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IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1965 OF 2013

Manisha Bijal Shah, )  
Aged Adult, Occupation : Household )  
Residing at Tara Parak, Kolhapur. ) ...Petitioner

....Versus....

1). Shankar Laxman Sutar, )  
Aged Adult, Occupation : Business )  
Residing at Ujalaiwadi, Vimantal )  
Road,Taluka Karvir, District Kolhapur. )  
)  
2). Assistant Registrar, )  
Co-operative Societies, Kagal )  
District Kolhapur. )  
)  
3). Divisional Joint Registrar, )  
Co-operative Societies, Kolhapur )  
Division, Kolhapur. )  
)  
4). Shri Gahininath Nagrik Sahakari )  
Patsanstha Maryadit, Kagal )  
District Kolhapur. )  
)  
5). Special Recovery Officer, )  
Shri Gahininath Nagrik Sahakari )  
Patsanstha Maryadit, Kagal )  
District Kolhapur. ) ...Respondents

WITH  
WRIT PETITION NO.2126 OF 2013

Manisha Bijal Shah, )  
Aged Adult, Occupation : Household )

Residing at Tara Parak, Kolhapur. ) ...Petitioner

....Versus....

- 1). Pushpadevi Ramchandra Sutar, )  
Aged Adult, Occupation : Business )  
Residing at Ujalaiwadi, Vimantal )  
Road, Taluka Karvir, District Kolhapur. )  
)
- 2). Assistant Registrar, )  
Co-operative Societies, Kagal )  
District Kolhapur. )  
)
- 3). Divisional Joint Registrar, )  
Co-operative Societies, Kolhapur )  
Division, Kolhapur. )  
)
- 4). Shri Gahininath Nagrik Sahakari )  
Patsanstha Maryadit, Kagal )  
District Kolhapur. )  
)
- 5). Special Recovery Officer, )  
Shri Gahininath Nagrik Sahakari )  
Patsanstha Maryadit, Kagal )  
District Kolhapur. ) ...Respondents

Mr. Girish S. Godbole i/b Mr. Chetan G. Patil for the Petitioner.

Mr. Surel S. Shah i/b Mr. Anand S. Patil for the Respondent No.1.

Mr. S.H. Kankal, A.G.P. for the State – Respondent Nos.2 and 3.

Mr. V.V. Salunke for the Respondent Nos.4 and 5.

**CORAM : R.D. DHANUKA, J.**  
**RESERVED ON : 14TH FEBRUARY, 2018**  
**PRONOUNCED ON : 7TH MARCH, 2018**

**JUDGMENT :-**

1. Rule. Mr. Surel S. Shah, learned counsel for the

respondent no.1 waives services. Mr.S.H. Kankal, learned A.G.P. for the respondent nos.2 and 3 waives service. Mr.V.V. Salunke, learned counsel for the respondent nos.4 and 5 waives service. Both the writ petitions are heard finally by consent of parties. The facts being identical in both these writ petitions were heard together and are being disposed of by a common judgment. Some of the relevant facts for the purpose of deciding these matters are as under :

2. The respondent no.1 had obtained a loan from the respondent no.4 in the sum of Rs.2,00,000/- in both these writ petitions. It is the case of the petitioners in both these writ petitions that the respondent no.1 had mortgaged the property bearing R.S. No.102/1c and the building constructed thereon being Milkat 304/1 and 2. The respondent no.1 committed default in making repayment of the loan to the respondent no.4. The respondent no.4 accordingly applied for issuance of the recovery certificate under section 101 of the Maharashtra Co-operative Societies Act, 1960 (for short "the said MCS Act") before the respondent no.3. The respondent no.3 issued a certificate under section 101 of the said MCS Act on 30<sup>th</sup> June, 2002 holding the respondent no.1 liable to pay an amount of Rs.2,09,095/- and Rs.2,08,362/- respectively with interest at the rate of 20% p.a. on Rs.2,00,000/- from 1<sup>st</sup> April, 2003 till realization. The respondent no.1 did not challenge the said recovery certificates both dated 30<sup>th</sup> June, 2003 issued by the respondent no.3.

3. On 12<sup>th</sup> July, 2003, a demand notice was issued by the respondent no.4 upon the respondent no.1. On 20<sup>th</sup> December, 2003, the alleged mortgaged properties of the respondent no.1 were attached in view of the respondent no.1 not having paid any amount

pursuant to the said two recovery certificates both dated 30<sup>th</sup> June, 2003.

4. It is the case of the petitioner that on 8<sup>th</sup> July, 2005, a Panchanama was drawn of the properties of the respondent no.1 and it was found that there were no movable properties of the respondent no.1 found in the house of the respondent no.1.

5. On 8<sup>th</sup> March, 2006, the District Deputy Registrar, Co-operative Societies, Kolhapur fixed the upset price of the immovable properties of the respondent no.1. It is the case of the petitioner that the said upset price was fixed by the District Deputy Registrar, Co-operative Societies, Kolhapur in respect of both the properties i.e. house property as well as the land.

6. On 12<sup>th</sup> April, 2006, the proclamation of the auction was alleged to have been published on 12<sup>th</sup> May, 2006 and the auction of the immovable properties of the respondent no.1 was alleged to have been conducted. It is the case of the petitioner that the petitioner was the highest bidder in the said auction conducted by the District Deputy Registrar, Co-operative Societies, Kolhapur and that properties of the respondent no.1 in the Writ Petition No.1965 of 2013 and of the respondent no.1 in the Writ Petition No.2126 of 2013 were sold for Rs.4,18,600/- and Rs.4,17,100/- respectively. The respondent no.1 in the Writ Petition No.2126 of 2013 is sister in law of the respondent no.1 in the Writ Petition No.1965 of 2013.

7. It is the case of the petitioner that the petitioner in both the writ petitions made payment of Rs.2,73,823/- on 12<sup>th</sup> May, 2006,

Rs.2,03,189/- on 16<sup>th</sup> May, 2006, Rs.3,64,211/- on 19<sup>th</sup> May, 2006 and a sum of Rs.50,000/- towards the stamp duty on 24<sup>th</sup> May, 2006 and that the said payments were within the time contemplated under Rule 101, Sub Rule 11 of the Maharashtra Co-operative Societies Rules, 1961 (for short “the said MCS Rules”). On 5<sup>th</sup> May, 2008, the said sale in respect of the said immovable properties was confirmed and the sale certificate was issued by the District Deputy Registrar, Co-operative Societies, Kolhapur.

8. It is the case of the petitioner that since there were some typographical errors in the description of the property in the sale and confirmation certificates, on 21<sup>st</sup> June, 2008, a fresh sale confirmation certificate and the fresh sale certificate came to be issued.

9. It is the case of the petitioner that since there were some typographical errors in the said certificates dated 21<sup>st</sup> June, 2008 also, on 19<sup>th</sup> July, 2008 a fresh confirmation certificate and the sale certificate came to be issued.

10. On 6<sup>th</sup> June, 2008, the respondent no.1 filed a Revision Application bearing Nos.218 of 2008 and 219 of 2008 respectively before the respondent no.3 challenging the sale certificates and seeking a direction to settle the loan amount under One Time Settlement (OTS) on Sampochar Yojana. Since the respondent no.1 did not comply with the requirement of section 154(2-A) of the MCS Act and did not deposit 50% amount in the said proceedings, the respondent no.3 by an order dated 6<sup>th</sup> April, 2009 dismissed the said two revision applications filed by the respondent no.1 on the ground of non-compliance of the said provision under section 154(2-A) of the

MCS Act.

11. On 19<sup>th</sup> December, 2009, the respondent no.1 filed Revision Applications bearing Nos.449 of 2009 and 450 of 2009 respectively for various reliefs. It is the case of the petitioner that the said fresh revision application was filed by the respondent no.1 seeking identical reliefs that were claimed in the earlier Revision Application bearing Nos.218 of 2008 and 219 of 2008 respectively. On 5<sup>th</sup> July, 2011, the respondent no.3 allowed the said Revision Applications filed by the respondent no.1 bearing Nos.449 of 2009 and 450 of 2009.

12. The petitioner challenged the said order dated 5<sup>th</sup> July, 2011 in this Court by filing Writ Petition Nos.8530 of 2011 and 8526 of 2011 respectively on 23<sup>rd</sup> September, 2011.

13. By an order dated 10<sup>th</sup> August, 2012, this Court was pleased to set aside the said order dated 23<sup>rd</sup> September, 2011 passed by the respondent no.3 and remanded both the Revision Applications bearing no.449 of 2009 and 450 of 2009 filed by the respondent no.1 respectively to the respondent no.3 for deciding the matters afresh. The petitioner filed affidavit in reply in those two revision applications before the respondent no.3. On 26<sup>th</sup> December, 2012, the respondent no.3 once again allowed the said two Revision Applications bearing Nos.449 of 2009 and 450 of 2009 respectively. Being aggrieved by the said order dated 26<sup>th</sup> December, 2012, the petitioner filed two separate Writ Petitions bearing Nos.1965 of 2012 and 2126 of 2013 in this Court which are being disposed of by this common judgment.

14. Mr.Godbole, learned counsel appearing for the petitioner invited my attention to various annexures to the Writ Petition No.1965 of 2013, the impugned orders passed by the authorities in the Revision Application No.218 of 2008 and Revision Application No.449 of 2009. He also invited my attention to the Sale Deed executed in favour of the petitioner who was the auction purchaser by the authority pursuant to the order of the authority confirming the sale and issuing the sale certificate.

15. It is submitted by the learned counsel that admittedly the respondent no.1 had not challenged the recovery certificates both dated 30<sup>th</sup> June, 2003 issued by the respondent no.3. Those recovery certificates thus attained finality. It is submitted that the respondent no.1 also did not raise any objection or apply for setting aside the auction sale conducted by the District Deputy Registrar, Co-operative Societies, Kolhapur by invoking Rule 107(13) and 107(14) of the MCS Rules and directly challenged the auction sale and sale certificate by invoking section 154 of the MCS Act before the respondent no.3. He submits that the said Revision Applications bearing Nos.218 of 2008 and 219 of 2008 themselves were not maintainable. He submits that in any event admittedly both these Revision Applications bearing Nos.218 of 2008 and 219 of 2008 were admittedly dismissed by the respondent no.3 on 6<sup>th</sup> April, 2009. The respondent no.1 did not challenge the said order dated 6<sup>th</sup> April, 2009 dismissing the earlier revision applications filed by the respondent no.1.

16. It is submitted by the learned counsel that the second

Revision Applications bearing Nos.449 of 2009 and 450 of 2009 filed by the respondent no.1 for identical reliefs except an additional prayer were not at all maintainable and could not have been entertained by the respondent no.3. In support of this submission, learned counsel invited my attention to the averments made by the respondent no.1 in both the revision applications and the reliefs sought therein. He submits that though a specific objection of maintainability was raised by the petitioner before the respondent no.3 of those Revision Applications bearing Nos.449 of 2009 and 450 of 2009 respectively, the respondent no.3 did not decide the issue of maintainability of the revisions applications and allowed those revision applications filed by the respondent no.1 illegally. In support of this submission, learned counsel placed reliance on the following judgments :

- i). 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,**
- ii). The unreported Judgment of this Court in case of **Pundalik Ganapati Alias Bahirji Ingale vs. The District Deputy Registrar, Co-operative Societies** in Writ Petition No.9027 of 2013, delivered on 25<sup>th</sup> February, 2014.
- iii). The unreported Judgment of this Court in case of **Ramchandra Sitaram Mulik & Ors. vs. Janata Nagari Sahakari Patsanstha Limited & Ors.,** in Writ Petition 6584 of 2013, delivered on 15<sup>th</sup> January, 2018, and
- iv). The Judgment of this Court in case of **Greater Bombay**

**Co-operative Bank Limited, Mumbai & Anr. vs. Dhillon P. Shah & Ors. 2004(1) Mh.L.J. 996.**

17. Mr.Surel S.Shah, learned counsel appearing for the respondent no.1 on the other hand invited my attention to the averments and the prayers in the Revision Application No.218 of 2008 and also in the Revision Application No.449 of 2009 and would submit that both the revisions applications were not exactly identical for the same reliefs. He submits that in this case, the District Deputy Registrar, Co-operative Societies, Kolhapur had issued four sale confirmation certificates as well as four sale certificates thereby making illegal corrections in the said certificates. In the second revision application filed by the respondent no.1, the respondent no.1 had prayed for additional reliefs and had brought on record the fraud and illegalities committed by the petitioner herein and the authority. He submits that the order dated 6<sup>th</sup> April, 2009 passed by the respondent no.3 thereby dismissing the Revision Application bearing Nos.218 of 2009 and 219 of 2008 respectively was not on adjudication of the disputes between the parties but those revision applications were dismissed simply on the ground of non-compliance of the provisions under section 154(2-A) of the MCS Act. He submits that the principles of *res-judicata* thus would not apply to the facts of this case.

18. Learned counsel for the respondent no.1 invited my attention to the documents annexed to the writ petitions and also to the affidavit in reply filed by the respondent no.1 and would submit that the sale alleged to have been effected by the authority was not in respect of the entire property but was only for part of the property. He

submits that the sale certificate issued by the authority annexed at page 30 of the writ petition would clearly indicate that the said sale certificate was also issued only in respect of the property admeasuring 82.58 sq. ft. There was no mention of sale of the plot admeasuring 280.66 sq. mtrs.

19. It is submitted by the learned counsel that the respondent no.5 should have issued a demand notice under Rule 107(4) of the MCS Rules to proceed against the movable properties first. The petitioner could not produce any proof on record to show that the society had proceeded against the movable properties first. He submits that the alleged notice for auction had been allegedly issued and published on 12<sup>th</sup> April, 2006 in the daily newspaper "Satyavadi" whose daily circulation is very small or almost nil. The original newspaper copy of the said alleged publication was never produced by the respondent nos.4 and 5 inspite of demand by the respondent no.1 from time to time. In the said notice alleged to have been published in the newspaper, the area of the property is not mentioned. It was also not clear as to when such publication was made.

20. Learned counsel invited my attention to the said certificate annexed to the petition and also the Sale Deed. He submits that though the auction was alleged to have been conducted on 12<sup>th</sup> May, 2006, the confirmation of the sale certificate annexed at Exhibit "H" to the petition would reveal that the petitioner was alleged to have deposited the auction earnest money amount against the sale of Rs.1,35,000/- on 12<sup>th</sup> April, 2006, i.e. on the date of publishing of the auction notice itself. The petitioner has alleged to have deposited the

remaining amount of Rs.2,84,300/- on or before 9<sup>th</sup> May, 2006 i.e. before the date of auction. He submits that it is thus clear that the respondent no.4 and 5 have not conducted the auction sale and the entire record is suspicious, bogus and fraudulent. The petitioner had never participated in the said alleged auction.

21. It is submitted by the learned counsel that if according to the petitioner the auction of the property was held on 12<sup>th</sup> May, 2006, then 15% amount ought to have been deposited on the same day but the Sale Deed dated 18<sup>th</sup> April, 2009 would clearly show that the amount of Rs.1,34,000/- was deposited on 12<sup>th</sup> April, 2006 and the balance amount was deposited on 9<sup>th</sup> May, 2006. The amount alleged to have been deposited by the petitioner on 12<sup>th</sup> May, 2006 shows two receipts of Rs.1,30,000/- and Rs.1,33,823/-. Both these receipts are without any receipt number. There are two more amounts deposited by the petitioner on 16<sup>th</sup> May, 2006 and 19<sup>th</sup> May, 2006 in the sum of Rs.2,01,189/- and Rs.3,64,211/- respectively. These two receipts are also without receipt numbers. The petitioner also alleged to have prepared a Correction Deed on 26<sup>th</sup> August, 2011 and in the said deed, the amount of Rs.1,34,000/- is shown as paid on 12<sup>th</sup> May, 2006.

22. The receipt dated 12<sup>th</sup> May, 2006 however, does not show this amount. In the Correction Deed made on 26<sup>th</sup> August, 2011, the amount of Rs.2,84,300/- is shown as paid on or before 9<sup>th</sup> June, 2006 which amount does not match with the receipt dated 19<sup>th</sup> May, 2006 produced by the petitioner at the time of hearing. He submits that even if the amount mentioned in the Correction Deed dated 26<sup>th</sup> August, 2011 is concerned, it is clear that 85% amount is not

deposited within 15 days as stipulated in Rule 107. It is submitted by the learned counsel that the alleged auction was dated 12<sup>th</sup> May, 2006. The Sale Deed was dated 18<sup>th</sup> April, 2009 and the alleged Correction Deed was dated 26<sup>th</sup> August, 2011 i.e. almost two years after the Sale Deed.

23. It is submitted by the learned counsel that in the proclamation notice dated 12<sup>th</sup> April, 2006, the property bearing RS No.102/1c, Milkat No.304/1 admeasuring about 82.58 sq. mtrs. were put up for auction dated 12<sup>th</sup> May, 2006. The sale certificate dated 5<sup>th</sup> May, 2008 was however, issued for the area 885.60 sq. ft. i.e. 82.58 sq. mtrs. The auction was intended only for Gat No.304/1. Later on another sale certificate dated 21<sup>th</sup> June, 2008 was issued for the said property being built up area admeasuring 82.58 sq. mtrs. and plot area of 280.66 sq. mtrs. In the said sale certificate dated 21<sup>st</sup> June, 2006, plot area was subsequently added which was not in the proclamation notice and the newspaper publication. He submits that a perusal of the sale certificate would indicate that the entire certificate is the same including the date thereon i.e. 5<sup>th</sup> May, 2008. Later on one line was drawn over and crossed the date with another date as 21<sup>st</sup> June, 2008. The said sale certificate was issued only for the purpose of the added plot area of 288.60 sq. mtrs. lateron. He submits that the respondent nos.4 and 5 have fraudulently issued three sale certificates i.e. 5<sup>th</sup> May, 2008, 21<sup>st</sup> June, 2008 and 19<sup>th</sup> July, 2008 for one property. He submits that total non-compliance of Rule 107(11)(e).

24. It is submitted by Mr.Shah, learned counsel for the respondent no.1 that the respondent nos.4 and 5 have shown that the

auction was conducted on 12<sup>th</sup> May, 2006 and all the bidders were personally present, including the petitioner. He submits that the petitioner was however, not present at all at the place of auction. He submits that the alleged auction panchanama was totally false and fabricated. The husband of the petitioner had made a bogus signature of the petitioner on the auction panchanama purportedly showing her presence. The signature of the petitioner on the Sale Deed does not match with the alleged signature on the auction panchanama. He submits that only three bidders were present in the alleged auction. However, the receipts of depositing the earnest money on the date of auction shows that four persons were present and deposited earnest money.

25. It is submitted by the learned counsel that there was no typographical error relating to the dates and figures in the Sale Deed. The respondent nos.4 and 5 had also made changes in ledgers by changing prior record and the dates in it. It is submitted by the learned counsel that the respondent no.4 has illegally prepared the alleged "Correction Deed" though the order dated 5<sup>th</sup> July, 2011 passed by the Revisioning Authority setting aside the sale certificates was then in force and was in force.

26. Learned counsel for the respondent no.1 invited my attention to the valuation report (upset price report) prepared by Chandrakant D. Harale allegedly dated 21<sup>st</sup> November, 2005. It is submitted by the learned counsel that the date of the said report as well as the date of the valuation had been fabricated. Someone has affixed signature at these two places and has changed the date from 21<sup>st</sup> February, 2004 to 21<sup>st</sup> November, 2005. On the second page of

the report, the valuer has not changed the date of valuation of the property as on 21<sup>st</sup> February, 2004. The signature on the second page and the signature on the first page does not tally. Except the date i.e. 21<sup>st</sup> on the first page, the year and the month are fabricated.

27. Insofar as the submission of Mr.Godbole, learned counsel for the petitioner that the finding of the Revisioning Authority that there was no mortgage of the property is contrary to the admitted facts on record is concerned, it is submitted by Mr.Shah, learned counsel for the the respondent no.1 that even if that observation is made in the impugned order is incorrect, that does not affect the conclusion drawn by the Revisioning Authority.

28. Insofar as the legality of the second revision application is concerned, it is submitted by the learned counsel that in the first revision application, the respondent no.1 had challenged the auction dated 12<sup>th</sup> April, 2006 and the sale certificate dated 5<sup>th</sup> May, 2008. However, in the second revision application, the respondent no.1 had challenged the subsequent sale certificate, the auction sale and also placed on record the serious fraud played by the respondent nos.4 and 5, the petitioner and the authority. The respondent no.1 had produced the additional material on record. The respondent no.1 had also challenged the Sale Deed executed between the petitioner and the Recovery Officer. He submits that admittedly the first revision application was not dismissed on merits but was dismissed in view of the respondent no.1 not having deposited 50% of the certificate amount under section 154(2A) of the MCS Act. It is submitted by the learned counsel that in view of *ex-facie* fraud committed by the petitioner and the respondent nos.4 and 5 along with authority in

conducting the alleged auction sale, the respondent no.1 was entitled to file a revision application challenging the auction sale as well as the sale and confirmation certificate. There was no outward number in two of the sale certificates.

29. Learned counsel placed reliance on the judgment of the Supreme Court in case of **Meghmala & Ors. vs. G. Narasimha Reddy & Ors. (2010) 8 SCC 383** and in particular paragraph 36 and would submit that even in judicial proceedings, once a fraud is proved, all advantages gained by playing fraud can be taken away. In such an eventuality the question of non-executing of the statutory remedies or statutory bars like doctrine of *res judicata* are not attracted. Suppression of any material fact / document amounts to a fraud on the Court. Every Court has an inherent power to recall its own order obtained by fraud as the order so obtained is *non est*.

30. Learned counsel for the respondent no.1 placed reliance on the judgment of this Court in case of **Shri Ramesh T. Gopalani vs. The Janata Sahakari Bank Ltd. 2000(3) ALL MR 177** and in particular paragraph 6 and would submit that the order passed by the Revisioning Authority in the second revision application was set aside by this Court and the matter was remanded back. The matter was not remanded back by this Court on the ground that the second revision application is not maintainable at all.

31. Mr.Shah, learned counsel for the respondent no.1 placed reliance on the judgment of the Supreme Court in case of **Rukmini Amma Saradamma vs. Kallyani Sulochana & Ors. (1993) 1 SCC 499** which judgment was adverted to by this Court in case of **Shri**

**Ramesh T. Gopalani** (supra).

32. Mr.Shah, learned counsel for the respondent no.1 placed reliance on the judgment of the Supreme Court in case of **Shilpa Shares & Securities & Ors. vs. National Co-operative Bank Ltd. & Ors., (2007) 4 Mh.L.J. 184 (SC)** and in particular paragraph 4 construing Rule 107(11)(g) and would submit that since 15% of the price of the immovable property was not deposited within the time contemplated under the said provision, the sale was not held only with a mere irregularity but was a complete nullity.

33. Learned counsel appearing for the respondent nos.4 and 5 referred to the affidavit filed by the society before the Divisional Joint Registrar and submits that no irregularity or illegality was committed by the respondent nos.4 and 5 in conducting the auction or otherwise.

34. Mr.Godbole, learned counsel appearing for the petitioner in rejoinder submits that it was an admitted position in both the revision applications filed by the respondent no.1 that the mortgage of the immovable property was created in favour of the society. He submits that the Deputy Registrar had passed an order fixing the upset price. No movables were found at that stage. He placed reliance on Rule 107(4) of the MCS Rules and would submit that the movables and the immovables both are required to be sold in execution. Since no movables were found, the question of sale of the movables did not arise. He placed reliance on section 107(10) and would submit that the mortgaged properties are not required to be attached. He invited my attention to the advertisement issued by the respondent nos.4 and 5 and would submit that there was no lacuna in

the said advertisement. The intimation of sale was already given to the respondent no.1. The area of the property was mentioned.

35. It is submitted that since there were inadvertent errors in the two sale certificates issued by the authority, the third sale certificate was required to be issued with the correct details. He submits that the entire amount was deposited by the petitioner within the time contemplated under Rule 107(11). He submits that on the contrary, the petitioner had deposited more than 15% of the amount on or before the due date. It is submitted that if there are any errors in the date mentioned in the Sale Deed or the sale certificate, it cannot be vitiated the sale of the property.

36. It is submitted that though the first revision application filed by the respondent no.1 was not dismissed on merits, the said order however became final in view of the respondent no.1 not having challenged the validity of the said order by filing appropriate proceedings. The second revision application was thus not maintainable on this ground itself. He submits that his client has already paid the stamp duty on the Sale Deed. The amount paid under the Sale Deeds was more than the sale price. It is submitted that it was the duty of the authority to verify whether the requirement of Rule 107(13) and (14) is complied with or not.

37. Mr.Shah, learned counsel for the respondent no.1 submits that in the Sale Deed relied upon by the petitioner, it is clearly provided that a sum of Rs.2,84,300/- was paid on 9<sup>th</sup> June, 2006 which was much after expiry of 15 days of the auction. He submits that it is thus clear beyond reasonable doubt that the amount was not

deposited within the time contemplated and thus the auction sale was nullity and the sale thus could not have been confirmed. He submits that the Revisioning Authority has passed a detailed reasoned order and has rendered various findings of fact which being not perverse, cannot be interfered with by this Court under Article 227 of the Constitution of India.

**REASONS AND CONCLUSIONS :**

38. It is not in dispute that the respondent no.1 had obtained a loan from the respondent no.4 in the sum of Rs.2,00,000/- in both the writ petitions. The respondent no.1 had mortgaged the property bearing RS No.102/1c and the building constructed thereon being Milkat No.304/1 and 2. The respondent no.4 had applied for issuance of the recovery certificate under section 101 of the MCS Act before the respondent no.3. On 30<sup>th</sup> June, 2002, the respondent no.3 issued two recovery certificates holding the respondent no.1 liable to pay an amount of Rs.2,09,095/- and Rs.2,08,362/- respectfully with interest at the rate of 20% on Rs.2,00,000/- from 1<sup>st</sup> April, 2003 till realization. It is an admitted position that the respondent no.1 did not challenge the said recovery certificates both dated 30<sup>th</sup> June, 2003 issued by the respondent no.3.

39. The District Deputy Registrar, Co-operative Societies, Kolhapur thereafter took steps to fix the upset price of the immovable properties of the respondent no.1. A proclamation of auction dated 12<sup>th</sup> April, 2006 was alleged to have been published. It is the case of the petitioner that in the said auction held on 12<sup>th</sup> May, 2006, the petitioner had submitted her bid and was the highest bidder. The

respondent no.1 on the other hand has taken pains to point out the illegality in conducting the auction sale, in issuing the sale and confirmation certificates etc.

40. A perusal of the revision application dated 6<sup>th</sup> June, 2008 filed by the respondent no.1 (Revision Application No.218 of 2008) indicates that the respondent no.1 had prayed for declaring the auction sale as well as the sale certificates as null and *void-ab-initio* and for setting aside the auction sale and the sale certificates. The respondent no.1 had also prayed for an order and direction against the respondent no.4 society to settle the loan amounts of the respondent no.1 under one time settlement or Samopchar Yojana. The respondent no.1 had alleged that the respondent nos.4 and 5 had practiced fraud upon the respondent no.1 and false and fabricated recovery certificates were issued. It is not in dispute that the said revision application was dismissed by an order dated 6<sup>th</sup> April, 2009 by the Divisional Joint Registrar, Co-operative Societies, Kolhapur Division, Kolhapur in view of the fact that the respondent no.1 had not deposited 50% of the recoverable dues as per the provisions of section 154(2A) of the said MCS Act. The said order passed by the Divisional Joint Registrar was not on merits but was passed rejecting the said revision applications in view of non-compliance of the mandatory deposit of 50% of the recovery amount.

41. The respondent no.1 filed a fresh revision application on 19<sup>th</sup> December, 2008 bearing No.449 of 2008 before the Divisional Joint Registrar, Co-operative Societies, Kolhapur Division, Kolhapur. In paragraph 9 of the second revision application, it was alleged by the respondent no.1 that the proclamation of auction sale on 12<sup>th</sup>

April, 2006 clearly showed the property for auction sale admeasuring 82.58 sq. mtrs i.e. build up only. The letter of approval of fixing upset price clearly showed that the Government valuer Mr.C.D. Harale had valued the property at 82.58 sq. mtrs. i.e. built up area of 4,12,600/- on 21<sup>st</sup> November, 2005. The sale confirmation and the sale certificate issued on 5<sup>th</sup> May, 2008 however, showed the property auction as 885.60 sq. ft. i.e. 82.58 sq. mtrs. and built up area only. The petitioner and the respondent nos.4 and 5 however joined hands fraudulently and illegally and obtained the sale confirmation and sale certificate illegally changing the area of the auction property with change of date as 21<sup>st</sup> June, 2008. On 19<sup>th</sup> July, 2008, the respondent nos.4 and 5 and the petitioner obtained another sale confirmation and the sale certificate pursuant to which the Recovery Officer executed the Sale Deed on 18<sup>th</sup> April, 2009 in favour of the petitioner.

42. It was pointed out in the second revision application that the sale certificate had been issued on 5<sup>th</sup> May, 2008 after long gap of more than two years and that also after the respondent no.1 made enquiry about the sale certificate repeatedly. The petitioner and the respondent nos.4 and 5 along with authority having practiced fraud upon the respondent no.1. In the said revision application, the respondent no.1 prayed that the auction sale as well as the sale certificate and the Sale Deed be declared as null and *void-ab-initio* and be quashed and set aside. The respondent no.1 also prayed that the respondent nos.4 and 5 be directed to settle the loan amount without charging the compound interest. It is thus clear that all the prayers in the first revision application and in the second revision application were not identical.

43. The said second revision application was partly allowed by the learned Divisional Joint Registrar on 5<sup>th</sup> July, 2011. The said order dated 5<sup>th</sup> July, 2011 passed by the learned Divisional Joint Registrar was challenged by the petitioner herein by filing two separate Writ Petitions bearing Nos.8530 of 2011 and 8526 of 2011. By an order dated 10<sup>th</sup> August, 2012, this Court was pleased to set aside the order dated 5<sup>th</sup> July, 2011 and remanded the said two Revision Applications bearing Nos.449 of 2009 and 450 of 2009 to the learned Divisional Joint Registrar, Co-operate Societies, Kolhapur Division, Kolhapur to decide the same afresh in accordance with law. This Court was of the view that though the petitioner as also the respondent no.1 had raised various contentions, all those contentions were not reflected in the impugned order. A perusal of the said order does not indicate that at that stage the petitioner had raised the issue of maintainability of the second revision application filed by the respondent no.1.

44. In my view, since the revision application was not dismissed by the Divisional Joint Registrar on merits but was simplicitor dismissed on the ground of non-compliance of deposit of 50% of the certificate amount by the petitioner under section 154(2A) of the MCS Act, the second revision application filed by the respondent no.1 cannot be considered as barred by *res judicata* or by principles analogous to *res judicata*.

45. The Supreme Court in case of **Meghmala & Ors.** (supra) has held that where an applicant gets an order by making misrepresentation or playing fraud upon the competent authority, such order cannot be sustained in the eye of the law. Fraud avoids all juridical acts, ecclesiastical or temporal. It is held that no judgment

of a Court, no order of a Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything. It is held that fraud and collusion vitiate even the most solemn proceedings in any civilised system of jurisprudence. It is a concept descriptive of human conduct. An act of fraud on Court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction *void ab initio*. Fraud and deception are synonymous.

46. In paragraph 36 of the judgment, it is held that even in judicial proceedings, once a fraud is proved, all advantages gained by playing fraud can be taken away. In such an eventuality the question of non-executing of the statutory remedies or statutory bars like doctrine of *res judicata* are not attracted. Suppression of any material fact / document amounts to a fraud on the Court. Every Court has an inherent power to recall its own order obtained by fraud as the order so obtained is *non est*. The principles laid down by the Supreme Court in the judgment of **Meghmala & Ors.** (supra) squarely applies to the facts of this case.

47. I shall now deal with some of the glaring facts pointed out by Mr.Shah, learned counsel for the respondent no.1 in support of his submission that fraud was practiced by the petitioner, the respondent nos.4 and 5 and the authority upon the respondent no.1 in conducting the auction sale of the properties of the respondent no.1.

48. A perusal of the record indicates that the proclamation of sale was alleged to have been issued on 12<sup>th</sup> April, 2006. No notice was however, given to the respondent no.1 about the said

proclamation of sale. The signature of the petitioner on the receipts of the alleged deposit on the date of the alleged auction does not tally with the admitted signature of the petitioner on the Sale Deed. The auction panchanama does not bear the signature of the petitioner however, the presence of the petitioner has been shown in the panchanama.

49. A perusal of the “Upset Price Report” alleged to have been prepared by the Government valuer Chandrkant D. Harale shows that on the first page date mentioned as 21<sup>st</sup> November, 2005 is tampered with. The numbers 11 and the number 5 of 2005 has been written by hand. The signatures besides the date mentioned on page 1 appears to have been fabricated. On the second page of the said upset price report, it is mentioned that the upset price of the property as on 21<sup>st</sup> February, 2004. Though on the first page of the upset price report, month and year has been fraudulently changed, the date of the valuation on the second page remained to be change from 21<sup>st</sup> February, 2004 to 21<sup>st</sup> November, 2005. It is thus clear that the order of the Sub-Registrar, Co-operate Societies, Kolhapur approving upset price based on the said fraudulent valuation report dated 21<sup>st</sup> November, 2005 was itself illegal and thus could not have been considered. It appears that the authority had withdrawn the sale confirmation and the sale certificate dated 5<sup>th</sup> May, 2008 and 21<sup>st</sup> June, 2008 and issued a fresh sale confirmation and sale certificate dated 19<sup>th</sup> July, 2008 fraudulently.

50. The respondent nos.4 and 5 had alleged that the alleged notice of auction had been issued and published on 12<sup>th</sup> April, 2006 in the daily newspaper “Satyavadi” whose daily circulation is almost nil.

Neither the petitioner nor the respondent nos.4 and 5 could produce the original newspaper copy of the daily "Satyavadi" though repeatedly called upon by the respondent no.1. The proof of publication of the said newspaper was not produced. The area of the property also not mentioned in the said so called publication of the newspaper. Though the auction is alleged to have been conducted on 12<sup>th</sup> May, 2006, the petitioner had alleged to have deposited the earnest money amount against the sale of Rs.1,34,000/- on 12<sup>th</sup> April, 2006 itself. Remaining amount of Rs.2,84,300/- is alleged to have been deposited on or before 9<sup>th</sup> May, 2006 i.e. even before the date of alleged auction sale. The Sale Deed executed between the petitioner and the authorized officer of the respondent no.4 shows that the amounts of Rs.1,34,000/- were deposited on 12<sup>th</sup> April, 2006 and the balance amount was deposited on 9<sup>th</sup> May, 2006. The amount deposited by the petitioner on 12<sup>th</sup> May, 2006 shows two receipts of Rs.1,34,000/- and Rs.1,34,823/-. There are no numbers on the said receipts.

51. A perusal of the record further indicates that the petitioner has alleged to have deposited a sum of Rs.2,03,189/- and Rs.3,64,211/- respectively on 16<sup>th</sup> May, 2006 and 19<sup>th</sup> May, 2006. Those two receipts produced by the petitioner are also without receipt number. In the alleged correction deed dated 26<sup>th</sup> August, 2011, the petitioner has reflected an amount of Rs.1,34,000/- as alleged to have been paid on 12<sup>th</sup> May, 2006. The receipt dated 12<sup>th</sup> May, 2006 however does not show the said amount. In the correction deed dated 26<sup>th</sup> August, 2011, an amount of Rs.2,84,300/- is shown as the alleged payment before 9<sup>th</sup> June, 2006 but the said amount does not match with the receipt of 19<sup>th</sup> May, 2006 produced before the

authority. It is thus clear that even after considering correction deed dated 26<sup>th</sup> August, 2011, 85% amount is not deposited within 15 days as stipulated in Rule 107 (11)(g) of the Maharashtra Cooperative Societies Rules, 1961.

52. The Supreme Court in the case of **Shilpa Shares and Securities & Ors.** (supra) has held that non-payment of the amount within the time prescribed under Rule 107(11)(h) of the Rules renders the auction sale invalid. The judgment of the Supreme Court in the case of **Shilpa Shares and Securities & Ors.** (supra) would squarely applies to the facts of this case.

53. A perusal of the record indicates that as per the auction proclamation notice dated 12<sup>th</sup> April, 2006, the property bearing RS No.102 1/c Milkat No.304/1 admeasuring 82.58 sq.mtrs. were put for auction dated 12<sup>th</sup> May, 2006. The sale certificate dated 5<sup>th</sup> May, 2008 was issued for the area 885.60 sq.ft. i.e. 82.58 sq.mtrs. The auction was intended only for Gat No.304/1. However later on, another sale certificate dated 21<sup>st</sup> June, 2008 was issued for the said property for built up area 82.58 sq.mtrs. and plot area 280.66 sq.mtrs. In the said sale certificate dated 21<sup>st</sup> June, 2008, plot area was later on added which was not in proclamation notice and newspaper publication shown on record. In the said sale certificate, it is clear that the entire certificate is dated 5<sup>th</sup> May, 2008. However later on, one line drawn over and crossed the date and written another date i.e. 21<sup>st</sup> June, 2008 is mentioned thereon. It is thus clear that the sale certificate was issued only for the purpose of to add plot area 280.66 sq.mtrs. later on.

54. Mr.Godbole, learned counsel for the petitioner could not explain before this Court as to why the authority had issued three sale certificates dated 5<sup>th</sup> May, 2008, 21<sup>st</sup> June, 2008 and 19<sup>th</sup> July, 2008 for the same property. A perusal of those three certificates dated 5<sup>th</sup> May, 2008, 21<sup>st</sup> June, 2008 and 19<sup>th</sup> July, 2008 clearly indicates that the same were fraudulent and were issued to cover up the false case of the petitioner and the respondent nos.4 and 5. A perusal of the auction panchnama clearly indicates that only 3 bidders were present for auction whereas receipts of depositing earnest money on the date of alleged auction shows that 4 persons were present and deposited earnest money.

55. A perusal of the order passed by the Revisional Authority clearly indicates that this crucial aspect was rightly considered by the authority while allowing the revision application filed by the respondent no.1. The findings recorded by the Revisional Authority while allowing the Revision Application No.218 of 2008 filed by the respondent no.1 being not perverse, thus cannot be interfered with by this Court in this petition filed under Article 227 of the Constitution of India.

56. Insofar as the judgment of this Court in the case of **Manager, Adarsh Mahila Nagri Sahakari Bank Ltd. & Anr.** (supra) relied upon by Mr.Godbole, learned counsel for the petitioner is concerned, the said judgment would not assist the case of the petitioner on the ground that the respondent no.1 had clearly made out a case of fraud played by the petitioner, the respondent nos.4 and 5 and the authority upon the respondent no.1 in auctioning the property of the respondent no.1. The remedy of filing a revision

application by the respondent no.1 thereby impugning the auction sale as well as the issuance of sale certificates was not taken away. Similarly, the judgments of this Court in the cases of **Pundalik Ganapati Alias Bahri Ingale vs. The District Deputy Registrar, Co-operative Societies** (supra), **Ramchandra Sitaram Mulik & Anr. vs. Janata Nagari Sahakari Patsanstha Ltd.** (supra) and **Greater Bombay Co-operative Bank Ltd., Mumbai & Anr. vs. Dhillon P. Shah & Ors.** (supra) would not assist the case of the petitioner and are clearly distinguishable in the facts of this case.

57. This Court is bound by the judgment of the Supreme Court in the case of **Meghmala & Ors. vs. G. Narasimha Reddy & Ors.** (supra) which has clearly held that even in judicial proceedings, once a fraud is proved, all advantages gained by playing fraud can be taken away. In such an eventuality, the question of non-executing of the statutory remedies or statutory bars like doctrine of *res judicata* are not attracted. This Court of the view that the petitioner no.1, the respondent nos.4 and 5 and the authority had played fraud upon the respondent no.1 as is demonstrated aforesaid, the Revisional Authority was right in entertaining the second revision application filed by the respondent no.1 under section 154 of the MCS Act. The petitioner, the respondent nos.4 and 5 and the authority cannot be allowed to take any advantage of the fraud committed by them.

58. In these circumstances, I am not inclined to accept the submission of the learned counsel for the petitioner that the respondent no.1 not having challenged the recovery certificate, could not have challenged the validity of the auction sale or sale certificates

issued by the authority though a fraud was played by the petitioner and few others. Even if the recovery certificate is not challenged by a party, if there is a fraud committed in effecting the sale certificate of the property of such a party and if the sale is in violation of the provisions of the MCS Act read with MCS Rules, the remedy of a party to challenge such auction sale as well as sale and confirmation certificate by filing revision application under section 154 of the MCS Act is not taken away. In my view, both the petitions are devoid of merits.

59. I therefore pass the following order :-

- i). Writ Petition Nos.1965 of 2013 and 2126 of 2013 are dismissed.
- ii). Rule is discharged.
- iii). Interim relief granted by this Court, if any, to stand vacated.
- iv). There shall be no order as to costs.

**(R.D. DHANUKA, J.)**

At the request of Mr.Patil, learned counsel appearing for the petitioner, ad-interim relief granted by this Court on 6<sup>th</sup> March, 2017 to continue for a period of eight weeks from today. If any proceedings are filed by the petitioner before the Supreme Court, a copy thereof shall be served upon the contesting respondents in advance.

**(R.D. DHANUKA, J.)**