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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8646 OF 2014

Suresh Shamrao Patil & anr. ..Petitioners
Vs.
The Divisional Joint Registrar Co-op.
Society Kolhapur & ors. ..Respondents

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Mr. Pravin Sabban I/b. Dr.Ramdas P. Sabban for the petitioners.
Mr. Amit B. Borkar for respondent No.4.
Mr. A.B. Kadam, AGP for State.

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CORAM : M.S.KARNIK, J.
DATE : 4th DECEMBER, 2018.

P.C. :

The petitioners by this Petition challenge an order dated 25/4/2013 passed by the Divisional Joint Registrar, Co-operative Societies, Kolhapur Division, Kolhapur, in Revision Application No. 418 of 2012. The petitioner Nos. 1 and 2 are the borrowers. They availed loan from the respondent No. 4 – Patsanstha. It is the contention of the petitioners that though they had availed loan from the Society and had repaid the loan amount to the tune of Rs.1,80,000/- still the petitioners' property was put to auction. In the submission of the learned Counsel for the petitioners, the auction notice was published in the newspaper on 27/5/2012 and the auction was held on

31/5/2012. Apart from the submission that the petitioners did not receive any notice, learned Counsel submits that the respondent No.4 – Patsanstha has clearly fallen foul of the provisions of the Rule 107 of Maharashtra Co-operative Societies Rules, 1961. According to him no auction could be held within the period of 30 days from the issuance of the publication of the notice dated 27/5/2012. He thus submits that in this case the auction is held on 31/5/2012 and therefore same is contrary to the Rules.

2. The other contention raised by the learned Counsel for the petitioners is that the property was grossly under valued. In short, the submission of the petitioners is that due procedure is not followed while auctioning the property. Learned Counsel for the petitioners submits that the order passed by the Revisional Authority is cryptic order and the contentions of the petitioners are not dealt with by giving cogent reasons.

3. Learned Counsel for the respondent No. 4 - Patsanstha submits that the Patsanstha has followed due

procedure while auctioning the property. He invites my attention to the findings recorded by the Revisional Authority that the even the upset price was duly fixed. He further submits that the Revision filed before the Divisional Joint Registrar is not maintainable and the remedy of the petitioners is to file a suit or apply under Sub-Rule 13 and 14 of Rule 107 of the Maharashtra Co-operative Societies Rules, 1961. In any case, learned Counsel for the submits that now that the sale is confirmed so also as Sale Deeds executed, the only remedy available to the petitioners is to file a suit. He further submits that the auction purchasers are not before this Court and the property has further changed hands. The subsequent purchasers are not before this Court.

4. Heard learned Counsel for the parties.

5. I have gone through the order impugned. In so far as the objection as to whether the Revision is maintainable or not was not raised by the respondent No. 4 - Patsanstha before the Revisional Authority. Having gone through the impugned order,

I find that the impugned order is a cryptic order. The contentions of the petitioners are not dealt with even by recording brief reasons.

6. In this view of the matter, I am inclined to set aside the impugned order. The right of the respondent No. 4 - Patsanstha to raise all objections including the one regarding the maintainability of the Revision before the Divisional Joint Registrar is reserved. The Revision shall be dealt with on its own merits and in accordance with law.

7. Parties to appear before the Divisional Joint Registrar on 19th December, 2018 for fixing further schedule of hearing by the Divisional Joint Registrar.

8. The Divisional Joint Registrar to decide the Revision as expeditiously as possible and preferably within a period of 12 weeks from today.

9. The Petition is partly allowed. No order as to costs.

(M.S.KARNIK, J.)