IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8240 OF 2019

Shri Laxmi Nagri Sahakari Patsanstha Maryadit
Dhule, Malegaon Road, Dhule,
Tq. & Dist. Dhule,
Through its Manager. PETITIONER
(Orig. Resp. No. 1)

VERSUS

1. Shri Manohar Shaligram Khandelwal
Age- Major, Occ- Business,
R/o. Kulwal Sadan, 2784/85 Galli No 4,
In front of Marimata Mandir, Dhule,
Tq. & Dist. Dhule.

2. Deputy Registrar, Co-operative Societies,
Dhule, Tq & Dist. Dhule.

3. Shri. K.R. Ratnale
Deputy Registrar Co-operative Societies,
Dhule Tq. & Dist. Dhule.

4. Khandelwal Kirana Merchant,
Charni Road, Dhule,
Tq. & Dist. Dhule.
Through its Proprietor
Mr. Ghanshyam Shankarlal Khandelwal

5. Kiran Sitaram Khandelwal (Dead)

6. Shri. Jagdish Rameshwar Khandelwal
Age- Major, Occ- Business,
R/o. 4747, Keshwar Bungalow,
Malegaon Road, Dhule,
Tq. & Dist. Dhule.

7. Shri. Sanjay Rameshwar Khandelwal
Age- Major, Occ- Business,
R/o. 4747, Keshwar Bungalow,

Malegaon Road, Dhule,
Tq. & Dist. Dhule.

8. Kesar Trading Company
R/o. 4747, Keshwar Bungalow,
Malegaon Road, Dhule,
Tq. & Dist. Dhule.
Through its Proprietor
Shri. Rajendra Shankarlal Khandelwal

9. Shaligram Gangaram Khandelwal
Proprietor Murari Shaligram Khandelwal (Dead)

10. Shri. Satish Shankarlal Khandelwal
Age- Major, Occ- Business,
R/o. Avadhut Apartment, Rane Nagar,
Mumbai, Agra Road, Nasik.
Tq. & Dist. Nasik.

11. Shri. Suresh Shankarlal Khandelwal
Age- Major, Occ- Business,
R/o. 4747, Keshwar Bungalow,
Malegaon Road, Dhule,
Tq. & Dist. Dhule.

12. Lata Kisan Khandelwal
Age- Major, Occ- Household,
R/o. 2835, Gall No. 4,
Khol Galli, Dhule,
Tq. & Dist. Dhule.

13. Lalitabai Rameshwar Khandelwal (Dead).

14. Tarabai Shankarlal Khandelwal
Age- Major, Occ- Household,
R/o. 4747, Keshwar Bungalow,
Malegaon Road, Dhule,
Tq. & Dist. Dhule.

15. Govind Shaligram Khandelwal (Dead)

16. Meena Hariprasad Khandelwal
Age- Major, Occ- Household,

R/o. Vardhaman Society, Lonawala,
Pune.

17. Special Recovery Officer of Dhule
Shahar Kirana Va. Bhusar Vyapari
Nagari Sahakari Patsanstha Maryadit,
Dhule (Under Liquidation) Usgalli,
Dhule, Tq. & Dist. Dhule.

18. Special Recovery Officer of
The Merchants Cooperative Bank Limited,
Dhule (Under Liquidation) Galli No. 6,
Dhule, Tq. & Dist. Dhule.

19. The Tahasildar Saheb, Dhule
Tq. & Dist. Dhule.

20. Divisional Joint Registrar
Cooperative Societies,
Nasik Division, Nasik. RESPONDENTS

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Mr. V.D. Salunke for Petitioner.
Mr. Kishor C. Sant for Respondents No. 1, 4, 8 and 16.
Mr. S.W. Munde, AGP for Respondent/State.

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[CORAM : NITIN B. SURYAWANSHI, J.]

RESERVED ON: 10th JUNE, 2022
PRONOUNCED ON: 30th AUGUST, 2022

JUDGMENT :

1. Rule. Rule made returnable forthwith and heard with the consent of learned advocate for the parties.

2. For the sake of convenience litigating parties hereinafter referred to as Petitioner- Patsanstha, Respondents

No. 1, 4, 8 and 9-borrowers and Respondents No. 5, 6, 7, 10 to 16 guarantors.

3. By this petition filed under article 226 and 227 of Constitution of India, petitioner takes exception to the judgment and order dated 07.06.2019, passed by the Divisional Joint Registrar, Co-operative Societies, Division Nashik/respondent No. 20, in Revision no. 51/2018.

4. The petitioner is a patsanstha registered under the Maharashtra Co-operative Societies Act, 1960 and Rules, 1961 (for short 'said Act and Rules'). The patsanstha advanced different loans to the borrowers and by way of security, borrowers mortgaged their properties bearing City Survey No. 2784 admeasuring 106.2 Sq.Mtrs and City Survey No. 2785 admeasuring 122.1 Sq.Mtrs (both constructed buildings) situated at Dhule. The guarantors stood surety for said loans. As the borrowers committed default in repyament of loan, patsanstha filed proceeding under section 101 of the said Act, bearing Applications No. 456/2009, 457/2009, 458/2009 and 459/2009. After hearing the parties, these proceedings were allowed and recovery certificate under section 101 were issued in all four applications, on 30.04.2011.

5. Since, recovery certificates are not challenged either by borrowers or by guarantors they have become final. Patsantsha thereafter approached competent authority for fixing upset price, which was fixed at Rs. 3,35,00,000/-, by order dated 27.05.2016. Thereafter, thrice advertisement for auction sale were published in daily newspaper. First advertisement was published on 22.09.2016 and the auction was kept on 27.09.2017, second notice was issued on 20.10.2016 and auction was kept on 22.10.2016 and third auction notice was published on 22.01.2017 and auction was kept on 23.01.2017. On all these three occasions no bids were received.

6. Patsanstha thereafter approached Deputy Registrar seeking order under section 100 of the said Act read with Rule 85 of said Rules. After hearing the concerned parties, Deputy Registrar on 23.11.2017 by granting transfer certificate, transferred the said property to patsanstha. Patsanstha then approached Collector, Dhule for possession of said property under rule 107 of the said Rules. The Collector by order dated 08.01.2019 gave the properties in possession of patsanstha.

7. The borrower (only respondent No. 1) by filing revision on 01.03.2019 before Divisional Joint Registrar challenged the order dated 23.11.2017 passed under section 100 read with rule 85 by the Deputy Registrar.

8. Patsanstha resisted the said revision by filing a detail say and prayed for dismissal of revision. Both the parties filed their respective written arguments in the revision. By the impugned judgment and order revision filed by the borrower is allowed and the order dated 23.11.2017 passed by the Deputy Registrar under section 100 read with Rule 85 is quashed and set aside. Hence, the present petition.

9. Heard the learned advocate for patsanstha, and learned advocate for borrowers and guarantors.

10. The learned advocate for the patsanstha assailed the impugned order on the ground that four recovery certificates were issued in different proceedings, which had become final. Only one borrower challenged the order under section 100 read with rule 85 in revision which should not have been entertained by respondent No. 20. The borrower could have challenged the

proceeding only to his own extent. Sub rule 4 of rule 84 mandates pre-condition of deposit which is not complied with by the respondents. Therefore, on that ground alone revision ought to have been dismissed. Ground of violation of procedure under rule 107 is not available to the respondents. He submits that the prayer in the revision is restricted to the extent of respondent No. 1 only. According to him, erroneous reasoning is given and perverse findings are recorded while passing the impugned order. He submits that property is in possession of patsanstha. Therefore, he submits that impugned order be quashed and set aside by allowing the petition.

11. Per contra, learned advocate for borrowers supported the impugned order. He submits that while putting property for auction sale, procedure prescribed under rule 107 was not followed, so also, thirty days gap provided under sub rule 11 Clause (c) of rule 107 was not followed. He further submits that legal heirs of borrowers and guarantors were not brought on record and were not heard, therefore, the order passed by the Collector is rightly set aside by respondent No. 20. According to him, after compliance of procedure prescribed under rule 107, procedure under rule 85 needs to be followed. Therefore,

respondent No. 20 is justified in holding that for non following of procedure under rule 107, which is mandatory, the order passed by the Collector under section 100 read with rule 85 is vitiated. According to him, revisional powers under section 154 can be exercised even *suo moto* and therefore, revision filed by him was rightly entertained. He submits that order under section 100 read with rule 85 is a common order and therefore, anyone of the borrowers was entitled to challenge the same. According to him, there is no substance in the petition and the petition is liable to be dismissed.

12. Heard the learned advocate for the patsanstha and learned advocate for the borrowers and guarantors at length. None appears for respondents No. 6, 7, 10 to 12, 14, 17 & 18, though served. Perused the documents placed on record.

13. It is a matter of record that respondent No. 20 has set aside the order passed by the Collector on the ground that no notice was given to legal heirs of borrowers, some of the respondents in the said proceeding were not heard, legal representatives/legal heirs of deceased borrowers/guarantors were not brought on record, and hence there is violation of

principles of natural justice. It is also held that while conducting auction sale on 27.09.2016, 22.10.2016 and 23.01.2017, procedure prescribed under rule 107 (11)(f) and (g) was not followed.

14. Record reveals that repeated opportunities were given to borrowers and guarantors to appear in the proceeding before respondent No. 20. Though, opportunity was given, borrowers failed to provide name and addresses of heirs of deceased respondents in the said proceeding.

Respondent No. 20 by issuing notice in daily newspaper *Varta* on 01.11.2017 called upon the concerned parties to appear before him. In this view of the matter, there is no substance in the finding recorded in the impugned order that legal heirs of respondents were not served with the notices and therefore, principles of natural justice were not followed while transferring the property to the patsanstha.

15. Since the borrower failed to pay patsanstha a sum equal to the amount due under the orders sought to be executed, together with interest thereon and such additional sum for payments of costs and other incidental expenses as may

be determined in this behalf by the Registrar, in terms of sub rule 4 of rule 85, respondent No. 20 ought to have dismissed the revision filed by the borrower on this ground alone.

16. It is observed in the impugned order that "*While going through the entire written as well as oral submissions of the present applicant, it appears that the applicant has challenged the sale dated 27/09/2016, 22/10/2016, 23/01/2017 claiming it as a faulty process as per the provisions of Rule 107 of the MCS Rule, 1961*."

17. From the averments in the revision application and the grounds raised therein and arguments advanced by respondent No. 1, it appears that the borrower has in fact challenged the procedure followed by patsanstha while conducting auction sale, as much emphasis is laid on violation of procedure prescribed under rule 107.

18. It is pertinent to note here that the borrower has neither challenged certificates issued under section 101 of the said Act nor the action taken under Rule 107 of the said Rules, at that point of time.

19. It is therefore clear that under the guise of revision application the borrower has in fact challenged the procedure followed at the time of auction sale of the said property. Admittedly, auction sale could not take place as no bids were received.

20. Sub Section 2 of Section 154 prescribes limitation of 60 days for preferring revision. The borrower challenged the order dated 23.11.2017 by filing revision on 01.03.2019 i.e. after a delay of 1 year and 4 months. Admittedly, no application for condonation of delay is filed along with revision. In the revision there is no prayer for condonation of delay.

In ***Ragho Singh Vs. Mohan Singh and Others*** (2001) 9 SCC 717, the Apex Court held that '*condonation of delay is not permissible in absence of any application for the same*.' In that case appeal filed before the Additional Collector beyond time by 10 days was held liable to be dismissed in absence of application under Section 5 of the Act for condonation of delay.

21. In ***Sneha Gupta Vs. Devi Sarup and Others*** (2009) 6 SCC 194, the Hon'ble Apex Court has held that, "*in absence of application for condonation of delay, the Court has no*

jurisdiction in terms of section 3 of the Limitation Act to entertain the application filed for setting aside decree after expiry of period of limitation". Admittedly, in the present case no such application is filed by the respondents, while belatedly filing the revision after a delay of more than one year and four months. In view of the above ratio, revision filed by the borrower beyond limitation by 1 year 4 months ought to have been dismissed by Respondent No. 20, on this ground alone.

22. In *Sneha Gupta* (supra), the Apex Court has held, *High Court's jurisdiction under article 227 is limited. In exercise of its supervisory jurisdiction, High Court cannot enter into disputed question of fact. Interference under article 227 is permissible if there exists an error apparent on the face of the record or if any other well-known principle of judicial review is found to be applicable i.e. where the findings arrived at in the impugned judgment are perverse and/or in arriving at the said findings, the Judge concerned failed and/or neglected to take into consideration the relevant factors or based its decision on irrelevant factors not germane therefor."*

23. In the impugned order, respondent No. 20 has only reproduced contentions of both the parties. Without recording any finding on the same, the impugned order is passed. It is therefore, clear that, respondent No. 20 has passed unreasoned order and the impugned order is passed ignoring the record, relevant provisions and facts. The impugned order is therefore, unsustainable. In the result following order:

ORDER

i) The writ petition is allowed in terms of prayer clause 'B'.

ii) The impugned judgment and order dated 07.06.2019 passed by the learned Divisional Joint Registrar, Cooperative Societies, Nasik Division, Nasik (DJR, Nasik) in Revision No. 51/2018 is quashed and set aside.

Rule is made absolute in the above terms with no order as to costs.

[NITIN B. SURYAWANSHI, J.]