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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2046 OF 2017

The Navi Mumbai Co-Operative Bank Ltd.	...Petitioner
V/s.	
The Hon'ble Minister for Co-Operation, Maharashtra State & Ors.	...Respondents

Mr.Dilip Bodake for the Petitioner.

Mr.S.D. Rayrikar, A.G.P. for the State – Respondent Nos.1 and 2.

Mr.Subhradeep Banerjee i/b Mr.Rajesh Gaikwad for the Respondent No.3.

Mr.Srinivas Bobde i/b Mr.Deepak Jamsandekar for the Respondent No.4.

CORAM : R.D. DHANUKA, J.
DATE : 13TH MARCH, 2018.

P.C. :-

1. Heard the learned counsel appearing for the parties.
2. By this petition filed under Article 227 of the Constitution of India, the petition has impugned the order dated 7th July, 2016 passed by the learned Minister, Co-Operation, Maharashtra State allowing the revision application described in prayer clause (b) of the writ petition.
3. The respondent no.3 had borrowed certain amount from

the petitioner bank and had committed default. The proceedings under section 101 of the Maharashtra Co-Operative Societies Act, 1960 were initiated by the petitioner against the respondent no.3. The authority issued a recovery certificate in favour of the petitioner and against the respondent no.3. The said recovery certificate was not admittedly challenged by the respondent no.3. The property was thereafter auctioned by the concerned officer under the provisions of the Maharashtra Co-Operative Societies Act, 1960 as per rules. The auction sale of the property in question was also not challenged by the respondent no.3. The respondent no.3 however, filed a revision application before the learned Minister directly against the order dated 28th July, 2015 passed by the Divisional Joint Registrar, Co-operative Societies, Konkan Division.

4. By the impugned order, the learned Minister however, has allowed the revision application filed by the respondent no.3 and has set aside the order dated 28th July, 2015 passed by the Divisional Joint Registrar. This order of the learned Minister is impugned by the petitioner in this writ petition.

5. In my view, the revision application filed by the respondent no.3 itself was not maintainable before the learned Minister. The recovery certificate issued by the authority under section 101 of the Maharashtra Co-operative Societies Act read with Rules had attained

finality. The auction sale conducted by the Sale Officer in implementation of the recovery certificate issued by the authority also had attained finality. The revision application filed by the respondent no.3 was thus without jurisdiction. The impugned order thus passed by the learned Minister is set aside.

6. At this stage, the respondent no.4, who had purchased the property in question in auction, on instructions, states that his client has already deposited the entire amount as per the sale certificate with the petitioner. The petitioner however, has not handed over possession of the property in question to the respondent no.4. He states that his client thus has no interest in the said property and is ready and willing to execute re-conveyance in favour of the petitioner in respect of the property on the condition that the petitioner pays the entire amount paid by the respondent no.4 to the petitioner under the said auction confirmed by the concerned officer with interest. He also makes a request that the petitioner be directed to reimburse the payment of stamp duty and registration charges paid on the said transaction.

7. Mr.Bodake, learned counsel appearing for the petitioner on instructions states that the question of reimbursement of any stamp duty or the registration charges to the respondent no.4 would not arise. It is for the respondent no.4 to apply for possession of the

property. He however, on instructions states that the petitioner is ready and willing to pay the entire amount received from the respondent no.4 with interest payable on the fixed deposit on such deposit to the respondent no.4 in favour of the petitioner and the Recovery Officer. The learned counsel for the respondent no.4 on instructions, states that his client is ready and willing to execute the deed of re-conveyance in favour of the petitioner and the Recovery Officer. It is made clear that if any further stamp duty or registration charges are payable on execution of the deed of re-conveyance, the petitioner would not recover that amount from the respondent no.4 however, will be at liberty to recover from the sale proceeds of the flat.

8. Upon execution of such deed of re-conveyance in favour of the petitioner and the Recovery Officer, the sale transaction between the respondent no.4 and the Recovery Officer shall stand cancelled. The petitioner bank shall refund the amount to the respondent no.4 within two weeks from the date of execution of deed of re-conveyance with interest payable on the fixed deposit for such period for which the said amount remained with the petitioner bank at the rate at which the petitioner pays such interest on fixed deposit for such period.

9. Upon cancellation of such transaction, the petitioner bank

would be at liberty to auction the said property in question by following the procedure under Rule 107 of the Maharashtra Co-operative Societies Rules, 1961. It is made clear that upon completion of the auction sale, if the petitioner receives any amount in excess of the amount due and payable by the respondent no.3 under the recovery certificate with interest and after giving credit of the amount paid, if any, after issuance of such recovery certificate, the said surplus amount shall be returned to the respondent no.3 by the petitioner.

10. The petitioner bank is directed to furnish a statement of reconciliation of amount to the respondent no.3 after sale of the property in question, i.e. after recovery of the amount upon re-auction of the property in question and after adjusting the exiting dues of the respondent no.3 to be paid, within four weeks from the date of completion of the sale. The respondent no.3 would be at liberty to participate in the auction sale. After receipt of the amount, the respondent no.3 will have to hand over vacant possession of the property to the Recovery Officer within two weeks.

11. The writ petition is allowed in aforesaid terms. No order as to costs.

(R.D. DHANUKA, J.)