IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4784 OF 2017

Shiva Trust, Aurangabad
Through its President
Dr. Balasaheb s/o Shivajirao Pawar
Age 49 years, Occ. Medical Practitioner,
R/o. G-57, N-4, CIDCO,
Aurangabad. … Petitioner

Versus

1. The Divisional Joint Registrar,
Co-operative Societies, Amravati
District Amravati

2. The District Deputy Registrar,
Co-operative Societies, Buldhana
District Buldhana

3. The Special Recovery Officer,
Malkapur Urban Co-operative Bank Ltd.
At Malkapur, Tq. Malkapur,
District Buldhana

4. Malkapur Urban Co-operative Bank Ltd.
at Malkapur, Tq. Malkapur,
District Buldhana
Through its Chief Executive Officer

5. Omprakash Bapuappa Khake
Age 55 years, Occ. Business,

6. Pravan Omprakash Khake
Age 25 years, Occ. Business,
Both R/o. Plot No. 10/11,
3rd Floor, Chinar Building,
Opp. Krushi Bhavan, Shivajinagar,
Pune … Respondents

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Mr. V. D. Hon, Senior Advocate i/by Mr. A. V. Hon, Advocate for the Petitioner.
Mr. S. P. Tiwari, AGP for Respondent Nos. 1 and 2.
Mr. N. T. Tribhuwan, Advocate for Respondent Nos. 3 and 4.
Mr. N. R. Thorat, Advocate for Respondent Nos. 5 and 6.

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**CORAM : V. K. JADHAV, J.**
**RESERVED ON : 08th MARCH, 2018**
**PRONOUNCED ON : 21st MARCH, 2018**

**ORDER** :-

1. Heard finally with consent at admission stage.

2. By this Writ Petition, the petitioner has challenged the order dated 17.02.2017 passed by the Divisional Joint Registrar, Co-operative Societies, Amravati. Brief facts giving rise to the present Writ Petition are as follows:

3. Respondent nos. 5 and 6 herein had borrowed a loan from respondent no.4-bank for their transport business. The said loan was defaulted, as a result of which, respondent no.4-bank had initiated proceedings under Section 101 of the Maharashtra Co-operative Societies Act, 1960 (for short, "the Act of 1960"). The competent authority had issued a recovery certificate in favour of the respondent no.4-bank. The amount of recovery had gone to

the tune of Rs.6,20,47,846/-. Thus, respondent no.4-bank had carried out valuation for determining the market price of the mortgaged property. The valuation as carried out by the Government valuer was considered by the District Deputy Registrar and accordingly, fixed the offset price of the mortgaged property to the tune of Rs.6,45,00,000/-. After fixing the offset price, the District Deputy Registrar also gave permission to sell the mortgaged property by conducting public auction. Respondent no.4-bank had accordingly issued a public notice in a widely circulated daily newspaper. It is part of the record that respondent no.4-bank had attempted to put the property for sale at least on five occasions. However, the bank could not get a buyer to its satisfaction.

4. Respondent nos. 5 and 6 herein had also filed Writ Petition No. 1336 of 2016 challenging thereby the offset price fixed by the District Deputy Registrar. This Court (Coram: Smt. Vasanti A. Naik, J) at Nagpur Bench, by order dated 23.12.2013, directed the parties to appear before the District Deputy Registrar for fixing the offset price, and accordingly disposed of the said Writ Petition. The District Deputy Registrar has thereafter fixed the

offset price on 20.02.2016. Thereafter, the auction was conducted on the scheduled date.

5. The petitioner-trust had submitted a bid of Rs.6,50,00,000/- which was the highest offer made. Accordingly, respondent no.4-bank, being satisfied with the bid given by the petitioner as highest and more than the offset price, accepted the same. The petitioner had deposited an amount of Rs.1,57,50,000/- by cheque, which of 25% of the auction price, while participating in the bid. After acceptance of the bid, the petitioner had also paid the entire amount before the expiry period of 30 days. Consequently, the Special Recovery Officer, on 30.04.2016, had also issued sale certificate and as such, the auction dated 26.03.2016 stands confirmed. Thereafter, the Special Recovery Officer of respondent no.4-bank has handed over possession of the mortgaged properties to the petitioner and also issued a certificate of sale. Even the Board of Directors of respondent no.4-bank had considered the subject in its meeting dated 30.04.2016 and confirmed the sale of the properties by passing necessary resolution. After following due process, respondent no.4-bank, through its Special Recovery Officer, has

executed a registered sale deed in respect of the suit land in favour of the petitioner-trust. After execution of the registered sale deed, the petitioner/trust had approached the Revenue authorities to mutate the name of the petitioner-trust in the Revenue record. Accordingly, mutation entries have been effected and thus, the entire suit land stands in the name of the petitioner-trust.

6. The respondent nos. 5 and 6, thereafter, had approached the Divisional Joint Registrar, Co-operative Societies, Amravati, by filing revision application challenging the order dated 27.11.2015 passed by the District Deputy Registrar. The said revision application has been filed after the prescribed period of limitation. In the said revision application, the present petitioner was not impleaded as party respondent. The revision was opposed by respondent no.4-bank on various grounds including the point of limitation.

7. Respondent no.1-revisional authority has come to the conclusion that the provisions of Rule 107(11)(g) and 107(11)(h) of the Maharashtra Co-operative Societies Rules, 1961 (for

short, “the Rules of 1961”) are not complied with and accordingly set aside the auction sale of the suit property made in favour of the petitioner by respondent no.4-bank. Hence this Writ Petition.

8. The learned senior counsel appearing for the petitioner submits that by the order passed in Writ Petition No. 1336 of 2016, the parties to the proceeding appeared before the District Deputy Registrar for fixing the offset price. Thereafter, the offset price has been fixed on 20.02.2016. There is no challenge to the offset price as fixed by the District Deputy Registrar. The learned senior counsel submits that the entire auction was conducted in a transparent manner. The Special Recovery Officer of the respondent-bank, after accepting the entire amount, handed over the possession of the mortgaged property to the petitioner by issuing possession receipt and also a certificate of sale. The learned senior counsel submits that as the respondent no.4-bank became the absolute owner of the suit property, the auction was conducted as per the procedure and the subject was placed before the managing committee members of respondent no.4-bank and the Board of Directors of respondent no.4-bank had

considered the subject in its meeting dated 30.04.2016 and confirmed the sale of the properties by passing necessary resolution. After following due process, the respondent-bank, through its Special Recovery Officer, has executed registered sale deed in respect of the suit land in favour of the petitioner trust. By virtue of the registered sale deed, the petitioner has become the absolute owner. The entire consideration has been received by the respondent-bank. The mutation entries have also been effected in respect of the suit land. The validity of execution of sale deed dated 05.05.2016 is not challenged by respondent nos. 5 and 6 herein and the same stands confirmed. The learned senior counsel submits that respondent nos. 5 and 6 have not challenged the sale proceedings dated 26.03.2016 in the revision application. On the contrary, they have challenged the order dated 27.11.2015 in the said revision application. The learned senior counsel submits that though respondent no.1 has referred all the details of the auction and the suit property now transferred to the petitioner, in the impugned order, failed to follow the principles of natural justice. The petitioner was not impleaded as party respondent in the said revision. Even there was no application filed for condonation of delay in preferring the revision application. However, the revisional authority has travelled beyond the scope of revisional jurisdiction.

9. The learned senior counsel submits that respondent no. 4-bank has got its branch at Aurangabad. As per the bye-laws of respondent no.4-bank, the area of operation of bank confined to the entire State of Maharashtra. Even the Reserve Bank of India has accepted the request of respondent no.4-bank for extension of area of operation to the entire State of Maharashtra way back in the year 2011. The loan was sanctioned and disbursed to respondent nos. 5 and 6 at Aurangabad branch. The mortgaged properties are also located at Aurangabad. The said auction was conducted on 26.03.2016 at Aurangabad and as such, the cause of action has occurred at Aurangabad. The learned senior counsel submits that the aforesaid facts do constitute a cause so as to empower this Court to entertain the Writ Petition. Thus, the objection regarding absence of territorial jurisdiction is not sustainable in law.

10. The learned senior counsel, in order to substantiate his contentions, placed reliance on the decision in the case of ***Asif***

***s/o Shaukat Qureshi vs State of Maharashtra and another***, reported in ***2017 (2) Mh.L.J. 178***.

11. The learned counsel for respondent nos.5 and 6 submits that the order impugned in the instant Writ Petition is passed by the Divisional Joint Registrar, Cooperative Societies, Amravati inasmuch as the subject matter of the instant petition is the order dated 17.02.2017. The seat of respondent no.2 authority is outside the territorial jurisdiction of this Hon'ble Court and is not amenable to the jurisdiction of this Court. The impugned order passed by respondent no.1 cannot be questioned before this Court for want of territorial jurisdiction to examine the legality and validity of the order impugned. It is the High Court of Bombay at Nagpur which alone has jurisdiction to examine the legality and validity of the impugned order passed by respondent no.1.

12. The learned counsel submits that the order of respondent no.1 is against the decision of respondent no.2, i.e. the District Deputy Registrar, Buldhana, dated 27.11.2015, which authority also is outside the territorial jurisdiction of this Hon'ble Court.

Thus, the instant Writ Petition is not tenable before this Court. The learned counsel submits that the respondent-bank, with whom the properties of respondent nos. 5 and 6 were mortgaged, is situated at Malkapur, District Buldhana inasmuch as the proceedings for recovery and auction of the mortgaged properties were initiated by the Special Recovery Officer of the said bank under the provisions of the Act of 1960 from its principal place of banking business of Malkapur, District Buldhana. The learned counsel submits that, for all intent and purposes, the auction initiated against respondent nos. 5 and 6 with respect to the mortgaged properties came to be initiated by respondent no.4-bank situated at Malkapur, District Buldhana, which is outside the territorial limit of jurisdiction of this Hon'ble Court. The learned counsel submits that though the branch of the said respondent no.4-bank is situated at Aurangabad, that by itself does not confer any territorial jurisdiction to this Hon'ble Court. Further, mere location of the properties under mortgage at Aurangabad and conducting of auction at Aurangabad also by itself is not sufficient to confer territorial jurisdiction upon this Court. The learned counsel submits that the fact remains that the loan amount was sanctioned by respondent no.4-bank at

Malkapur inasmuch as the security interest in the properties was created with the bank at Malkapur, and for the purposes of security, it hardly matters where the property offered as security is situated. The entire process for loan transaction was finalized with the bank at Malkapur and the loan was disbursed by the bank at Malkapur. The learned counsel submits that so far as the auction of the property at Aurangabad is concerned, the same was conducted at Aurangabad in view of the fact that the mortgaged property is situated at Aurangabad inasmuch as the same was done for the convenience of the mortgagee bank. The fact remains that the auction was in fact conducted by respondent no.4-bank at Malkapur and not by its branch at Aurangabad. The learned counsel submits that it is not out of place to mention here that respondent nos.3 and 4 have also challenged the order dated 17.02.2017 passed by respondent no.1 herein by preferring Writ Petition No. 4746 of 2017 before the High Court of Bombay at Nagpur and the same is pending for disposal in accordance with law.

13. The learned counsel for respondent nos.5 and 6, in order to substantiate his contentions, placed reliance on the decisions

in the following cases:

1. ***Nawal Kishore Sharma vs. Union of India and others***, reported in ***(2014) 9 SCC 329***,

2. ***Kusum Ingots and Alloys Ltd. vs. Union of India and anr***, reported in ***(2004) 6 SCC 254*** and

3. ***National Textile Corpn. Ltd vs. Haribox Swalram***, reported in ***(2004) 9 SCC 786***.

14. I have also heard learned AGP for respondent nos. 1 and 2 and the learned counsel for respondent nos. 3 and 4.

15. In the case of ***State of Rajasthan & Ors. vs. M/s. Sawika Properties and Another***, reported in ***(1985) 3 SCC 217***, the Supreme Court had an occasion to consider the territorial jurisdiction of the High Court. The Supreme Court has observed that the transaction must be integral part of the cause of action sufficient to invest the High Court with jurisdiction to entertain the Petition. In the facts of the said case, the Supreme Court has observed that the acquisition proceedings initiated by the Rajasthan State Government in respect of the land situated in Jaipur of a Calcutta based company by serving notice on it at its

registered office in Calcutta, and company's representative appear before the concerned authority in Jaipur and the acquisition of the land recommended by the authority to the State Government with the Notification of the land issued by the State Government, the Writ Petition filed by the company in the Calcutta High Court against State, held, not maintainable.

16. In the case of ***Navinchandra N. Majithia vs. State of Maharashtra and Ors.***, reported in ***(2000) 7 SCC 640***, the Supreme Court has interpreted the term "cause of action" and observed that the High Court will have jurisdiction if any part of cause of action arises within the territorial limits of its jurisdiction even though the seat of the Government or authority or residence of the person against whom direction, order or writ is sought to be issued is not within the said territory.

17. In the case of ***Alchemist Ltd. & Anr. vs. State Bank of Sikkim & Ors.***, reported in ***(2007) 11 SCC 335,*** the Supreme Court, by explaining the meaning of the term "cause of action", held that the Writ Petition can now be instituted in the High Court within territorial jurisdiction of which cause of action in

whole or in part arises. The Supreme Court further held that whether the facts averred by writ petitioner constitute a part of cause of action has to be determined on the basis of question whether such facts constitute a material, essential or integral part of the cause of action.

18. In the case of ***Nawal Kishore Sharma vs. Union of India and others***, reported in ***(2014) 9 SCC 329***, the Supreme Court considered the case of cause of action if wholly or in part arose within territorial jurisdiction of High Court and held that the same is to be determined in the light of the nature and character of proceedings under Article 226 of the Constitution of India and the High Court can issue a writ if the cause of action wholly or partially arises within its territorial jurisdiction even if person or authority against whom writ is issued is located outside its territorial jurisdiction. In order to maintain a writ petition, petitioner has to establish that his legal right has been infringed by the respondents within territorial limit of High Court's jurisdiction.

19. In the case of ***National Textile Corpn. Ltd vs. Haribox Swalram***, reported in ***(2004) 9 SCC 786*** and in the case of

***Kusum Ingots and Alloys Ltd. vs. Union of India and anr***, reported in ***(2004) 6 SCC 254***, the Supreme Court has decided the issue of jurisdiction of High Court on the same lines as mentioned above.

20. In the instant case, as per the undisputed documents placed on record, in terms of the bye-laws of the respondent-bank, the area of operation of the bank is confined to the entire State of Maharashtra and in terms of the order of the Reserve Bank of India dated 18.02.2011, the request for extension of area of operation to the entire State of Maharashtra made by the respondent-bank has been considered and granted. Respondent no.4-bank has its branch at Aurangabad. Loan was sanctioned and disbursed to respondent nos. 5 and 6 at Aurangabad Branch. The mortgaged properties are also situated at Aurangabad. Admittedly, the auction was conducted on 26.03.2016 at Aurangabad. Respondent nos. 5 and 6 had borrowed loan from respondent no.4-bank for their transport business. The loan was defaulted, as a result of which the bank had taken proceedings under Section 101 of the Act of 1960 and the competent authority has also issued the recovery certificate in favour of the bank. The amount of recovery had gone to the tune

of Rs.6,20,47,846. The respondent Bank accordingly had carried out valuation for determining the market price of the mortgaged property. The same was considered by the District Deputy Registrar and accordingly fixed the offset prise of the land which was mortgaged to the tune of Rs.6,45,00,000/-. The District Deputy Registrar also gave permission for putting the said property for sale by conducting public auction. Though respondent nos. 5 and 6 had tried to frustrate the sale of the property on one or another count, as per the order passed by this Court, the issue of the offset price has now attained finality and there is no further challenge to the offset price that was fixed by the District Deputy Registrar on 20.02.2016. Accordingly, the auction was conducted on the scheduled date i.e. 26.03.2016 at Aurangabad. The petitioner has deposited 25% of the amount of auction price by cheque and accordingly participated in the bid. The petitioner, as per the bid, has also paid the entire amount before expiry of the period of 30 days. Consequently, the Special Recovery Officer, on 30.04.2016, has issued the sale certificate since the bank had received the entire amount and accordingly, auction dated 26.03.2016 stands confirmed. Further, the Special Recovery Officer of the bank, after accepting the entire amount, has confirmed the auction sale and handed over possession of the mortgaged properties by issuing possession receipt and a certificate of sale. The respondent nos. 5 and 6, without challenging other orders, only challenged the order passed by the District Deputy Registrar dated 27.11.2015 before the Divisional Joint Registrar by filing the aforesaid revision. In the light of the ratio laid down by the Supreme Court in various cases discussed above, undoubtedly, the cause of action, in part, arises within the jurisdiction of this Court and the facts as averred in the Writ Petition constitute a material, essential and integral part of the cause of action. It is immaterial that the authority against whom the writ is issued is located outside the territorial jurisdiction of this Court. Thus, considering all facts together, in my considered opinion, part of the cause of action did arise within the territorial jurisdiction of this High Court and as such, the objection raised with regard to the territorial jurisdiction of this Court is not sustainable.

21. The learned senior counsel appearing for the petitioner vehemently placed reliance in the case of ***Ramchandra Sitaram Mulik & Anr. Vs Janata Nagari Sahakari Patsanstha Ltd.***

***Hupari & Ors.***, reported in ***2018 (2) Mh.L.J. 245***, wherein this Court, in the facts of the said case, in para no. 33, has made the following observations:

> "33. It is not in dispute that no payment of dues together with interest, bhatta and other expenses incurred in bringing the property to sell, including the expenses of attachment were paid by the petitioners before the Sale Officer under Rule 107(12) of MCS Rules and thus the said property was rightly not released after cancelling the sale by the Sale Officer. Similarly, the petitioners also did not exercise any rights under Rule 107(13) by depositing any amount as contemplated therein and did not apply for setting aside the sale within the time contemplated under Rule 107(14)(i) of MCS Rules. The sale of the properties in question thus effected by the respondent no.2 not having been challenged by the petitioners attained finality. The respondent nos.3 to 5 having made the payment within time contemplated under Rule 107(11) (g) and (h), the Sale Officer executed the sale deed in favour of those auction purchasers and handed over possession thereof to them. The petitioners thus in these circumstances even otherwise could not have challenged the sale certificate/auction of the property in favour of the respondent nos.3 to 5 and that also after two years of the date of the auction."

This Court held that no revision against the order passed by the Deputy Registrar, confirming the sale and the certificate in favour of respondent-bank, is maintainable.

22. On careful perusal of the order dated 27.11.2015 passed by the District Deputy Registrar, Co-operative Societies, Buldhana, it appears that after giving opportunity of being heard to respondent nos. 5 and 6, the District Deputy Registrar has passed a reasoned order. It further appears from the impugned order dated 27.11.2015 that the District Deputy Registrar, Co-operative Societies, Buldhana has referred the attempts made for auction of the attached properties by auction no.1 dated 23.02.2013, auction no. 2 dated 18.03.2014, auction no. 3 dated 05.06.2014, auction no. 4 dated 23.11.2014 and auction no. 5 dated 30.03.2015 and in terms of the provisions of Section 100 of the Act of 1960, read with Rule 85 of the Maharashtra Co-operative Societies Rules, 1961, transferred the properties to the respondent Bank. The learned District Deputy Registrar, on failure of the defaulter to deposit the amount under Sub-rule (5) of Rule 85, directed the properties to be transferred to the

respondent-bank. After perusal of the entire record, I am of the considered opinion that there was no irregularity of any nature whatsoever in conducting the auction sale of the property in question. After the entire auction process was over and the mortgaged property was transferred to the highest bidder/ petitioner after complying all the essential requirements, respondent nos. 5 and 6 have challenged the order dated 27.11.2015 passed by the District Deputy Registrar before the Divisional Joint Registrar. Though there is delay in filing revision application, no separate application has been filed for condonation of delay and the petitioner is not impleaded as a party respondent in the said revision. Though the respondent-bank has raised the ground of maintainability of revision before the Divisional Joint Registrar, Co-operative Societies, Amravati, the same was not considered and the Divisional Joint Registrar has cancelled the entire auction process dated 26.03.2016 by exceeding the jurisdiction. The order impugned cannot be justified on any count.

23. In view of the above discussion, in my opinion, this Writ Petition deserves to be allowed. Hence the following order:

**ORDER**

I. The Writ Petition is hereby allowed in terms of prayer clause (B). No costs.

II. The impugned order dated 17.02.2017 passed by the Divisional Joint Registrar, Co-operative Societies, Amravati in Revision Application No. 79 of 2016 is hereby quashed and set aside.

III. The Writ Petition is accordingly disposed of.

**( V. K. JADHAV, J.)**

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