sale to the purchaser, amount deposited by the purchaser may be refunded to him on his demand.”

17. Thus, it is evident that even after auction sale of the above said land, last opportunity was available to the Judgment Debtors by pre-depositing the amount of arrears specified in proclamation of sale and 5% of auction purchase money, as required under Rule 107(13) (i) (a) & (b) of the Maharashtra Co-operative Societies Rules, 1961. By taking such steps, they

could have set aside the sale and could have claimed restoration of possession of above said land.

18. However, in the case at hand, the respondents – debtors slept over their right to get possession of their land on payment of the balance decretal amount till 1974 i.e. till filing of the dispute referred to the Co-operative Court. Even during pendency of this litigation, on 24.10.1964, the appellant Avadabai Patil had already obtained possession of the disputed land on payment of substantial amount to the Bank. Subsequently, the registered sale deed of the disputed land is executed in favour of auction purchaser. Thus, by taking advantage of Rule 85(15), the respondent Judgment Debtor cannot claim restoration of possession who had lost their right long back. Even it cannot be ignored that, even after auction of the disputed land towards partial satisfaction of decretal amount, the Bank was compelled to file subsequent execution proceedings for recovery of balance award amount which was ultimately deposited by debtors in the **Petition No.1912/1983, which was re-numbered by this Bench as Writ Petition No.3206/1989** . Thus, it is evident that, the respondents are all along defaulters. Therefore, we find no need to consider other various points raised by the respondents regarding legality of the auction sale. When right of the respondents to get restoration of

possession is extinguished, other questions raised by respondents regarding legality of auction sale have become valueless.

19. The case of **Chhatrapati Sambhaj Maharaj Sahakari Patsanstha Maryadit Vs. Assistant Registrar, Co-operative Societies & anr.**, (cited supra) and **Narayan D. Woody Vs. South Indian Co-operative Bank Ltd.**, (cited supra) as well as **M/s Shilpa Shares & Securities Vs. National Co-operative Bank Ltd.** (cited supra) are distinguishable for the reason that the auction sale held in the year 1964 was not challenged by the respondents within the period of limitation.

20. Another important aspect of this matter is that, undisputedly, the original borrower was the member of appellant Co-operative Society. The dispute in between Society and local representatives of deceased member on account of auction sale of disputed property. Therefore, this dispute raised by respondents falls within the ambit of Section 92(1)(b) of the New Act, which provides limitation of six years from the date on which the act or omission with reference to which the dispute arose took place. The disputed auction took place in the year 1964 and the dispute was referred to Co-operative Court by respondent in

the month of November 1974 i.e. beyond the period of limitation. Thus, otherwise also the dispute referred by the respondent before the Co-operative Court was barred by limitation.

21. In the result, our conclusion is that, the right of respondents to get restoration of possession of disputed land on payment of balance decretal amount has already extinguished. Dispute raised by respondent is also barred by limitation. However, without considering this important aspect of this case, the learned Single Judge directed to restore the possession of the disputed land to the present respondents. The order passed by learned Single Judge is obviously bad in law and deserves to be set aside by allowing these Letters Patent Appeals. Accordingly, we pass the following order :

ORDER

- (i) Letters Patent Appeal No.105/1998 and Letters Patent Appeal No.106/1998 are allowed.
- (ii) The order passed by learned Single Judge in Writ Petition No.303/1991 (Aurangabad)/ Writ Petition No.639/1984 (Bombay) (Balkisan Manekchand Zavar & others Vs. Jalgaon People's Co-operative Bank Ltd. & others) is quashed and set aside.
- (iii) The Dispute bearing Arbitration Suit No.ABN/GA/5/1975

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filed before the Co-operative Court, Jalgaon is rejected.

(iv) Civil Applications are disposed of.

(v) No order as to costs.

(SUNIL K. KOTWAL)
JUDGE

(T.V. NALAWADE)
JUDGE

fmp/