IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2430 OF 2022

Sunil Jabarhand Modi .. Petitioner

Versus

Datta Nagari Sah Patsanstha
Maryadit Chinchwad & Anr. .. Respondents

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Mr. Kishor Patil i/by Mr Pratik B. Rahade, *Advocates for the Petitioner.*

Mr. Manoj M. Sabale i/by Mr. Aayush Kedia, *Advocates for Respondent No.1.*

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CORAM : SANDEEP V. MARNE, J.
DATE : 9 OCTOBER 2023

P. C.

1. The challenge in the present petition is to the Order dated 6th November 2020 passed by the Divisional Joint Registrar of Co-operative Societies, Kolhapur rejecting Petitioner's Revision Application No.153 of 2020 on account of failure on the part of the Petitioner to deposit 50% of the amount covered by Recovery Certificate under the provisions of sub section (2A) of Section 154 of the Maharashtra Co-operative Societies Act, 1960.

2. Mr. Patil, the learned counsel appearing for the Petitioner would contend that he has not challenged the Recovery Certificate in the revision filed before the Divisional Joint Registrar. He would submit that what is challenged before the Divisional Joint Registrar is the manner in which the auction sale was conducted. He would invite my attention to the proclamation dated 19th June 2020 issued the Respondent society for conduct of auction sale. He would submit that the proclamation was published on 28th June 2020 and the date fixed for conducting auction was 7th July 2020. Inviting my attention to the provisions of Rule 107 (11) (e) of the Maharashtra Co-operative Societies Rules 1961 (Rules of 1961), he would submit that it was also mandatory to give a notice of 30 days before conduct of auction sale. He would further submit that it was also mandatory for the Respondent Society to include the prescribed details including the details of the amount due from the Petitioner in that proclamation. He would submit that the proclamation did not contain any details of the amount due and payable by the

Petitioner. He would submit that since the sale proclamation is prima facie in violation of Rule 107 of the Rules of 1961. Petitioner had challenged the auction process before the Divisional Joint Registrar by filing the Revision Application No.153 of 2020 under the Provisions of Section 154 of the Act of 1960. He would submit that since the Recovery Certificate is not challenged, Petitioner cannot be directed to deposit 50% of the amount covered by the recovery certificate for the purpose of maintaining the revision under Section 154 of the Act of 1960. He would place reliance on the order passed by the learned Single Judge of this Court on 16th March 2005 in ***Pravin Yashvant Dhanwade Vs. Jawali Sahakari Bank Ltd. & Others***[1] decided on 16th March 2005 in which a view is taken that if recovery certificate is not challenged in revision, deposit of amount under Section 154 (2A) is not mandatory.

3. Mr. Patil would fairly invite my attention to order passed by another Single Judge of this Court in ***Govindra Shankarrao Gaikwad Vs The Ganesh Co-operative Bank***

1 Writ Petition No.890 /2005

Ltd & Others[2] dated 28th April 2014 by which reference of the following issue has been made to the larger bench:-

> *"Whether a litigant, who challenges an action consequential to the issuance of a certificate under section 101 of MCS Act, 1960 in a revision under section 154 and not the recovery certificate itself, is required to deposit the amount equivalent to 50% of dues recoverable under the recovery certificate, or not ?"*

4. According to Mr. Patil the said issue is still pending and yet to be decided by the larger bench. He would therefore submit that the present petition be also referred to the Larger Bench for decision of the same issue.

5. In my view, it is not necessary to go into the issue of the requirement of deposit of amount under Section 154 (2A) of Act of 1960 in view of authoritative pronouncement by judgment of the Apex Court in ***Deenadayal Nagari Sahakari Bank Ltd Vs. Munjaji & Others***[3] wherein it is held that mere procedural violations in conduct of auction proceedings would not vitiate the the entire auction process. The Apex Court has held that the borrowers have an option under the

2 Writ Petition No.4118 / 2014
3 (2022)7 SCC 594

provisions of sub Rule 13 of Rule 107 to get the auction set aside by deposit of 5% amount of the purchase price offered in the auction. The Apex Court has further held that no sale need be set aside only on account of irregularity unless a satisfaction is reached that the borrower has sustained substantial injury as per Rule 107 (14)(i) of Rules of 1961. The Apex Court held in Para 12, 12.1 an 14 as under :

> ***12.*** *Even otherwise on merits also, the High Court has erred in entertaining the writ petition filed by the borrower and quashing and setting aside the auction-sale/sale by not bearing in mind the following aspects:*
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> ***12.2.*** *Secondly, as per proviso to Rule 107(14)(i) of the MCS Rules, 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.*
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> ***14.*** *It is also required to be noted that even under Rule 107(14)(i) of the MCS Rules, 1961 no sale shall be set aside on the ground of material irregularity, mistake or fraud unless the Recovery Officer is satisfied that the applicant had sustained substantial injury by reason of such irregularity, mistake or fraud. In the present case,*

> *there is no finding recorded by the High Court that the borrower had sustained substantial injury and by reason of such irregularity the auction-sale had to be set aside. Under the above circumstances also, setting aside of auction-sale/sale by the High Court is just contrary to the proviso to Rule 107(14)(i) of the MCS Rules, 1961.*

6. In the present case, it is seen that immediately after the conduct of auction, the society sent a letter dated 7th July 2020 to the Petitioner not only informing him the factum of conduct of auction but offering him an option to have the auction sale set aside by deposit of 5% purchase price as well as the entire amount due from him within a period of 30 days. However, despite grant of such option, Petitioner has failed to have auction sale set aside by making deposits as provided for under Rule 107 (13) of the Rules of 1969. Therefore, the mere procedural irregularities sought to be pointed out by the Petitioner in issuance of the sale proclamation in the form of not providing for period of 30 days for conduct of Auction and failure to provide the details or amount due from the borrower in the proclamation of sale would not *ipso facto* render the entire Auction process vitiated. Therefore, leaving the issue as to whether it is mandatory to deposit the amount under

Section 154 (2A) for the purpose of entertaining revision application filed under Section 154 of the Act of 1960, the present petition is disposed of.

SANDEEP V. MARNE, J