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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.263 OF 2016

Hanumant Pandurang Deshmukh	)
Age. 41 years, Occ. Agriculturist	)
Residing at Ambawade, Tal. Khatau,	)
Dist. Satara.	) ...Petitioner

Versus

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| 1. | Vithal Maruti Bhosale |) |
| | Age Adult, |) |
| | Residing at Ambawade, |) |
| | Tal. Khatau, Dist. Satara. |) |
| 2. | Sanjivani Nagari Sahakari |) |
| | Patsanstha, Satara Branch. |) |
| 3. | B.J. Deshmukh, |) |
| | The Special Recovery Officer, |) |
| | Satara Zilha Sahakari Patsanstha |) |
| | Federation. |) |
| 4. | District Deputy Registrar, |) |
| | For Co-operative Societies, Satara. |) |
| 5. | The Divisional Joint Registrar |) |
| | Co-operative Societies, Kolhapur |) |
| | At Udyog Bhavan, Assembly Road |) |
| | Kolhapur 416 003. |) ...Respondents |

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WITH

WRIT PETITION NO.2940 OF 2018

Hanumant Pandurang Deshmukh	)
Age. 41 years, Occ. Agriculturist	)
Residing at Ambawade,	)
Tal. Khatau, Dist. Satara.	) ...Petitioner

Versus

1. Vithal Maruti Bhosale)
Age Adult,)
Residing at Ambawade,)
Tal. Khatau, Dist. Satara.)
2. Sanjivani Nagari Sahakari)
Patsanstha, Satara Branch.)
Chitali, Tal. Khatau, Dist. Satara.)
3. B.J. Deshmukh,)
The Special Recovery Officer,)
Satara Zilha Sahakari Patsanstha)
Federation, At. Satara,)
Dist. Satara.)
4. District Deputy Registrar)
For Co-operative Societies, Satara.)
5. The Divisional Joint Registrar)
Co-operative Societies, Kolhapur)
At Udyog Bhavan, Assembly Road)
Kolhapur 416 003.) ...Respondents

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WITH
WRIT PETITION NO.5711 OF 2017

1. Sanjivani Nagari Sahakari)
Patsanstha, Satara Branch.)
2. B.J. Deshmukh,)
The Special Recovery Officer,)
Satara Zilha Sahakari Patsanstha)
Federation.)...Petitioners

Versus

1. Vithal Maruti Bhosale)
Age Adult,)
Residing at Ambawade,)
Tal. Khatau, Dist. Satara.)
2. Hanumant Pandurang Deshmukh)
Age. 41 years, Occ. Agriculturist)
Residing at Ambawade,)

- Tal. Khatau, Dist. Satara.)
3. District Deputy Registrar)
For Co-operative Societies, Satara.)
4. The Divisional Joint Registrar)
Co-operative Societies, Kolhapur)
At Udyog Bhavan, Assembly Road)
Kolhapur 416 003.) ...Respondents

.....
WITH
WRIT PETITION NO.12653 OF 2017

1. Sanjivani Nagari Sahakari)
Patsanstha, Satara Branch.)
2. B.J. Deshmukh,)
The Special Recovery Officer,)
Satara Zilha Sahakari Patsanstha)
Federation.) ...Petitioners

Versus

1. Vithal Maruti Bhosale)
Age Adult,)
Residing at Ambawade,)
Tal. Khatau, Dist. Satara.)
2. Hanumant Pandurang Deshmukh)
Age. 41 years, Occ. Agriculturist)
Residing at Ambawade,)
Tal. Khatau, Dist. Satara.)
3. District Deputy Registrar)
For Co-operative Societies, Satara.)
4. The Divisional Joint Registrar)
Co-operative Societies, Kolhapur)
At Udyog Bhavan, Assembly Road)
Kolhapur 416 003.) ...Respondents

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Appearances

Mr. A.J. Kenjale a/w Mr. Kaustubh Kandpile, Advocate for Petitioner in W.P. No.263 of 2016 and W.P. No.2940 of 2018 and for Respondent No.2 in W.P. No.5711 of 2017 and W.P. No.12653 of 2017.

Mr. P.S. Gole, Advocate for Petitioners in W.P. No.5711 of 2017 and W.P. No.12653 of 2017 and for Respondent Nos.2 and 3 in W.P. No.263 of 2016 and W.P. No. 2940 of 2018.

Mr. M.S. Athalye, Advocate for Respondent No.1 in W.P. No. 263 of 2016, W.P.No.2940 of 2018, W.P.No.5711 of 2017 and W.P. No. 12653 of 2017.

Mr. P.P. Pujari, A.G.P. for Respondent Nos. 4 & 5 in W.P. No.5711 of 2017.

Mr. N.C. Walimble, A.G.P. for Respondent Nos. 4 and 5 - in W.P. No.263 of 2016.

Mr. Y.D. Patil, A.G.P. for Respondent Nos. 4 & 5 in W.P. No.12653 of 2017.

Ms. M.S. Bane, A.G.P. for Respondent Nos. 4 & 5 in W.P. No.2940 of 2018.

CORAM : MILIND N. JADHAV, J.
RESERVED ON : 25th February, 2020.
PRONOUNCED ON : 12th August, 2020.

JUDGMENT:

1. Rule. Rule made returnable forthwith. Heard finally with consent of the parties.

2. This common judgement shall dispose of Writ Petition No. 263 of 2016, Writ Petition No. 2940 of 2018,

Writ Petition No.5711 of 2017 and Writ Petition No. 12653 of 2017. Writ Petition No. 263 of 2016 has been filed under Articles 226 and 227 of the Constitution of India to challenge the legality, validity and propriety of the order dated 16.12.2015 passed by respondent No.5 i.e. Divisional Joint Registrar, Co-operative Societies, Kolhapur Division, Kolhapur in Revision proceedings under the provisions of Section 154 of the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as 'the said Act'). By the impugned judgment, respondent No.5, has allowed Revision Application No.75 of 2015 filed by respondent No.1 and has set aside the public auction dated 03.05.2014 and Sale Certificate dated 29.06.2015 granted in favour of the petitioner subject to payment of the entire dues of the respondent No.2 Society by the respondent No.1 within a period of one month from the date of the order. The petitioner is the successful auction purchaser in whose favour the sale confirmation / certificate has been issued. Writ Petition No. 263 of 2016 has been filed for the following reliefs :-

a) This Hon'ble Court by issue appropriate writ and or directions to call for the records and proceedings of the Revision application No.75 of 2015 and after perusing its legality, validity and propriety, be pleased to quash and set aside Impugned Judgment and Order dated 16.12.2015 passed by the Divisional Joint Registrar, co-operative Societies, Kolhapur Division, Kolhapur in Revision application No. 75 of 2015;

b) Pending hearing and final disposal of the present writ petition, this Hon'ble Court be pleased to stay the effect and implementation of Impugned Judgment and Order dated 16.12.2015 passed by the Divisional Joint Registrar, co-operative Societies, Kolhapur Division, Kolhapur in Revision application No. 75 of 2015;

c) Ad-interim and interim reliefs in terms of prayer clause (b) above be granted;"

2.1 Writ petition No.263 of 2016 has been filed by the successful auction purchaser, *inter alia*, challenging the common order dated 16.12.2015 passed by the Divisional Joint Registrar, Co-operative Societies, Kolhapur Division, Kolhapur in Revision Application No.75 of 2015.

2.2. Writ Petition No.2940 of 2018 has also been filed by the successful auction purchaser, *inter alia*, challenging the common order dated 16.12.2015 passed by the Divisional Joint Registrar, Co-operative Societies, Kolhapur Division, Kolhapur in Revision Application No.216 of 2015.

2.3 Writ Petition No.5711 of 2017 has been filed by Sanjivani Nagari Sahakari Patsanstha, Satara Branch through the Special Recovery Officer, Satara Zilha Sahakari Patsanstha Federation, *inter alia*, challenging the common order dated 16.12.2015 passed by Divisional Joint Registrar, Co-operative Societies, Kolhapur Divison, Kolhapur in Revision Application No.216 of 2015.

2.4. Writ Petition No.12653 of 2017 has been filed by Sanjivani Nagari Sahakari Patsanstha, Satara Branch through the Special Recovery Officer, Satara Zilha Sahakari Patsanstha Federation, *inter alia* challenging the order dated 16.12.2015 passed by Divisional Joint Registrar, Co-operative Societies, Kolhapur Divison, Kolhapur in Revision Application No.75 of 2015.

3. For the sake of convenience, the parties have chosen to argue W.P.No. 263 of 2016 as the facts in all the four petitions are identical.

4. The brief facts relevant for the purpose of deciding the *lis* between the parties are as under :

(A) Respondent No.2 Society granted loan of Rs.5,80,000.00 to respondent No.1. Respondent No.1 failed to repay the loan amount and was declared as defaulter. Respondent No.2 Society filed recovery proceedings against respondent No.1. After following the due process of law, the Registrar issued recovery certificate dated 03.02.2009 under the provisions of Section 101.

(B) Since respondent No.1 failed to repay the loan, respondent No.2 Society proceeded with attachment of the mortgaged properties belonging to respondent No.1. Attachment order dated 11.05.2010 was issued by respondent No.3 and by further order dated 20.09.2010 property belonging to respondent No.1 was attached.

(C) Respondent No.3 proceeded to obtain permission for sale of the attached property by fixing the upset price by order dated 28.03.2014.

(D) On 01.04.2014 respondent No.3 on his third attempt issued proclamation of sale notice by affixing the

same in his office which stated that the auction of the attached properties would take place on 03.05.2014. The copy of proclamation was also affixed in the office of the Registrar which is the Taluka office.

(E) After issuing the above proclamation notice in Form No.12, respondent Nos.2 and 3 issued public notice in the local newspaper "Dainik Pudhari" on 27.04.2014 publishing the advertisement of sale / auction.

(F) Petitioner along with three other bidders participated in the auction proceedings. Petitioner's bid was in excess of the upset price fixed for the attached properties and petitioner was declared as the successful bidder. Petitioner thereafter deposited the entire auction price within the stipulated time prescribed under the Maharashtra Co-operative Societies Rules with respondent No.2 Society.

(G) On 03.05.2014 respondent No.3 addressed a letter giving a final opportunity to respondent No.1 to

deposit 5% of the total outstanding loan amount due within 30 days and further informing respondent No.1 that in the event of failure, proposal of the successful bidder would be sent to the District Deputy Registrar i.e. respondent No.4 for confirmation.

(H) Respondent No.1 did not avail of this opportunity and did not deposit any amount. After a period of more than 9 months, on 24.02.2015 respondent No.1 filed Revision Application No.75 of 2015 without impleading the petitioner in the revision proceedings and sought cancellation of the auction proceedings / sale and injunction from taking over possession of the auctioned properties.

(I) By order dated 29.06.2015 respondent No.4 confirmed the sale and issued Sale Confirmation Certificate in terms of provisions of Rule 107 (14) (3).

(J) Respondent No.5 by the common impugned order dated 16.12.2015 set aside the auction dated

03.05.2014 and sale certificate dated 29.06.2015, *inter alia*, on the ground of breach of Rule 107 (11) (e) of the Maharashtra Co-operative Societies Rules.

(K) Hence the present petition.

5. Mr. Kenjale learned counsel appearing on behalf of the petitioner in writ petition No.263 of 2016 and writ petition No.2940 of 2018 submitted that the impugned order is not sustainable in as much as it sets aside the confirmation of sale in favour of the petitioner without the petitioner being impleaded in the revision proceedings. Notwithstanding this fact, he submitted that even on merits and under the provisions of the said Act, respondent No.4 could not have entertained the Revision Application bearing No.75 of 2015 and Revision Application No.216 of 2015 as the two applications had not been filed against any order passed under the provisions of Rule 107 (14) (1). He submitted that if respondent No.1 was aggrieved by the confirmation of sale in favour of petitioner, it was incumbent upon the said respondent to

file revision proceedings under Rule 107 (14) within 30 days from the date of auction. However, in the instant case, no such application for revision was ever filed by respondent No.1 under Rule 107 (14) (1) and as such respondent No.1 did not avail the statutory remedy available to him under the above provisions in accordance with law. He submitted that the ground stated in the impugned order that there was non-compliance of Rule 107 (11) (e) in respect of giving notice of publication of auction is also not sustainable.

6. Mr. Kenjale submitted that proclamation of sale of the subject property was declared on 01.04.2014 and on the same date the proclamation was affixed in the office of the Recovery Officer and Taluka office, which was well before 30 days from the date of auction i.e. 03.05.2014. He submitted that as a matter of abundant caution, respondent No.2 published the newspaper advertisement subsequently in order to give wide publicity to the auction and garner a free and fair purchase price / bid for the auctioned property. He submitted that the impugned order

merely considers the date of publication in the newspaper as the starting point and on that ground itself concludes that there was non-compliance of the provisions of Rule 107 (11) (e). He submitted that Rule 107(11)(e) stipulates that proclamation of sale shall be published by affixing the notice in the office of the Recovery Officer and Taluka office at least 30 days from the date fixed for the sale and this was effectively done and complied with in the present case. He submitted that respondent No.1 miserably failed to avail the statutory remedy available to him for setting aside the sale on the ground of material irregularity, mistake or fraud, if any, as available under Rule 107 (14) (1) in the present case. He submitted that there is no case made out that respondent No.1 was unaware about the sale of the auctioned property. He submitted that the procedure prescribed under Rule 107 was duly followed by the Competent Authority and thus there was no reason for respondent No.4 to entertain the alleged revision application filed by respondent No.1. He submitted that both the revision applications as filed by respondent No.1 were not maintainable. He submitted that as against the

upset price of Rs.9,93,718.00, the petitioner had deposited a total a sum of Rs.11,80,000.00 and as such there was no material irregularity as contemplated by the provisions.

7. In support of his submissions Mr. Kenjale has relied upon the following judgments :-

(i) *Manager, Adarsh Mahila Nagri Sahakari Bank Ltd., & Anr. Vs. State of Maharashtra & Ors, reported in 2012 (2) Bom.C.R. 163;*

(ii) *Pundalik Ganapati Alias Bahirji Ingale Vs. The District Deputy Registrar, Co-operative Societies in Writ Petition No.9027 of 2013 (unreported);*

(iii) *Palus Sahakari Bank Ltd. and Anr. Vs. Sunil Shamrao Salunkhe and ors., reported in 2018 (5) Mh.L.J. 279.*

8. Mr. P. S. Gole, learned counsel appearing for respondent Nos.2 and 3 has at the outset supported and adopted the submissions advanced by Mr. Kenjale in toto. He has further submitted that if the dates and events of the present case are perused by the Court, it would be established beyond reasonable doubt that no *mala fide* whatsoever, irregularity, mistake or fraud could be established, much less seen in the conduct of the

petitioner and the respondent No.2. He submitted that respondent No.2 has also challenged the common order dated 16.12.2015 in Writ Petition No. 5711 of 2017 and Writ Petition No.12653 of 2017 on similar grounds. He submitted that just as the petitioner was not impleaded by the respondent No.1 in revision proceedings before respondent No.5, similarly respondent No.2 Society was also not impleaded and kept in the dark. He submitted that revision proceedings against the conduct of auction process and the order of confirmation of sale are both different issues and independent of each other. He submitted that it was settled position in law that the revision Court could not have entered into the aspect of any error, material irregularity, mistake or fraud in publishing and conducting auction as done in the present case and as such the revision proceedings against the conduct of auction or confirmation of sale in the present case were not maintainable. He forcefully submitted that there was no order or decision available to the respondent No.1 for challenge by filing revision under Section 154 of the said Act and therefore the two alleged revision

proceedings taken out by respondent No.1 were nothing but an abuse of the due process of law. He submitted that the mandatory provisions of the said Act read with Rules were duly followed by the Recovery Officer in as much as intimation to the respondent No.1 in respect of the auction proceedings as well as his statutory right to challenge the auction proceedings within 30 days was duly informed. He submitted that for the above reasons the impugned order deserved to be quashed and set aside.

9. PER CONTRA, Mr. M.S. Athalye, learned counsel appearing for respondent No.1 has supported the impugned order and advanced submissions in support of the impugned order. He, however, fairly submitted that the substantive facts with respect to obtaining loan from respondent No.2 Society and the recovery proceedings were not in dispute. He submitted that in accordance with the legal procedure, respondent No.1 had executed a registered mortgage deed dated 09.04.2007 in favour of respondent No.2 Society as security for the loan advanced in respect of the undivided share of respondent No.1 in

block nos.1407A and 1408A situated at village Ambawade, Tal. Khatau, Dist. Satara. He submitted that since the share of respondent No.1 in the larger property belonging to the joint family was not crystalised, the proclamation of sale did not clarify that the share of respondent No.1 in the larger property was undivided in nature. In view thereof, the proclamation was silent on the applicability of the Maharashtra Prevention of Fragmentation and Consolidation of Holding Act, 1947 to the auction sale.

10. Mr. Athalye submitted that there was breach of provisions of Rules 107 (d-1), 107 (11) (e) and 107 (11) (f) in the present case. He submitted that the auction proceedings could not have taken place in view of the fact that, the share of respondent No.1 was not crystalised and remained undivided in the larger property belonging to the joint family. He submitted that before confirmation of auction sale, the son of respondent No.1 had filed Regular Civil Suit No.288 of 2014 in the Court Civil Judge, Senior Division Vaduj, at Vaduj, District Satara seeking partition of joint hindu family properties by metes and bounds. He

submitted that the learned Trial court had granted interim injunction on 20.08.2014 against creation of third party rights and therefore respondent Nos.3 and 4 having been informed of the same should have taken cognizance of the same. He submitted that serious attempts were made by the respondent No. 1 in the year 2014 in the first instance, to compromise and settle repayment of the borrowed amount from respondent No.2. He submitted that in the year 2014, respondent No.1 had issued two cheques bearing nos.822302 and 822303 drawn on Satara District Central Co-operative Bank Ltd., Market Yard Branch, Satara both dated 14.11.2014 to show his bonafides. He submitted that respondent Nos.2 and 3 however did not acknowledge the conduct of respondent No.1 and issued sale confirmation application on 19.11.2014 against which respondent No. 1 preferred revision application No.75 of 2015. He submitted that respondent No.1 was ready and willing to deposit the entire amount due to the respondent No.2 Society at all times. He submitted that there was suppression on the part of respondent No.3 who has conveniently concealed the status of holding of property

by respondent No.1 of the subject property at the time of auction and issuance of Sale Confirmation Certificate in favour of the petitioner. He submitted that the act of respondent No.3 Recovery Officer to sell the undivided share of respondent No.1 in the absence of partition by metes and bounds was clearly illegal and amounted to forcibly partition of the HUF properties. He submitted that respondent No.1 was in possession of the subject properties and even today he was ready and willing to pay the entire amount to respondent No.2. He submitted that the provisions of the said Act and Rules did not empower the auction purchaser to insist upon completion of sale of the auctioned properties, if it was possible to refund the entire price paid by the auction purchaser. He submitted that in compliance of the impugned order, respondent No.1 was willing to effect payment of the entire dues to the respondent No.2 Society and thus there was no prejudice caused to the petitioner and or the respondent No.2. He submitted that there were discrepancies and anomalies in the attachment order dated 20.09.2010 and proclamation of sale in as much as the attachment order was issued in

respect of six properties whereas the proclamation of sale was in respect of nine properties. He however fairly submitted that respondent No.1 was concerned with his undivided share in two properties only, viz; block nos.1407A and 1408A. He submitted that the petitioner who was the auction purchaser had no locus to challenge the impugned order as the provisions of Rule 107 (14) (iv) direct refund of the price paid by the auction purchaser and in the present case respondent No.1 had shown his readiness and willingness to pay the same. He submitted that serious prejudice would be caused to respondent No.1 and the civil suit instituted by respondent No.1's son would be rendered completely infructuous, especially when respondent No.1 was offering to settle the entire amount of loan as well as interest with respondent No.2 Society. Mr.Athalye has painstakingly argued and drawn my attention to the detailed affidavit dated 14.09.2016 filed by respondent No.1 with respect to his submissions in support of the impugned order.

Mr.Athalye, in support of his submissions has extensively referred to and relied upon the interpretation

of the provisions of Rule 107 in Chapter XII of the MCS, Rules.

11. Mr. N.C. Walimbe, learned A.G.P. invited my attention to the affidavit-in-reply dated 30.07.2018 filed by the Assistant Registrar, Co-operative Societies, Vaduj on behalf of respondent No.5. He has relied upon the submissions made by the learned counsel appearing for the respondent No.1 and has supported the impugned order.

12. I have considered the pleadings and submissions advanced by the respective parties.

13. At the outset, it would be apposite to state the provisions of the said Act and Rules which are relevant and applicable in the facts and circumstances of the present case in order to examine respondent No.1's challenge by filing revision application under the provisions of Rule 107. Sub-rules 12, 13 and 14 of Rule 107 read thus :-

“(12) Where prior to the date fixed for

a sale, the defaulter or any person acting on his behalf or any person claiming an interest in the property sought to be sold tenders payment of the full amount due together with interest, batta and other expenses incurred in bringing the property to sale, including the expenses of attachment, if any, the Sale Officer shall forthwith release the property after cancelling, where the property has been attached, the order of attachment.

(13) (i) Where immovable property has been sold by the Sale Officer, any person either owning such property or holding any interest therein by virtue of a title acquired before such sale may apply to have the sale set aside on his depositing with the Recovery Officer :-

(a) for payment to the purchaser a sum equal to 5 per cent of the purchase money; and

(b) for payment to the applicant, the amount of arrears specified in the proclamation of sale as that for the recovery of which the sale was order together with interest thereon and the expenses of attachment, if any, and sale and other costs due in respect of such amount, less amount which may since the date of such proclamation have been received by the applicant.

(ii) If such deposit and application are made within thirty days from the date of sale, the Recovery Officer shall pass an order setting aside the sale and shall repay to the purchaser, the purchase money so far as it has been deposited, together with the 5 per cent deposited by the applicant :

Provided that if more persons than

one have made deposit and application under this sub rule, the application of the first depositor to the officer authorised to set aside the sale, shall be accepted.

(iii) If a person applies under sub-rule (14) to set aside the sale of immovable property, he shall not be entitled to make an application under this sub-rule.

(14) (i) At any time within thirty days from the date of the sale of immovable property, the applicant or any person entitled to share in a rateable distribution of the assets or whose interests are affected by the sale, may apply to the Recovery Officer to set aside the sale on the ground of a material irregularity or mistake or fraud in publishing or conducting it: Provided that no sale shall be set aside on the ground of irregularity or fraud unless the Recovery Officer is satisfied that the applicant has sustained substantial injury by reason of such irregularity, mistake or fraud.

(ii) If the application be allowed, the Recovery shall set aside the sale and may direct a fresh one.

(iii) On the expiration of thirty days from the date of sale, if no application to have the sale set aside is made or if such application has been made and rejected, the Recovery Officer shall make an order confirming the sale: Provided that if he shall have reason to believe that the sale ought to be set aside notwithstanding that no such application has been made or on grounds other than those alleged in any application which has been made and rejected, he may, after recording his reasons to writing, set aside the sale.

(iv) Whenever the sale of any immovable

property is not so confirmed or is set aside, the deposit or the purchase money, as the case may be, shall be returned to the purchaser.

(v) After the confirmation of any such sale, the Recovery Officer shall grant a certificate of sale bearing his seal and signature to the purchaser, and such certificate shall state the property sold and the name of the purchaser."

14. On a conjoint reading of the above provisions, it is crystal clear that, respondent No.1 had an adequate opportunity, pursuant to the auction sale to challenge the same by filing an appropriate application under sub-rule 14(1) before the Recovery Officer (i.e. respondent No.3) on the ground of material irregularity, mistake or fraud in the publication of the notice of auction sale and / or in the conduct of the auction sale. It was open for respondent No.1 to plead and prove that due to such material irregularity, mistake or fraud, he had sustained substantial injury and on doing so the Recovery Officer, if satisfied and convinced, would have set aside the sale. It is pertinent to note that, such an application under sub-rule 14 (1) can be filed within 30 days from the date of auction. In the present case, admittedly respondent No.1 did not take any

such steps at all and instead filed a revision application to challenge the auction sale and the sale deed much after the 30 day limitation period was over. Therefore, the fundamental question that arises in the present case requiring adjudication is:

“Qs. Whether such revision application filed by respondent No.1 to challenge the proclamation of sale and sale confirmation deed was maintainable and whether even at that time alternate remedy under sub-rule 14 was available to the respondent No.1.”

15. The provisions of Section 154 of the said Act i.e. is revisionary powers of the State Government and Registrar are therefore required to be considered. Section 154 reads thus :-

“154. Revisionary powers of State Government and Registrar

(1) The State Government or the Registrar, suo motu or on an application, may call for and examine the record of any inquiry or proceedings of any matter, other than those referred to in sub section (9) of section 149, where any decision or order has been passed by any subordinate officer, and no appeal lies against such decision or order for the purpose of satisfying themselves as to the legality or propriety of any such decision or order,

and as to the regularity of such proceedings. If in any case, it appears to the State Government, or the Registrar, that any decision or order so called for should be modified, annulled or reversed, the State Government or the Registrar, as the case may be, may, after giving the person affected thereby an opportunity of being heard, pass such orders thereon as to it or him may seem just.

(2) Under this section, the revision shall lie to the State Government if the decision or order is passed by the Registrar, the Additional Registrar or a Joint Registrar, and to the Registrar if passed by any other officer. (2A) No application for revision shall be entertained against the recovery certificate issued by the Registrar under section 101 unless the applicant deposits with the concerned society, fifty per cent, amount of the total amount of recoverable dues.

(3) No application for revision shall be entertained, if made after two months of the date of communication of the decision or order. The revisional authority may entertain any such application made after such period, if the applicant satisfies it that he had sufficient cause for not making the application within such period.

(4) The State Government may, by order, direct that the powers conferred on it by this section shall, in such circumstances and under such conditions, if any, as may be specified in the direction, be exercised also by an officer of the rank of Secretary to Government."

16. Section 154 states that revision is possible either *suo moto* and / or on an application in respect of only an order passed in an enquiry or proceeding by a subordinate officer of the revisional authority. In the

present case, respondent No.1 did not avail the opportunity available under sub-rule 13 as also did not avail the remedy available under sub-rule 14. It is trite to note that confirmation of sale order is not an expression of opinion by a judicial or *quasi* judicial authority after hearing the parties and after recording reasons for the same. Before such an order is passed a judicial or *quasi* judicial authority hears submissions made by rival parties and applies his mind to the facts and law and then it comes to a conclusion forming an opinion as to what ultimate action is required to be taken in the case. Therefore the order confirming the sale cannot be said to be an order contemplated under Section 154. In the present proceedings respondent No.3 Recovery Officer was appointed as per the provisions of Rule 2 (h) of the Rules. Once a person is appointed as Recovery Officer, he becomes the representative of the Registrar having all the powers to do whatever is required to be done under the Rules. Under sub-rule 14 (v) the Recovery Officer is empowered to confirm the same. Besides the revisional authority ought to have taken into account the provisions

of sub-rule 14 which provides an elaborate procedure giving opportunity to the Recovery Officer to examine as to whether the respondent No.1 was subjected to fraud while conducting the proceeding for auction sale. The question would still arise as to what remedy respondent No.1 availed out of the remedies available to him in law. There was ample opportunity available to the respondent No.1 to challenge the legality of the sale before the Recovery Officer. Instead, an untenable revision application was filed by respondent No.1 before respondent No.2 (Divisional Joint Registrar) to challenge the sale confirmation order. Admittedly respondent No.1 did not file an appropriate application as contemplated sub-rule 14 (1) so as to empower the Recovery Officer to complete the enquiry and pass the reasoned order. If a reasoned order is passed by the Recovery Officer on conducting the enquiry contemplated under sub-rule 14 (1), such order could be challenged in revision proceedings under Section 154. Unfortunately, the important provision of sub-rule 14 is completely ignored by respondent No.1 in the present case. As held by this Court in the case of *Pundalik Ganpati*

Alias Bahirji Ingale (supra) in terms of the provisions of Rules 107 (13) and 107 (14) which are applicable, revision cannot be said to be maintainable as the revisionary jurisdiction cannot be invoked at the first instance against an auction sale or sale certificate without approaching the first authority which is mentioned in rule 107 (13) or rule 107 (14) of the said Rules. In terms of the provisions of the said act and rules framed thereunder, the regime which is applicable for challenging an auction sale notice and the auction is by way of Rules 107 (13) and 107 (14). The said rules contemplate the pre-deposit to be made, which find a place in Sub-Rule 13 of the said rules. The said rules also mention the person / persons who can take exception to an attachment or an auction sale and the time limit prescribed for invoking the said rules. The respondent No.1 admittedly has done nothing in as much as he has not invoked the said rules which are the statutory provisions and remedy available to him for challenging the notice of attachment and the auction sale, but has conveniently and by a very clever method, sought to file the revision application directly for setting aside the

auction sale and the sale certificate. In view of the aforesaid, in my view, the revision application bearing No.75 of 2015 itself as filed by respondent No.1 was not maintainable in terms of rules 107 (13) and 107 (14). Therefore, the petition has to succeed and the impugned common order dated 16.12.2015 deserves to be quashed and set aside. Similarly, on the above mentioned reasons, revision application bearing No.216 of 2016 filed by respondent No.1 was also not maintainable in terms of rules 107 (13) and 107 (14).

17. In view of the above, the following order is passed.

(A) Writ petition No.263 of 2016, writ petition No.2940 of 2018, writ petition No.5711 of 2017 and writ petition 12653 of 2017 are allowed. Rule is made absolute.

(B) The common judgment and order dated 16.12.2015 passed by respondent No.5 Divisional Joint Registrar, Co-operative Societies, Kolhapur Division, Kolhapur in Revision Application No.75 of 2015 and

Revision Application No.216 of 2016 is quashed and set aside.

(c) Parties to bear their own costs.

[MILIND N. JADHAV, J.]