

SAS

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12590 OF 2017

Mohan Kashinath Gujarathi	..Petitioner.
V/s.	
The State Maharashtra & Ors.	..Respondents.

Mr.S.S.Kanetkar for the petitioner.

Mr.S.L.Babar, AGP for respondent Nos.1, 2 & 5.

Mr.Pramod S.Kumbhar I/b. Priyal Sardas for respondent Nos.3 & 4.

Mr.Vilas B.Tapkir for respondent No.6.

CORAM: NITIN W.SAMBRE, J.

DATE : JUNE 13, 2019

P.C.:-

Heard the respective parties.

2. The petitioner obtained a loan in the year 1991 from the respondent Co-operative Bank. Failure to repay the same has resulted into issuance of recovery certificate under section 101 of the Maharashtra Co-operative Societies Act, 1960 ('the Act' for short), which I am informed is not questioned till date by the

petitioner.

3. The petitioner mortgage his plot admeasuring 220 sq. ft. which was auctioned on January 16, 2007 and the sale was confirmed in favour of respondent No.1 in March 13, 2007. The sale deed came to be executed in August 6, 2007 in favour of respondent-auction purchaser against the auction amount, with an offset amount of Rs.91,000/-. The respondent-purchaser parted with the consideration of Rs.1,55,000/- which was already credited to the petitioner's savings bank account after adjusting the loan amount and auction purchaser was put in possession.

4. In the aforesaid backdrop, the petitioner has questioned the auction on the ground that the provisions of clause (e) of sub-rule (11) of Rule 107 of the Maharashtra Co-operative Societies Rules, 1961 was not complied with, as the auction notice was not served on the petitioner. A further submission is, the offset price was fixed in 2004 whereas the property was auctioned on January 1, 2007. In view of law laid down by the Apex Court in the case of *Ram Kishun and others V/s. State of Uttar Pradesh and others*¹, the auction which was without ascertaining the upto

¹ (2012) 11 Supreme Court Cases 511

date market value, should have been stayed. As such, according to him, since the petitioner has shown his *bona fides* by depositing amount of offset price of Rs.91,000/- and thereafter the differential amount. As such, the petitioner is entitled for retaining his property.

5. Learned counsel for the respondent No.1 while contravening the aforesaid submission, would urge that after the sale was confirmed in favour of respondent No.1 on March 13, 2007, on August 6, 2007 a registered sale deed was executed in his favour and he was put in possession of the property. He would further urge that the petitioner has neither permitted the Bank nor the auction purchaser to enjoy the property since he has enjoyed the loan since 1991, till the date of auction of the property. As such, prayed for dismissal of the petition.

6. At the outset, this Court is required to take judicial note of the fact that the petitioner has not disputed the liability to repay the amount, having not questioned till date the recovery certificate under section 101 of the Act.

7. In the aforesaid backdrop, if the conduct of the petitioner is appreciated, particularly his contention which he has

raised after the sale was confirmed on March 13, 2007 and the sale deed was executed on August 6, 2007 an inference requires to be drawn that he has intention to enjoy the property without questioning his liability to repay the loan amount pursuant to the recovery certificate.

8. The petitioner so as to substantiate his case relied upon certain non compliances of the Rules which, in my opinion, will be of hardly any assistance to the petitioner in the case in hand, particularly when no such objections are raised at the time of auction sale, as the auction sale is confirmed and the title stood vested in the auction purchaser.

9. The property in question is 220 sq. ft. of land and it is informed that the structure thereon is already demolished.

10. In the aforesaid backdrop, when the recovery certificate was never questioned by the petitioner, his liability to repay the loan amount before attaching his property appears to be just and proper. That being so, no case for any interference under the extra-ordinary jurisdiction is called for.

11. The petitioner though has relied upon the judgment of the Apex Court in *Ram Kishun and others (supra)*, the law by the

said judgment was laid down in the year 2012 whereas the sale auction in question was confirmed in favour of respondent No.1 way back in 2007. That being so, the said authority will be of hardly any assistance to the petitioner.

11. The petition fails and accordingly stands dismissed.

12. At this stage, learned counsel for the petitioner submits that the amount which is deposited by the petitioner with the authorities so as to show his *bona fides* be permitted to be withdrawn with interest, if any, accrued thereon in view of the dismissal of the petition. Since no objection is raised to the aforesaid prayer, the petitioner is permitted to withdraw the said amount.

(NITIN W.SAMBRE, J.)