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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6778 OF 2017

Shri Sunil Sitaram Mahajan)
Age 49 years, Occupation : Business,)
R/At Radhakrishna Colony, Ichalkaranji,)
Taluka Hatkanangale, District Kolhapur) ...Petitioner

....Versus....

- 1). Suryakant Pandurang Badave,)
Age Adult, Occupation : Business,)
R/At 5/606, Date Mala, Ichalkaranji,)
District Kolhapur.)
)
- 2). District Deputy Registrar)
Co-operative Societies, Kolhapur.)
)
- 3). Recovery Officer,)
Shahu Corner Nagari Sahakari)
Path Sanstha Maryadit,)
5/44, Shahu Corner, Ichalkaranji,)
District Kolhapur.)
)
- 4). Sou.Pooja Annaso Jadhav,)
Age Adult, Occupation : Household,)
R/At Mahavir Housing Society,)
Kolhapur Road, Ichalkaranji,)
District Kolhapur.)
)
- 5). Joint Registrar,)
Co-operative Societies, Kolhapur)
Division, Kolhapur.)
)
- 6). Shivaji Dhondiram Powar,)
Age Adult, R/At Behind Radha)
Krishna Talkies, Ichalkaranji,)
District Kolhapur.)
)

- 7). Shahu Corner Nagari Sahakari Pat)
Sanstha Maryadit, Ichalkaranji,)
5/44, Near Venkatrao School,)
Shahu Corner, Ichalkaranji – 416 115)
Taluka Hatkanangale, Dist. Kolhapur) ...Respondents

Mr.Amit B. Borkar for the Petitioner.

Mr.Girish R. Agrawal for the Respondent No.1.

Mr.S.H. Kankal, A.G.P. for the State – Respondent Nos.2 and 5.

Mr.Pradeep D. Dalvi for the Respondent Nos.4 and 7.

Mr.N.J. Patil i/b Mr.Amey N. Patil for the Respondent No.6.

CORAM : R.D. DHANUKA, J.
RESERVED ON : 4TH MAY, 2018
PRONOUNCED ON : 13TH JUNE, 2018

JUDGMENT :-

1. By this petition filed under Article 227 of the Constitution of India, the petitioner has impugned the order and judgment dated 1st February, 2017 passed by the learned Divisional Registrar, Co-operative Societies, Kolhapur Division, Kolhapur in Revision Application Nos.373 and 374 of 2016 and the Revision Application Nos. 409 and 420 of 2016. Learned counsel appearing for the petitioner states that all the respondents are served. The statement is accepted. Rule. Learned counsel for the respondents waive service. By consent of parties, writ petition is heard finally.

2. The respondent no.4 had obtained a loan from the respondent no.7 i.e. Shahu Corner Nagari Sahakari Path Sanstha Maryadit. The respondent no.1 and one Ratanlal Madanlal Bamb were the guarantors for the said loan obtained by the respondent no.4

from the respondent no.7 society. The borrower as well as the guarantors committed default in making repayment of the said loan. The respondent no.7 therefore, filed an application under section 101 of the Maharashtra Co-operative Societies Act, 1960 (for short "the M.C.S. Act.") before the District Deputy Registrar, respondent no.2 herein.

3. On 1st June, 2010, the respondent no.2 issued a recovery certificate in favour of the respondent no.7 society. The said recovery certificate was neither challenged by the borrower nor by the guarantors. Pursuant to the said recovery certificate, the respondent no.3 attached the immovable property of the respondent no.4. The property of the respondent no.1 bearing City Survey No.12029 admeasuring 459 sq. mtrs. at Date Mala, Ichalkaranji was also attached. On 26th December, 2012, the auction came to be held in respect of the said property of the respondent no.1. The petitioner along with other four bidders participated in the said auction. The bid of the petitioner was the highest. It is the case of the petitioner that the bid of the petitioner was much more than the upset price and was thus accepted by the respondent no.3.

4. The petitioner deposited an amount of Rs.5,47,500/- towards 15% of the amount of bid by cheque No.012593 dated 26th December, 2012 on the same date drawn on Kalappa Awade Ichalkaranji Janata Sahakari Bank Limited and thereafter deposited the balance 85% amount of Rs.31,02,500/- by cheque No.12598 dated 7th January, 2013 drawn on the same Bank within a period of 15 days from the date of auction. The petitioner also deposited an amount of Rs.2,20,000/- towards the stamp duty in respect of the proposed sale deed.

5. It is the case of the petitioner that since the borrower or the guarantors did not pay the amount of auction along with costs plus 5% amount within 30 days from the date of auction under Rule 107(13) and other provisions of the Maharashtra Co-operative Societies Rules (for short the "M.C.S. Rules"), the respondent no.3 sent a proposal for confirmation of sale to the respondent no.2 i.e. the District Deputy Registrar. The respondent no.2 however, by an order dated 21st December, 2013 refused to grant sale certificate in favour of the petitioner.

6. The respondent no.3 addressed a letter to the respondent no.2 on 6th January, 2014 stating that due to factual incorrect statement, the respondent no.2 had refused to confirm the sale in favour of the petitioner and thus the respondent no.2 shall grant confirmation of sale in respect of the said property in favour of the petitioner. The respondent no.2 accordingly issued a notice dated 23rd January, 2014 to all the concerned parties to remain present in his office on 3rd February, 2014 for hearing on the objections mentioned in the letter dated 6th January, 2014 addressed by the respondent no.3 i.e. the Recovery Officer of Shahu Corner Nagari Sahakari Path Sanstha Maryadit.

7. Being aggrieved by the said communication dated 6th January, 2014 sent by the respondent no.2, the respondent no.1 herein filed a Revision Application bearing No.51 of 2014 initially without making the petitioner a party respondent. The petitioner however, on his application was later on impleaded as one of the respondent to the said revision application. The petitioner filed a detailed reply raising various issues, including the issue of

maintainability of the said revision application. The petitioner also pointed out that the respondent no.1 had already filed a suit (Regular Civil Suit No.199 of 2014) which suit was pending on the date of the said revision application filed by the respondent no.1.

8. By an order dated 20th January, 2015 passed by the respondent no.5 i.e. the Divisional Joint Registrar, Co-operative Societies, the petitioner herein preferred a writ petition (11417 of 2015) in this Court. By an order and judgment dated 18th March, 2016, passed by Shri Justice R.M. Savant, the said writ petition was made absolute. This Court was pleased to set aside the letter dated 21st December, 2013 of the District Deputy Registrar, holding that the said authority had erroneously refused the permission on the grounds mentioned in the said order and judgment. This Court directed the District Deputy Registrar to proceed on the basis of the notice of hearing dated 23rd January, 2014 and to conclude the proceedings. The said order and judgment dated 18th March, 2016 was not impugned by any of the respondents.

9. Pursuant to the said order and judgment, the learned District Deputy Registrar after hearing all the parties, issued a sale certificate and confirmation of sale by an order dated 12th September, 2016 in favour of the petitioner. Being aggrieved by the said sale certificate dated 12th September, 2016, the respondent no.1 filed a fresh Revision Application No.373 of 2016. The respondent no.6 filed Revision Application No.409 of 2016. By an order dated 1st February, 2017, the learned Divisional Joint Registrar, Co-operative Societies, Kolhapur Division, Kolhapur allowed the said revision applications filed by the respondent nos.1 and 6 and was pleased to set aside the sale confirmation order and sale certificate issued by the learned

District Deputy Registrar, Co-operative Societies on 12th September, 2016 and various orders passed therein. Being aggrieved by the said order dated 1st February, 2017, the petitioner herein preferred this writ petition under Article 227 of the Constitution of India.

10. Mr.Borkar, learned counsel appearing for the petitioner invited my attention to various annexures to the writ petition including various orders passed by the authorities from time to time and the order and judgment dated 18th March, 2016 passed by this Court in Writ Petition No.11417 of 2015 filed by the petitioner thereby allowing the said writ petition. It is submitted that neither the borrower nor the guarantors had challenged the recovery certificate dated 1st June, 2010 issued by the learned District Deputy Registrar, Co-operative Societies, in favour of the respondent no.7 society. Neither the borrower nor the guarantors invoked any of the provisions of Rule 107 of the M.C.S. Rules and did not deposit any amount as contemplated under those provisions for setting aside the sale in favour of the petitioner. He submits that the respondent no.1 thus could not have filed the said revision application directly i.e. Revision Application (51 of 2014) before the Revisional Authority thereby impugning the sale and confirmation certificates.

11. Learned counsel strongly placed reliance on the order and judgment delivered by this Court on 18th March, 2016 in an earlier Writ Petition filed by the petitioner (11417 of 2015) against the order of the learned Divisional Joint Registrar passed on 20th January, 2015. He submits that this Court has already held in the said judgment that the notice of hearing issued by the learned District Deputy Registrar by no stretch of imagination could be said to be a decision or order so as to entitle the respondent no.1 to invoke section 154 of the said

M.C.S. Act. It is held by this Court that the learned Divisional Joint Registrar has exceeded his jurisdiction under section 154 of the M.C.S. Act when none was vested in him and thus the said learned Divisional Joint Registrar had erred in setting aside the notice of hearing dated 23rd January, 2014.

12. It is submitted that the revision application filed by the respondent no.1 which was the subject matter of the Writ Petition No.11417 of 2015 having been already held as not maintainable, upon remand of the proceedings before the respondent no.2 and upon adverse order passed by the respondent no.2 and in favour of the petitioner upon such remand, could not have been challenged once again by way of the revision application under section 154 of the M.C.S. Act. It is submitted by the learned counsel that the revision application challenging the sale and confirmation certificate was not maintainable in view of the respondent no.1 not having applied for setting aside the sale under Rule 107 of the M.C.S. Rules. It is submitted that the impugned order thus passed by the learned Divisional Joint Registrar is in the teeth of the order and judgment passed of this Court which was delivered on 18th March, 2016 in Writ Petition No.11417 of 2015 filed by the petitioner against the respondents.

13. In support of the submission that the revision application filed by the respondent no.1 was not maintainable, learned counsel for the petitioner also placed reliance on the judgment of this Court in case of Manager, **Adarsh Mahila Nagri Sahakari Bank Limited & Anr. vs. State of Maharashtra & Ors., 2012(2) Bom. C.R. 163** and in particular paragraphs 6 to 9. He submits that the judgment of this Court in case of Manager, **Adarsh Mahila Nagri Sahakari Bank**

Limited & Anr. (supra) has been followed by this Court in the said judgment dated 18th March, 2016. He submits that though the issue of maintainability of the revision application was raised by the petitioner before the learned Divisional Joint Registrar, the said contention raised by the petitioner has been totally over looked by the Revisional Authority.

14. Learned counsel for the petitioner strongly placed reliance on Rule 107 (12), (13), (14) and (19) and would submit that the respondent no.1 could have exercised his remedy under one of these provisions before the respondent no.3 itself if he was aggrieved by the auction sale proposed by the respondent no.3 or even after such sale was effected within the time prescribed under those provisions and on the terms and conditions set out therein. The respondent no.1 however, did not exhaust any of those remedies available in law to the respondent no.1.

15. Learned counsel for the petitioner placed reliance on the judgment of the Supreme Court in case of **Commissioner of Income Tax, Bombay South, Bombay vs. M/s.Ogale Glass Works Limited, AIR 1954, SC 429** and in particular paragraph 11. He also placed reliance on section 269(SS) and 269(T) which provisions were inserted in the year 2004 and 2002 respectively in the Income Tax Act, 1961. It is submitted that the petitioner had already made a deposit of amount of 15% on the date of auction by a cheque. Since the amount involved in the said transaction was more than Rs.20,000/- under the provisions of the Income Tax Act, 1961 and more particularly section 269(SS) and 269(T), the petitioner could not have deposited the said amount in cash.

16. It is submitted that the cheque issued and deposited by the petitioner was accepted unconditionally by the respondent no.3. The cheque was admittedly encashed in the account of the respondent no.3 when deposited. He submits that thus the payment made by a cheque by the petitioner thus relate back to the date of the deposit of cheque and in law the date of payment was the date of the delivery of the cheque and not when the cheque was honoured upon presentation. He submits that the impugned order passed by the learned Divisional Joint Registrar is totally perverse and is contrary to the provisions of the M.C.S. Act and said M.C.S. Rules. The petitioner has already made the entire payment including the payment of stamp duty. The respondent no.1 not having raised any objection at any point of time when the auction sale took place within the time contemplated and in the manner as provided under the said Rules, could not have raised an objection subsequently by filing a revision application.

17. Mr.Girish Agrawal, learned counsel appearing for the respondent no.1 (one of the guarantors) on the other hand would submit that the petitioner had not complied with the mandatory requirement of deposit of 15% on the date of the auction sale in cash or by demand draft or by R.T.G.S. The payment made by the petitioner by a cheque towards 15% deposit on the date of auction could not even considered as compliance of mandatory requirement under Rule 107(11)(g) of the M.C.S. Rules. He submits that admittedly on the date of issuance of the said cheque, there was no sufficient balance in the account of the petitioner. It is submitted that the said Rule 107(11)(g) of the M.C.S. Rules is in pari materia with Order 21 Rule 84 of the Code of Civil Procedure, 1908. Since the cheque was admittedly honoured after three days of such deposit, the

said deposit could not have been considered as in compliance of Rule 107(11)(g) of the M.C.S. Rules.

18. In support of this submission, the learned counsel for the respondent no.1 placed reliance on the following judgments :-

a). This Court in case of **Niranjan D. Woody vs. The South Indian Co-op. Bank Ltd. & Ors., 2006(6) ALL MR 144** (paragraphs 11 to 13),

b). The judgment of the Punjab & Haryana High Court in case of **Margaret A. Skinner vs. M/s.Empire Store Connaught Place, 1975(77) PunLR 64** (paragraphs 8),

c). The judgment of the Allahabad High Court in case of **Hira Lal & Ors. vs. Mst.Champa & Ors., AIR 1955 Allahabad, 226** (paragraphs 4),

d). The judgment of the Himachal Pradesh High Court in case of **State Bank of India vs. Mohini Devi, 1998 Law Suit (HP) 28** (paragraph 25),

e). The judgment of the Madhya Pradesh High Court in case of **M/s.Progressive Industrial Enterprises vs. Bank of Baroda & Ors., AIR 1989 Madhya Pradesh 177** (paragraphs 7, 9 and 10),

f). The judgment of the Supreme Court in case of **Rao Mahmood Ahmed Khan vs. Sh.Ranbir Singh & Ors., AIR 1995 SC 2195** (paragraph 12) and

g). The judgment of the Supreme Court in case of **C.N. Paramasivam & Anr. vs. Sunrise Plaza, Through Partner & Ors., (2013)9 SCC 460** (Head Note “B”).

19. Insofar as the issue of maintainability of the revision application is concerned, it is submitted by the learned counsel that this Court while disposing of the writ petition by an order dated 18th March, 2016 in Writ Petition No.11417 of 2015 had made *prima-facie* observations about the maintainability of the said revision application and the said decision was not conclusive on the said issue. It is submitted that in any event since the order passed by the respondent no.2 confirming the sale and the sale certificate was nullity and *ex-facie* in violation of the provisions of Rule 107, the sale of the property in favour of the petitioner was nullity, the revision application filed under section 154 of the M.C.S. Act was maintainable. He placed reliance on an unreported judgment of this Court delivered on 7th March, 2018 in case of **Manisha Bijal Shah vs. Shankar Laxman Sutar & Ors.** in Writ Petition No.1965 of 2013 with companion writ petition.

20. It is submitted by the learned counsel that Rule 107(11)(g) of the M.C.S. Rules is in pari materia with Order 21 Rule 84 of the Code of Civil Procedure, 1908. Since the petitioner had not deposited 15% of the highest bid amount at the time of purchase of the property in auction in cash, the sale of the property in question could not have confirmed in favour of the auction purchasers, in view of the sale being nullity and in violation of Rule 107(11)(g) of the M.C.S. Rules. The said property was required to be re-sold.

21. Mr.Agrawal learned counsel for the borrower also placed

reliance on the following judgments :-

- a). The judgment of the Supreme Court in case of **Assistant Director of Inspection Investigation vs Kum. A.B. Shanthi, AIR 2002 SC 2188** (paragraph 4),
- b). The judgment of the Supreme Court in case of **Manilal Mohanlal Shah & Ors. vs. Sardar Sayed Ahmed Sayed Mahmud & Anr., AIR 1954 SC 349** (paragraph 8),
- c). The judgment of the Supreme Court in case of **Balram Bhasa Ram vs. Ilam Singh & Ors., AIR 1996 SC 2781** (paragraphs 8 and 9),
- d). The judgment of the Supreme Court in case of **M/s.Shilpa Shares & Securities & Ors. vs. National Co-operative Bank Limited & Ors., AIR 2007 SC 1874** (paragraphs 5 and 6),
- e). The judgment of the Punjab & Haryana High Court in case of **Ramji Lal & Anr. vs. Sarab Singh (dead) through L.Rs. & Ors. 2010(4) CCC 501 (P & H)** (paragraph 21),
- f). The judgment of the Punjab & Haryana High Court in case of **Mehtab Singh Malik vs. M/s.S.R. Buildcon India (P) Ltd. & Ors., 2009(4) CCC 417 (P & H)** (paragraph 16),
- g). The judgment of this Court in case of **Jagdish Radhakisan Kayasth vs. Ramesh N. Wagh & Ors., AIR 2001 Bom. 152** (paragraph 24 to 29),

h). The judgment of the Supreme Court in case of **Sarguja Transport Service vs. State Transport Appellate Tribunal Gwalior & Ors., AIR 1987 SC 88** (paragraph 9),

i). The judgment of the Supreme Court in case of **Kiran Singh & Ors. vs. Chaman Paswan & Ors. AIR 1954 SC 340**, and

j). The judgment of the Supreme Court in case of **Gurnam Singh (D) Thr. L.Rs. & Ors. vs. Gurbachan Kaur (D) by L.Rs. & Ors., AIR 2017 SC 2419** (paragraph 23).

22. Learned counsel for the respondent no.1 distinguished the judgment of this Court in case of **Shivangi D. Shah & Anr. vs. Greater Bombay Co-operative Bank Ltd. & Ors., 2008 SCC OnLine Bom. 20** on the ground that the facts before this Court in the said judgment were totally different. During the course of argument before this Court, I invited the attention of the learned counsel for the parties to an unreported judgment of this Court delivered on 31st January, 2013 in case of **Shri Daulat Babanrao Tarle & Ors. vs. Shri Balasaheb Babanrao Tarle** in Writ Petition No.5299 of 2012 with companion writ petition. Learned counsel for the respondent no.1 distinguished the said judgment on the ground that this Court has not considered the provisions of Order 21 Rule 84 of the Code of Civil Procedure, 1908 in the said judgment and on the ground that the facts before this Court in the said judgment were totally different. He also distinguished the other judgments relied upon by the learned counsel for the petitioner, including the judgment of the Supreme Court in case of **Commissioner of Income Tax, Bombay South, Bombay** (supra) and would submit that reliance placed by the learned counsel for the auction purchaser on section 269(SS) and

269(T) of the Income Tax Act, 1961 is of no relevance to the facts of this case.

23. Mr.Patil, learned counsel appearing for the respondent no.6, who claims to have purchased the property in question from the respondent no.1 submits that neither the auction purchaser nor the bank had raised an issue of maintainability of the revision application filed by the respondent no.1 or his client before the Special Recovery Officer and thus cannot be allowed to raise that issue for the first time in this writ petition. He placed reliance on section 21 of the Code of Civil Procedure, 1908 and Rule 57 of the said M.C.S. Rules in support of his submission that the auction of the suit property in favour of the auction purchaser is nullity. He submits that office bearers of the bank could not have remain present at the time of auction. He submits that the respondent no.1 has already entered into an agreement for sale with his client in respect of the property in question on 6th July, 2007 for a consideration of Rs.21,49,195/-. Out of the said consideration amount, the respondent no.6 has already paid a sum of Rs.5.00 lakh to the respondent no.1. Under the said agreement for sale, the respondent no.1 had agreed to execute a sale deed in favour of his client on or before 10th November, 2007.

24. It is submitted that the suit property has been auctioned by the Special Recovery Officer without issuing any notice to his client. His client has already filed a suit for various reliefs against the respondent no.1 in a Civil Court which is still pending. His client is ready and willing to deposit the entire dues of the bank within such time as this Court may direct.

25. Mr.Borkar, learned counsel for the auction purchaser in

rejoinder submits that this Court in the order and judgment dated 18th March, 2016 in Writ Petition No.11417 of 2015 has already held that the revision application filed by the guarantor was not maintainable. He submits that all the findings rendered by this Court in the said judgment were not *prima-facie*. He submits that the Revisional Authority cannot set aside the registered document entered into in favour of the petitioner.

26. Insofar as the judgments relied upon by Mr.Agrawal, learned counsel for the respondent no.1 are concerned, it is submitted that none of those judgments would assist the case of the respondent no.1 or the respondent no.6, who is claiming through the respondent no.1 in view of the fact that in none of those judgments, the Supreme Court as well as the High Courts as the case may be had considered the provisions of section 269(SS) and (TT) which were inserted in the Income Tax Act, 1961 in the year 2004 and 2002 respectively. He submits that under the said provisions any payment above Rs.20,000/- for any such transaction in cash was specifically prohibited. It is submitted that in any event, no prejudice of any nature whatsoever had caused to any of the respondents even if the said cheque towards 15% of the amount was encashed by the bank after three days from the date of deposit of such cheque by the petitioner. No substantial injury is caused to any of the respondents as set out under Rule 107 (14) of the M.C.S. Rules merely because the cheque was encashed by the bank after three days from the date of such deposit.

27. It is submitted that since the Central Act override the provisions of the State Act i.e. the said M.C.S. Rules in case of inconsistency, the provisions of the Income Tax Tax would be binding

and not the provisions of the said M.C.S. Rules. He submits that in any event the said Rule 107 of the said M.C.S. Rules does not provide for any cash payment. He submits that even if it is construed that the said Rule 107 of the M.C.S. Rules would contemplate payment of 15% of the highest bid amount to be deposited on the date of auction in cash, the same would be contrary to the provisions of section 269(SS) and (TT) and 271(d) of the Income Tax Act, 1961. He submits that the letter of the lender bank, if any, thus asking the petitioner to deposit the said 15% of the highest bid amount immediately would not be binding upon him being contrary to law. He submits that in the said order and judgment dated 18th March, 2016 passed by this Court in the said Writ Petition No.11417 of 2015 filed by the petitioner herein, the impugned letters have been set aside. He submits that the said judgment would be thus binding on all the parties and in view of the said judgment, the revision applications filed by the respondent no.1 as well as the respondent no.6 were not maintainable.

REASONS AND CONCLUSIONS :

28. It is not in dispute that the respondent no.4 had obtained a loan from the respondent no.7 society for which the respondent no.1 and Mr.Ratanlal Madanlal Bamb were the guarantors. The borrowers as well as the guarantors committed default in making repayment of the said loan. The recovery certificate was issued by the District Deputy Registrar on an application filed by the respondent no.7 under section 101 of the MCS Act. The said recovery certificate dated 1st June, 2010 issued by the respondent no.2 was admittedly neither challenged by the borrowers nor by the guarantors. The properties mortgaged in favour of the respondent no.7 were thereafter attached in execution of the said recovery certificate dated 1st June, 2010. The

respondent no.3 thereafter took steps to auction the said property in execution of the said recovery certificate. Auction sale was admittedly conducted on 26th December, 2012 in respect of the property of the respondent no.1.

29. It is not in dispute that the petitioner along with the other four bidders participated in the said auction and that the bid of the petitioner was the highest and was much more than the auction price. The bid of the petitioner was accepted by the respondent no.3. It is also not in dispute that on 26th December, 2012 itself the petitioner deposited an amount of Rs.5,47,500/- towards 15% of the amount as bid with the respondent no.3 by cheque bearing No.012593 dated 26th December, 2012 drawn on Kalappa Awade Ichalkaranji Janata Sahakari Bank Limited. The petitioner thereafter also deposited the balance 85% amount of Rs.31,02,500/- by cheque No.12598 dated 7th January, 2013 drawn on the same Bank within a period of 15 days from the date of auction. The said cheque was also honoured when presented. The petitioner also deposited an amount of Rs.2,20,000/- towards the stamp duty in respect of the proposed sale deed.

30. It is not in dispute that the said cheque of Rs.5,47,500/- towards 15% of the amount of bid by cheque No.012593 dated 26th December, 2012 deposited with the respondent no.3 on the date of auction was thereafter deposited by the respondent no.7 in its account and was honoured on 28th December, 2012. The respondent no.3 as well as other respondents did not raise any objection when the petitioner had deposited the said amount towards 15% of the highest bid amount by cheque with the respondent no.3 on 26th December, 2012 or even thereafter any time prior to the petitioner depositing the balance 15% of the highest bid amount with the

respondent no.3.

31. The questions that arise for consideration of this court is (a) whether the revision application filed by the respondent no.1 and the respondent no.6 under section 154 of the Maharashtra Co-operative Societies Act, 1960 were at all maintainable or not ? (b) whether payment of Rs.5,47,500/- made by the petitioner towards 15% of the highest bid amount by a cheque dated 26th December, 2012 on the date of auction with the respondent no.3 was in compliance with Rule 107(11) (g) of the MCS Rules or not? (c) whether the petitioner was required to deposit the said 15% amount under Rule 107(11)(g) of the MCS Rules, only in cash or by bankers' cheque on the date of auction of the immoveable property.

32. It is not in dispute that the respondent no.3 had sent a proposal to the respondent no.2 for confirmation of the sale in respect of the property auctioned in favour of the petitioner after the entire consideration was received by the respondent no.3 from the petitioner. It is the case of the petitioner that no such proposal was required to be sent of the respondent no.3 to the respondent no.2 for confirmation. It is not in dispute that by an order dated 21st December, 2013, the respondent no.2 had refused to grant the sale certificate in favour of the petitioner. Though the petitioner had already made payment of the entire amount i.e. the highest bid amount submitted by him, the respondent no.2 refused to confirm and grant sale certificate in favour of the petitioner on the ground that the petitioner had not deposited 15% amount of the highest bid on the date of auction.

33. A perusal of the record indicates that the respondent no.3 vide its letter dated 6th January, 2014 informed the respondent no.2

that due to factually incorrect statement made in the said order dated 21st December, 2013, the respondent no.2 had refused to confirm the sale in favour of the petitioner and did not issue sale certificate in respect of the said property in question. The respondent no.3 conveyed to the respondent no.2 that thus it was necessary and in the interest of justice that the confirmation of the sale shall be issued by the respondent no.2 in favour of the petitioner. Pursuant to the said letter dated 6th January, 2014 from the respondent no.3, the respondent no.2 issued a notice on 23rd January, 2014 calling upon all the concerned parties to remain present in his office on 3rd February, 2014 for hearing on the objection mentioned in the letter dated 6th January, 2014 issued by the respondent no.3.

34. The respondent no.1 had admittedly challenged the said notice dated 6th January, 2014 issued by the respondent no.2 calling all the parties for hearing on the objection mentioned in the letter dated 6th January, 2014. The respondent no.1 filed a Revision Application No.51 of 2014 before the Divisional Joint Registrar under section 154 of the MCS Act. The respondent no.1 also filed a regular civil suit bearing no.199 of 2014 for various reliefs. The respondent no.5 by an order dated 20th January, 2015 allowed the said Revision Application No.51 of 2014 filed by the respondent no.1. It is not in dispute that the petitioner herein filed a writ petition bearing no.11417 of 2015 in this court impugning the said order dated 20th January, 2015 passed by the respondent no.5 thereby allowing the Revision Application No.51 of 2014 filed by the respondent no.1.

35. The said writ petition filed by the petitioner came to be allowed. A perusal of the said judgment dated 18th March, 2016 delivered by this court on the said writ petition indicates that in the

said writ petition, the petitioner had not only impugned the order dated 20th January, 2015 passed by the respondent no.5 but had also challenged the order dated 21st December, 2013 passed by the respondent no.2 refusing to issue the sale certificate in favour of the petitioner on the ground that the petitioner had not paid the 15% amount on the date of auction of the property in question and also on the ground that the names of the witnesses to the auction were not mentioned. A perusal of the said judgment indicates that it is held by this court that the auction proceedings had taken place pursuant to the certificate issued under section 101 of the MCS Act. The record clearly disclosed that no recourse was taken against the said certificate by the borrowers or the guarantors. The petitioner had paid an amount of Rs.5,47,500/- within the period stipulated and had paid the balance 85% on 7th January, 2013.

36. This court also noticed that the respondent no.1 had not challenged the auction notice or the auction sale which recourse was available under section 107 of the MCS Rules. This court accordingly in paragraph (9) of the said judgment observed that the objections as mentioned in the letter dated 21st December, 2013 *prima facie* did not have any substance. The notice for confirmation of sale said to be a sequititer to the auction sale that had taken place pursuant to which the purchase price had been paid by the petitioner. It is held that the notice of hearing for confirmation of the sale is therefore a logical consequence of the said auction proceedings and cannot be said to be a “decision” or “order” so as to enable the respondent no.1 to invoke the revisionary jurisdiction. This court held that the word “decision” appearing in section 154 would take its colour from the word “order” appearing in the said provision and therefore in the instant case the notice regarding confirmation of sale is neither a

“decision” or an “order”.

37. This court adverted to the judgment of this court in case of **Manager, Adarsh Mahila Nagri Sahakari Bank Limited & Anr.** (supra) holding that the order confirming a sale was not an order which was capable of being challenged under section 154 of the MCS Act. This court accordingly held that the Divisional Joint Registrar has exceeded his jurisdiction under section 154 of the MCS Act when none was vested in him and therefore erred in setting aside the notice of hearing dated 23rd January, 2014. This court accordingly was pleased to set aside the letter/order dated 21st December, 2013 of the District Deputy Registrar on the ground that the said District Deputy Registrar had erroneously refused permission on the ground mentioned in the said order dated 21st December, 2013 which were untenable. This court accordingly directed the Deputy Registrar to proceed on the basis of the notice hearing dated 23rd January, 2014 and to conclude the proceedings. It is not in dispute that the said judgment delivered by this court thereby setting aside the letter/order dated 21st December, 2013 has not been impugned by the respondents.

38. Insofar as maintainability of the revision application filed by the respondent no.1 is concerned, this court held that the notice of hearing issued by the District Deputy Registrar by no stretch of imagination could be said to be decided or ordered so as to entitle the respondent no.1 to invoke section 154 of the MCS Act. The Divisional Joint Registrar has accordingly exceeded his jurisdiction under section 154 of the M.C.S. Act.

39. The question that however arises is whether the

respondent nos.1 and 6 could file a revision application under section 154 against the order passed by the respondent no.5 issuing sale certificate and thereby confirming the sale of the property in question in favour of the petitioner by an order dated 12th September, 2016. A perusal of the order dated 12th September, 2016 passed by the learned District Deputy Registrar, Co-operative Societies, Kolhapur thereby confirming the sale and issuing sale certificate indicates that the said order is a reasoned order. It is not in dispute that the respondent no.1 or respondent no.6 had neither challenged the recovery certificate issued by the Deputy Registrar under section 101 of the MCS Act nor had challenged the auction sale at any point of time.

40. It is also not in dispute that neither the respondent no.1 nor the respondent no.6 had exercised the recourse available under Rules 107(12), (13), (14) and (19) of the said MCS Rules within the time prescribed under those rules or otherwise. The subject matter of the first revision application filed by the respondent no.1 was the notice dated 23rd January, 2014 i.e. the notice of hearing dated 23rd January, 2014 and the letter/order dated 21st December, 2013 refusing to grant sanction to the sale of the immoveable property in favour of the petitioner. Insofar as the first revision application impugning the said notice dated 23rd January, 2014 is concerned, the same could not be considered as a decision or order which would entitle the respondent no.1 invoking under section 154 of the MCS Act.

41. This Court in case of **Manager, Adarsh Mahila Nagri Sahakari Bank Limited & Anr.** (supra) has construed section 154 of the MCS Act and also Rule 107 of the MCS Rules and has held that

the revision application under section 154 of the MCS Act is possible either sue motu or on application in respect of only an order passed in a inquiry or proceeding by a subordinate officer of the revisional authority. It is held that since the borrower did not avail opportunity under sub rule 13 and did not avail remedy available to her under sub rule 14, the order confirming the sale was mere formality. It is held that the said order confirming the sale was thus not an order in real sense. The order is also an expression of opinion by judicial or quasi judicial authority after hearing the parties and after recording reasons for the same. This court accordingly held that the order confirming the sale could not be said to be an order contemplated under section 154.

42. This court in the above referred judgment also held that if the borrower believed that the auction sale was tainted with irregularity/mistake or fraud and that because of such, sale she had sustained substantial injury etc., the borrower had an ample opportunities under sub-rule 14 (i) of Rule 107 to challenge the legality of the sale on the grounds mentioned therein. In this case, the respondent no.1 or respondent no.6 did not make out any case of fraud or nullity of the auction sale before this court or before the revisionary authority.

43. This Court in case of **Ramchandra Sitaram Mulik & Ors. vs. Janata Nagari Sahakari Patsanstha Ltd. and Ors., 2018 (2) Mh.L.J. 245** has after adverting to the judgment of this Court in case of **Manager, Adarsh Mahila Nagri Sahakari Bank Limited & Anr.** (supra) and various other judgments has held that the revision application under section 154 of the MCS Act was not maintainable in view of the fact that the sale and confirmation certificate issued by the

Deputy Registrar was not an order which would entitle the borrower or the guarantor invoked under section 154 of the MCS Act. In the said judgment, this court also considered the fact that the borrower had not challenged the legality of the sale on the grounds mentioned in Rule 107(14)(i) of the MCS Rules. In my view the principles laid down by this Court in case of **Manager, Adarsh Mahila Nagri Sahakari Bank Limited & Anr.** (supra) and in case of **Ramchandra Sitaram Mulik & Ors.** (supra) would squarely applies to the facts of this case. I am respectfully bound by those judgments.

44. In my view, the impugned order passed by the learned District Deputy Registrar confirming the sale and issuing sale certificate could not have been challenged by way of revision application under section 154 of the MCS Act. The said order confirming the sale was a mere formality and not an order in real sense. The order confirming the sale cannot be an order which would attract the remedy of the revision application under section 154 of the MCS Act.

45. A perusal of the impugned order passed by the Divisional Joint Registrar indicates that though an objection of maintainability of two revision applications filed by the respondent nos. 1 and 6 was raised by the petitioner, the said issue of maintainability has not been considered by the revisioning authority in the impugned order at all. In my view, since the revision application itself was not maintainable, the entire order passed by the revisionary authority is without jurisdiction and thus deserves to be set aside on that ground itself. The remedy of the respondent nos. 1 and 6 was under Rules 107(12), (13), (14) and (19) of the said MCS Rules which the respondent nos. 1 and 6 admittedly failed to invoke. The respondent nos. 1 and 6

therefore could not have filed a revision application only against the order of confirmation of sale passed by the concerned authority.

46. Insofar as submission of the learned counsel for the respondent no.1 that this court had only made *prima facie* observations in order and judgment dated 18th March,2016 to the effect that the objections mentioned in the letter dated 21st December, 2013 did not have any substance is concerned, a perusal of the said judgment clearly indicates that in later part of paragraph (9) of the said judgment, this court has set aside the said letter/order dated 23rd December, 2013 of the District Deputy Registrar on the ground that the District Deputy Registrar had erroneously refused permission on the grounds indicated in the said judgment which were untenable. There is thus no substance in this submission of the learned counsel for the respondent no.1.

47. Since both the parties have addressed this court also on the issue as to whether the entire auction proceedings could be considered as nullity on the ground that the petitioner had not paid 15% of the highest bid amount in cash or by bankers' cheque or demand draft on the date of auction and whether the respondent nos. 1 and 6 were entitled to file a revision application on the ground of nullity or fraud, this court will deal with the said issue also. Both the parties have relied upon several judgments in support of their rival contentions on this issue which would be dealt with in the later part of this judgment.

48. The undisputed facts on this issue are that the auction of the property in question took place on 26th December, 2012. The bid of the petitioner was much more than the upset price. The petitioner

had already deposited an amount of Rs.5,47,500/- towards 15% of the amount of the highest bid submitted by him by cheque dated 26th December, 2012 on the date of auction after the petitioner was declared as the highest bidder. The said cheque was accepted by the respondent no.3 without raising any objection. The said cheque was admittedly deposited by the respondent no.7 subsequently and was admittedly honoured on 28th December, 2012 in the account of the respondent no.7.

49. Neither the respondent no.1 nor the respondent no.7 could point out any terms and conditions of sale requiring that the payment of 15% or 85% of the highest bid amount was required to be paid or deposited in cash or by demand draft or by bankers' cheque. Neither the respondent no.1 nor the respondent no.6 challenged the auction sale on the ground on nullity or otherwise by invoking any of the remedy provided under Rules 107(12), (13), (14) and (19) of the said MCS Rules. It is not the case of the respondent nos. 1, 6 or 7 that the petitioner had not deposited the 15% amount on the date of auction by cheque.

50. A perusal of Rule 107(11)(g) indicates that it provides that a sum of money equal to 15% of the price of the immoveable property shall be deposited by the purchaser in the hands of the recovery officer at the time of the purchase, and in default of such deposit, the property shall forthwith be re-sold. Rule 107(11)(h) provides that the remainder of the purchase money and the amount required for the general stamp for the sale certificate shall be paid within thirty days from the date of sale. It is not in dispute that the remainder amount of the purchase money had been paid by the petitioner within the time prescribed in the said provision. The payment of requisite stamp duty

was also deposited by the petitioner within the time prescribed. The said rule 107(11)(g) and (h) does not indicate that either the payment of 15% or 85% is required to be paid in cash or by demand draft or bankers' cheque. In my view there is thus no substance in the submission of the learned counsel for the respondent nos.1 or 6 that the petitioner having failed to deposit 15% amount on the date of auction in cash or by demand draft or by bankers' cheque, the auction sale in favour of the petitioner was nullity or illegal.

51. Mr.Borkar, learned counsel for the petitioner placed reliance on sections 269SS and 269T of the Income Tax Act, 1961 in support of his submission that even otherwise since the amount towards 15% highest bid amount under Rule 107(11)(g) was more than Rs.20,000/- the petitioner could not have deposited the said amount otherwise then by account payee cheque or account payee bank draft in view of the bar under sections 269SS and 269T of the Income Tax Act, 1961. He also placed reliance on the judgment of Supreme Court in case of **Commissioner of Income Tax, Bombay South, Bombay vs. Messrs Ogale Glass Works Ltd., Ogale Wadi, AIR 1954 SC 429.**

52. Supreme Court in the said judgment has while construing the provisions of section 82 of the Negotiable Instruments Act, 1881 has held that when it is said that a payment by negotiable instrument is a conditional payment what is meant is that such payment is subject to a condition subsequent that if the negotiable instrument is dishonoured on presentation, the creditor may consider it as waste paper and resort to his original demand. It is held that a cheque, unless dishonoured, is payment. The payment takes effect from the delivery of the cheque, but is defeated by the happening of the

condition, i.e. non-payment at maturity.

53. This court in an unreported judgment in case of **Shri Daulat Babanrao Tarle & Ors.** (supra) has adverted to the judgment of Supreme Court in case of **Commissioner of Income Tax, Bombay South, Bombay** (supra) and also subsequent judgment of Supreme Court in case of **K. Saraswathy vs. P.S.S. Somasundaram Chettiar, AIR 1989 SC 1553** in which it was held that the payment by cheque realized subsequently on the cheque being honoured and encashed, relates back to the date of the receipt of the cheque, and in law the date of payment is the date of delivery of the cheque. Payment by cheque is an ordinary incident of the present day life, whether commercial or private and unless it is specifically mentioned that payment must be in cash, there is no reason why payment by cheque should not be taken to be due payment if the cheque is subsequently encashed in the ordinary course. In the said judgment, this court also rejected the submission of the respondent that on the date of issuance of the cheque, there was no money in the account of the drawer and an arrangement was made subsequently for realizing the cheque holding that there was nothing to suggest that the cheque was not honoured in due course and the bank had any time declined to honour the said cheque for want of funds in the ordinary course.

54. In my view, the principles of law laid down in the judgment of Supreme Court in case of **Commissioner of Income Tax, Bombay South, Bombay** (supra) and judgment of this court in case of **Shri Daulat Babanrao Tarle & Ors.** (supra) would squarely apply to the facts of this case. In this case also it is not the case of any of the respondents that the cheque deposited by the petitioner was

dishonoured when presented by the respondent no.7 society for payment for want of sufficient balance in the account of the petitioner or for any other reason.

55. In my view, in view of the specific bar under sections 269SS and 269T of the Income Tax Act, 1961 from making/depositing any payment of Rs.20,000/- or above otherwise then by way of account payee cheque or account payee bank draft, the petitioner was not allowed to make any payment in cash on the date of auction even if there would have been a condition for payment of depositing cash which in this case did not exist. Not only the petitioner but also the respondent no.7 society and the borrower and guarantors or the other bidders were bound to comply with the provisions of the Income Tax Act, 1961 and the said provision being binding upon them. I am not inclined to accept the submission of the learned counsel for the respondent no.1 that the provisions of sections 269SS and 269T of the Income Tax Act, 1961 was not applicable to the facts of this case or that the same were not relevant for the purpose of deciding whether the auction sale confirmed in favour of the petitioner was nullity or not.

56. In my view, since there was no specific condition in the conditions for sale of the property in question or under rule 107(11)(g) of the MCS Rules for depositing the amount in cash only or by banker's cheque or demand draft, the payment deposited by the petitioner by cheque admittedly on the date of auction sale was a valid payment in compliance with the provisions of rule 107(11)(g) of the MCS Rules. Merely because the cheque was deposited by the bank in its bank account on the next day of such deposit made by the petitioner or that the amount was credited in the account of the

respondent no.7 after two days could not make the said deposit as if in contravention of rule 107(11)(g) of the MCS Rules. The encashment of the cheque in the account of the respondent no.7 would relate back to the date of the deposit of the said cheque by the petitioner with the respondent no.3 on the date of auction sale in compliance with the obligation under rule 107(11)(g) of the MCS Rules. The provisions of the Income Tax Act being Central Act, in case of inconsistency if any between Income Tax Act, 1961 and the MCS Rules, the provisions of Income Tax Act would prevail.

57. Be that as it may, since this court had already set aside the letter/order dated 21st December, 2013 issued by the learned District Deputy Registrar refusing to confirm the sale in favour of the petitioner on the condition that the petitioner did not make payment of 15% of the highest bid amount on the date of auction, the learned District Joint Registrar in the impugned order could not have rendered a finding that the petitioner had not complied with the points mentioned in the said letter/order dated 21st December, 2013 or that the auction was not conducted as per the provisions of rule 107(11)(g) of the MCS Rules. In my view, the order passed by the learned Divisional Joint Registrar is *ex-facie* contrary to the order and judgment dated 18th March, 2016 passed by this court setting aside the letter/order dated 21st December, 2013 on the ground that the learned District Deputy Registrar had erroneously refused permission on the grounds which were totally untenable.

58. Insofar as submission of the learned counsel for the respondent no.1 that the observations made by this court in the order and judgment dated 18th March, 2016 about the maintainability of the said revision application filed by the respondent no.1 were *prima facie*

is concerned, a perusal of the paragraph no.9 indicates that this court had taken a view that the order passed by the District Deputy Registrar was not a “decision” or “order” so as to enable the respondent no.1 to invoke section 154 of the MCS Act and thus the Divisional Joint Registrar had exceeded his jurisdiction under section 154 of the said MCS Act though the same was not vested in him and therefore he had erred in setting aside the notice of hearing dated 23rd January, 2014. Be that as it may, by the said order, this court had set aside the letter/order dated 21st December, 2013 which was subject matter of the said revision application filed by the respondent no.1.

59. Insofar as the judgment of this court in case of **Manisha Bijal Shah** (supra) relied upon by the learned counsel for the respondent no.1 is concerned, this court in the said judgment had recorded a specific finding that the auction on the part of the auction purchaser and the authority was fraudulent and thus the entire auction sale was nullity. In this case, the respondent no.1 has not been able to demonstrate before this court that the auction sale in favour of the petitioner was fraudulent or nullity. The judgment of this court in case of **Manisha Bijal Shah** (supra) thus would not assist the case of the respondent no.1.

60. Insofar as the reliance placed by the learned counsel for the respondent no.1 on the provisions of Order 21 Rule 84 in support of the submission that the said provision is in *pari materia* with the provisions of rule 107(11)(g) of the MCS Rules and in support thereof reliance of various judgments of Supreme Court and this court is concerned, in my view the reliance placed on the said provision under Order 21 Rule 84 of the Code of Civil Procedure, 1908 and various judgments in support thereof would not assist the case of the

respondent no.1. In none of the judgments relied upon by the learned counsel for the respondent no.1, the Supreme Court or this court had considered the provisions of sections 269SS and 269T of the Income Tax Act, 1961. Be that as it may, this court will now deal with those judgments referred to and relied upon by the learned counsel for the respondent no.1.

61. Insofar as judgment of Supreme Court in case of **Manilal Mohanlal Shah & Ors.** (supra) and judgment of Supreme Court in case of **Balram Bhasa Ram** (supra) are concerned, the Supreme Court has held that the provisions regarding deposit of 25% under Order 21 Rule 85 of the Code of Civil Procedure by the purchaser other than the decree holder is mandatory and if the payment is not made within the time prescribed, the court has discretion to forfeit the deposit and the discretion ends, but the obligation of the court to re-sell the property is imperative. Similar view has been taken by the Punjab and Haryana High Court in case of **Ramji Lal & Anr.** (supra) and in case of **Mehtab Singh Malik** (supra), judgment of Allahabad High Court in case of **Hira Lal & Ors. vs. Mst.Champa & Ors. (S)**. **AIR 1955 Allahabad 226 (Vol.42,C.N.70)** and judgment of Supreme Court in case of **C.N. Paramasivam & Anr.** (supra). However, in none of these judgments, the Supreme Court as well as the the other High Courts have neither considered the provisions of sections 269SS and 269T of the Income Tax Act, 1961 nor has considered the provisions of rule 107(11)(g) of the MCS Rules or a situation where the auction purchaser had admittedly deposited the 15% amount by cheque on the date of auction itself, which was subsequently cleared when presented. None of these judgments would assist the case of the respondent no.1 and are clearly distinguishable in the facts of this case.

62. Insofar as judgment of Supreme Court in case of **Assistant Director of Inspection Investigation** (supra) relied upon by the learned counsel for the respondent no.1 is concerned, the said judgment would not assist the case of the respondent no.1 but would assist the case of the petitioner. In the said judgment, the Supreme Court has held that sections 269SS was inserted in the Income Tax Act, 1961 by Finance Act, 1984 debarring persons from taking or accepting from any other person any loan or deposit otherwise than by account-payee cheque or account-payee bank draft, if the amount of such loan or deposit or the aggregate amount of such loan or deposit is Rs. 10,000/- or more. Such restriction is neither violative of article 14 of the Constitution of India, nor it can be said that section 269SS was inserted without legislative competence.

63. Insofar as judgment of Supreme Court in case of **M/s.Shilpa Shares & Securities & Ors.** (supra) relied upon by the learned counsel for the respondent no.1 is concerned, Supreme Court has held that under rule 107(11)(g) of the rules, 15% of the price of the immovable property has to be deposited by the auction purchaser at the time of the purchase, and the remaining 85% of the purchase money has to be paid within 15 days from the date of such sale. Since, there was no compliance of the said provision, the Supreme Court was of the opinion that the auction sale of the property was nullity and there was no valid auction sale. In the said judgment, Supreme Court did not consider the provisions of sections 269SS and 269T of the Income Tax Act, 1961 or that the payment of 15% of the highest bid amount was required to be paid in cash or by demand draft or cheque. The principles laid down by the Supreme Court in the said judgment are not in dispute. However, in the fact of this

case, the said judgment would not assist the case of the respondent no.1.

64. Insofar as judgment of this Court in case of **Jagdish Radhakisan Kayasth** (supra) is concerned, the executing court in that matter while construing the provisions of Order 21 Rule 84 (1) of the Code of Civil Procedure, 1908 had directed the auction purchaser to deposit the entire amount as contemplated under sub-rule(1) of Rule 84 of Order 21 on the same day till 5.30 p.m. which the auction purchaser had failed to deposit. The auction purchaser though deposited the amount on the next day, the same was accepted by the executing court. Supreme Court held that there was material irregularity committed by the executing court by accepting the amount from the auction purchaser on the next day. Supreme Court accordingly was pleased to set aside the auction sale after declaring the auction sale nullity on the ground of material irregularity and directed the executing court to hold a fresh auction sale. In my view, the facts before this court in the said judgment were totally different and are distinguishable. In this case, the petitioner had deposited the requisite amount on the day of auction sale itself with the respondent no.3 and not on the next date or in violation of any order of any court.

65. Insofar as judgment of this court in case of **Niranjan D. Woody** (supra) relied upon by the learned counsel for the respondents is concerned, this court in the said judgment had construed the provisions of rule 107(11)(g) of the said MCS Rules and held that rule 107(11)(g) requires a deposit of sum of money equal to 15% of the price at the time of purchase. The words, "at the time of purchase" in the case of an auction must mean the same thing as the words "on every sale of immovable property" that are used in Rule

84(1). "At the time of purchase" must necessarily mean at the time when the auction purchaser is informed of the acceptance of his bid. It is held that both the sets of provisions i.e. the provisions of Order 21 being statutory and those of Rule 107 being subordinate legislation emphasize the fundamental principle that the mandate of deposit within the period stipulated has to be complied with strictly. In the absence of compliance with the mandatory requirement, the sale itself is no sale in the eyes of law. In default of compliance, the sale is rendered a nullity.

66. This court held that once the auction takes place and the highest bid is accepted, the consequence thereof is to knock down the sale in favour of the highest bidder. It is at that time that the highest bidder must make a payment equivalent to 15% of the total price of the immovable property. The time of purchase under Clause (g) is the time when the bid is accepted. This court held that the Divisional Joint Registrar has clearly lost sight of the fact that the mandatory requirement of Rule 107(11)(h) could not have been relaxed by the said authority. This court accordingly recorded the finding that 15% of the sale consideration was not deposited on 4th November, 2005, at the time of purchase but thereafter. This court accordingly was pleased to set aside the order passed by the Divisional Joint Registrar and held that the sale in favour of the auction purchaser was in nullity. The principles laid down by this court in the said judgment are not in dispute. However, in the said judgment, this court does not consider a situation where the auction purchaser had deposited 15% amount by cheque on the same date which cheque was honoured when presented and the amount was credited to the account of the respondent no.7 society.

67. Insofar as judgment of Supreme Court in case of **Rao Mahmood Ahmed Khan** (supra) is concerned, a perusal of the said judgment clearly indicates that the said judgment is delivered by the Supreme Court prior to the insertion of sections 269SS and 269T of the Income Tax Act, 1961 which were inserted much later and thereby prohibiting making deposit of any amount above Rs.20,000/- after 30th June, 1984 otherwise then by way of account payee cheque or account payee bank draft. In my view the provisions under sections 269SS and 269T of the Income Tax Act, 1961 would be binding on all the parties thereby barring deposit of Rs.20,000/- or above otherwise than by way of account payee cheque or account payee bank draft. In view of such statutory bar, the auction purchaser could not have deposited all the said amount in cash which was much more than Rs.20,000/- on the date of auction sale upon acceptance of his bid by the respondent no.3. The judgment of Supreme Court thus in case of **Rao Mahmood Ahmed Khan** (supra) would not apply to the facts of this case and would not assist the case of the respondent no.1. Even otherwise in view of the inconsistency in the provisions of sections 269SS and 269T of the Income Tax Act, 1961 and rule 107(11)(g) of the MCS Rules, the provisions of sections 269SS and 269T of the Income Tax Act, 1961 would prevail.

68. Insofar as the submission of Mr.Patil, learned counsel for the respondent no.6 who claims to have purchased the property in question from the respondent no.1 that neither the auction purchasers nor the bank had raised an issue of maintainability of the revision application filed by the respondent no.1 or his client before the special recovery officer is concerned, there is no merit in this submission of the learned counsel. Reliance placed by the learned counsel on Rule 57 of the MCS Rules in support of the submission that the auction of

the suit property in favour of the petitioner was nullity is totally misplaced. Even if the office bearers of the respondent no. 7 were present at the time of auction that would not indicate that they were interested in the auctioned properties personally. Insofar as the proceedings filed by the respondent no.6 in respect of the property in question is concerned, this court does not express any view on the merits of the said proceedings. The fact remains that no adverse order is passed in respect of the property in question against the petitioner or in favour of the respondent no.6 in the said proceedings till date. In my view, the revisional authority cannot set aside the registered documents entered into in favour of the petitioner directly or indirectly.

69. In my view, findings rendered by the learned Divisional Joint Registrar, Co-operative Societies, Kolhapur Division, Kolhapur in the impugned order dated 1st February, 2017 are perverse and contrary to the principles of law laid down by the Supreme Court and this court and also contrary to the provisions of rule 107 of the MCS Rules and various other provisions of MCS Act and thus deserve to be set aside.

70. I, therefore, pass the following order :-

a). Writ Petition No.6778 of 2017 is allowed in terms of prayer clause (a).

b). Revision Application Nos.373 and 374 of 2016 and the Revision Application Nos. 409 and 410 of 2016 are dismissed.

c). The confirmation order and sale certificate issued by

the District Deputy Registrar, Co-operative Societies, Kolhapur on 12th September, 2016 in favour of the petitioner is upheld.

d). Rule is made absolute in the aforesaid terms.

e). There shall be no order as to costs.

(R.D. DHANUKA, J.)

71. At the request of Mr.Agrawal, learned counsel for the respondent no.1, the operation of this order is stayed for a period of four weeks from today. If any Special Leave Petition is filed by the respondent no.1, a copy thereof shall be served upon the petitioner and other contesting respondents in advance.

(R.D. DHANUKA, J.)