Santosh

# IN THE HIGH COURT OF JUDICATURE AT BOMBAY
## CIVIL APPELLATE JURISDICTION
## WRIT PETITION NO. 535 OF 2015

Sachin Tailors and Cloth Merchant ...Petitioner

**Versus**

The State of Maharashtra & ors. ...Respondents

Mr. S. S. Kanetkar, for the Petitioner.
Ms. M. S. Bane, AGP for the State/Respondent nos.1 and 2.
Mr. Rahul Shinde, i/b Mr. Sanjay Kshirsagar, for Respondent nos.3 and 4.

**CORAM: N. J. JAMADAR, J.**
**DATED : 9th MARCH, 2020**

**<u>Oral Order :-</u>**

**1.** Heard the learned Counsels for the parties.

**2.** The challenge in this petition is to an order passed by the Divisional Joint Registrar, Co-operative Societies, Pune, in Revision Application No.291 of 2008, whereby the revision preferred by the petitioner herein came to be dismissed.

**3.** In Revision Application No.291 of 2008, the petitioner had challenged the communication issued by the Special Recovery Officer dated 7th August, 2008, whereby the petitioner was informed that a sum of Rs.4.10 lakh, which was recovered pursuant to the sale of the property of the petitioner in execution of the recovery certificate, was credited to the loan account of the petitioner and as of 6th August, 2008, a sum of

Rs.1,45,310/- alongwith further interest, surcharge etc. was due and the petitioner was called upon to pay the said amount.

**4.** The petitioner had availed a loan of Rs.3,00,000/- from respondent no.4 – Bank for business purpose. The petitioner could not repay the loan amount regularly as his business suffered a slow down. Respondent no.4 – Bank obtained a recovery certificate for a sum of Rs.3,30,289/- under an order dated 23rd December, 2003. The recovery certificate was put to execution. The shop premises of the petitioner situated at Survey No.33/2, Plot no.24, Tipare Nagar, Pune-32, came to be attached. A notice for public auction of the said shop premises for the recovery of the amount due under the recovery certificate came to be issued on 11th April, 2007. The auction was conducted. The property was sold for the highest bid of Rs.4,10,000/- to respondent no.5 though the property was worth Rs.10,00,000/-. Eventually, respondent no.3 addressed communication dated 7th August, 2008 demanding a further payment of Rs.1,45,360/-, after adjusting the sale proceeds towards the outstanding loan amount. The petitioner assailed the same communication before the Divisional Joint Registrar in the Revision Application No.291 of 2008, which came to be dismissed by the impugned order.

**5.** Heard Mr. Kanetkar, the learned Counsel for the petitioner. An endeavour was made to show that the auction sale was conducted in breach of the mandatory provision of 30 days clear notice. There were other infirmities in the auction as the real market price of the property could not be obtained, on account of the haste in which the sale was conducted by the recovery officer. The petitioner had in fact shown willingness to deposit a sum of Rs.4,50,000/- to obviate the sale. The proposal of the petitioner was not considered and ultimately the impugned communication dated 7th August, 2008 came to be issued.

**6.** The submissions on behalf of the petitioner do not merit consideration as the petitioner had exhausted his remedies by challenging the orders passed in the recovery proceedings as well as in the execution of the recovery certificate. The communication dated 7th August, 2008 itself records that three revision applications, namely, 2002 of 2005, 189 of 2007 and 384 of 2007 came to be disposed of by the revisional authority on 22nd July, 2008. The property of the petitioner which was initially taken over by respondent no.2 on 1st August, 2008. The communication dated 7th August, 2008 is in the nature of an intimation to the petitioner that after adjusting the sale proceeds of Rs.4,10,000/-, the petitioner still owed a sum of

Rs.1,45,360/- to the respondent Bank. It was in the nature of demand of balance outstanding amount. This could not have furnished a fresh cause of action of the petitioner to reopen the issue of recovery certificate and execution thereof, against which the petitioner had exhausted the remedies available in law.

**7.** In the circumstances, if at all, the petitioner is aggrieved by the communication of demand of the sum of Rs.1,45,360/- and the interest and surcharge etc. thereon, the petitioner can agitate the same before the authorities, if permissible in law. No interference is warranted in exercise of the writ jurisdiction.

**8.** Hence, the petition stands dismissed with liberty to the petitioner to avail the remedies as may be permissible in law to contest the liability to pay the sum of Rs.1,45,360/- and the interest and surcharge etc. as claimed in the communication dated 7th August, 2008.

**9.** The petition stands disposed of in aforesaid terms.

**[N. J. JAMADAR, J.]**