IN THE HIGH Court OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9743 OF 2018

Sou. Ayesha Maqbul Inambdar ...Petitioner
Versus
The Manager, The Mayani Urban Co-op.
Bank Ltd. And Ors. ...Respondents

Mr. Vishwanath S. Talkute, for Petitioners.
Mr. Bodke, for Respondent No.1.
Mrs. V. S. Nimbalkar, AGP for Respondent Nos.2 & 3.
Mr. Prasad Jadhav, i/b. Mr. Manmath Athalye for Respondent No.8 auction purchaser.

CORAM : SANDEEP V. MARNE, J.
DATE : 06 OCTOBER 2023.

JUDGMENT:

Rule. Rule is made returnable forthwith. With the consent of parties, petition is taken up for final hearing and disposal.

2. This petition assails order dated 04 May 2018 passed by the Divisional Joint Registrar, Kolhapur in Revision Application No. 63 of 2018 as well as the Recovery Certificate dated 30 October 2010 issued by the Assistant Registrar, Co-operative Societies, Satara.

3. Briefly stated, facts of the case are that Respondent No.1 is a Cooperative Bank and a Society registered under the provisions of the Maharashtra Co-operative Societies Act, 1960 (**the Act of 1960**). Petitioner was disbursed credit facilities of Rs. 3,50,000/- by Respondent-Bank, to which Respondent No.5 was a co-borrower and Respondent Nos. 6 and 7 were guarantors. On account of Petitioner's failure to repay the loan, Bank filed application under Section 101 of the Act of 1960 before the Assistant Registrar, Co-operative Societies, Satara, for issuance of Recovery Certificate. It is Petitioner's case that the notice was issued by the Assistant Registrar in that application fixing the date of hearing as 31 October 2010 and accordingly Petitioner appeared before the Assistant Registrar on 31 October 2010 only to realise that the Recovery Certificate was already issued a day prior i.e. on 30 October 2010. In pursuance of that Recovery Certificate, warrant of attachment of immovable properties was issued on 10 January 2011 which was replied by Petitioner through her Advocate on 15 January 2011. The Recovery Officer of the Bank proceeded ahead with auction sale of Petitioner's property and published a notice in the newspapers for conduct of auction of Petitioner's properties consisting of non-agricultural land bearing Gat No.28A/2A/1/2 and House Property No.231/1, Village-Waduz, Taluka-Khatav, District-Solapur. Petitioner filed Revision Application No. 211/2012 before the Divisional Joint Registrar, Kolhapur. During pendency of that Revision Application, the Bank conducted auction on 19 April 2012 and Respondent No.8 was declared as the highest bidder

with offer of Rs.12,10,000/-. Petitioner claims that she did not receive any notice in respect of the auction held on 19 April 2012. On a proposal submitted before the District Deputy Registrar, Satara, Sale Confirmation Order was issued on 15 June 2012. In pursuance of sale confirmation and sale certificate, Bank executed a sale-deed in favour of Respondent No.8 on 20 June 2012. Petitioner filed Revision Application No. 434/2012 before the Divisional Joint Registrar, Kolhapur challenging the order of sale confirmation. In view of filing of fresh Revision Application No. 435/2012, earlier Revision Application No. 211/2012 was disposed of on 27 November 2012 as infructuous by the Divisional Joint Registrar.

4. Petitioner's Revision Application No. 435/2012 was heard and rejected by the Divisional Joint Registrar by Order dated 26 December 2012. Petitioner filed Writ Petition No. 3904 of 2013 before this Court challenging the Recovery Certificate dated 30 October 2010 and order dated 26 December 2012. This Court permitted Petitioner to deposit amount of Rs.3,00,000/- and granted interim relief on 25 April 2013. On 7 August 2018, Petitioner handed over demand draft of Rs. 1,00,000/- to the Advocate of the Respondent-Bank in this Court against the Recovery Certificate thereby increasing the total amount of deposit to Rs.4,00,000/-. This Court disposed of Writ Petition No. 3904 of 2013 granting liberty to Petitioner to file a fresh Revision Application under Section 154 of the Act of 1960 challenging the Recovery Certificate. Respondent No.8 was permitted to participate in the proceedings of the

Revision Application. The interim order of protection from possession was continued till the disposal of the Revision Application and for a period of two weeks thereafter.

5. Petitioner accordingly filed Revision Application No. 63 of 2018 before the Divisional Joint Registrar, Co-operative Societies, Kolhapur Division, Kolhapur. The Revision Application No. 63 of 2018 came to be rejected by the Divisional Joint Registrar by order dated 04 May 2018, which is the subject matter of challenge in the present petition.

6. Mr. Talkute would appear on behalf of the Petitioner and submit that the entire recovery proceedings have been conducted in violation of principles of natural justice. He would submit that in the notice issued by the Deputy Registrar, the date of hearing was reflected as '31 October 2010' and the Recovery Certificate was issued on 30 October 2010 without hearing the Petitioner. He would place on record the original notice dated 30 September 2010 which is taken on record and marked 'X' for identification. He would further submit that the Recovery proceedings are conducted in gross violation of the provisions of Rules 86A to 86F of the M.C.S. Rules, 1961 (Rules of 1961). That it was mandatory for the Deputy Registrar to pass a detailed reasoned order whereas perusal of the Recovery Certificate would show that the order passed is in a format by filling in the blanks. That the Recovery Certificate does not record even a single reason contrary to the provisions

of Rules 86F. He would invite my attention to the Roznama to contend that the Recovery Application was filed on 08 September 2010 and the Recovery Certificate is issued on 30 October 2010 thereby showing the haste with which the Deputy Registrar has acted. That the Certificate is stereotype without any application of mind to the facts of the case. That the bank has illegally sold Petitioner's property at a throwaway price for non-payment of meager amount of Rs.3,00,000/-, when infact the real value of the property is substantially high. Lastly, Mr. Talkute would contend that Petitioner's dwelling house is sought to be sold and that she would be rendered shelter less, if the impugned orders are not set aside. Having deposited the amount of Rs.4,00,000/-, the properties must be returned to her.

7. *Per Contra* Mr. Bodke, the learned counsel appearing for Respondent - Bank would oppose the petition and support the order passed by the Divisional Joint Registrar. He would submit that the recovery certificate has been issued after following the principles of natural justice. That Petitioner was deliberately avoiding to appear before Deputy Registrar. That initial notice dated 08 September 2010 was refused by Petitioner and therefore fresh notice was issued on 30 September 2010. Though Petitioner received the said notice on 06 October 2010, she failed to remain present. That the date of hearing stated in the notice dated 30 September 2010 was of '11 October 2010' and not '31 October 2010' as falsely sought to be suggested by Petitioner.

That Petitioner otherwise has no defence on merits and is deliberately trying to delay in handing over possession to the auction purchaser.

8. Mr. Jadhav, the learned counsel appearing for Respondent No. 8 - auction purchaser would also oppose the petition submitting that despite issuance of the sale certificate on 15 June 2012 and registration of the sale deed on 20 June 2012, the auction purchaser is still not permitted to enjoy the property. That he is suffering prejudice on account of baseless litigation initiated by Petitioner. He would submit that auction process has been conducted by duly following the process prescribed under the provisions of Rules of 1961.

9. I have also heard Mrs. Nimbalkar, Ld. AGP for Respondent Nos.2 and 3.

10. Rival contentions of the parties now fall for my consideration.

11. The first point canvassed by Mr. Talkute is that recovery certificate has been issued in violation of principles of natural justice, without grant of any opportunity of defence to Petitioner. He has contended that the notice issued by the Deputy Registrar on 30 September 2012 was in respect of date of hearing scheduled to be held on '31 October 2010'. That accordingly Petitioner presented herself before the Deputy Registrar on 31 October 2010 but she was informed that recovery certificate was already issued on 30 October 2010. The

Divisional Joint Registrar has dealt with this aspect in his order dated 04 May 2018. After perusal of the notice dated 30 September 2010, the Divisional Joint Registrar has recorded a finding that the date fixed for hearing was '11 October 2010' and not '31 October 2010'. It appears that Petitioner did not produce copy of notice received by her to prove that the date indicated in that notice was '31 October 2010'. Mr. Talkute has placed on record original notice addressed to Ankush Bhagwan Godse (Respondent No.7). Perusal of that notice would indicate that the date fixed for hearing was '11 October 2010'. Mr. Talkute did attempt to canvas that the handwritten date creates an impression as if it is '31 October 2010'. However, it is difficult to accept that the handwritten date creates any such impression.

12. Even if the contention of Mr. Talkute is that handwritten date appears to be '31 October 2010' the conduct of Petitioner and other noticees after receipt of notices assumes importance. Notice was addressed to 04 individuals, Petitioner, Co-Borrower and two guarantors. None of them presented before the Deputy Registrar on 11 October 2010. It cannot be that each one of them assumed that the hand written date was '31 October 2010'. It cannot be a matter of coincidence of all four of them laboured under similar impression as that of Petitioner with regard to date fixed for hearing. It is also important to note that Petitioner has pleaded in the petition that she remained present before Divisional Joint Registrar on 31 October 2010 and the office was found to be closed.

31 October 2010 was a Sunday, and it is really incomprehensible as to how Petitioner believed that the office of the Deputy Registrar would call her for a hearing on Sunday. It is again difficult to fathom that Petitioner travelled to office of Dy. Registrar on a Sunday. If Petitioner's defence that she visited Deputy Registrar's office on 31 October 2010 and later realized that the recovery certificate was already issued on 30 October 2010 is to be believed, a person of ordinary prudence would address some communication to the Deputy Registrar raising an enquiry as to how the recovery certificate could be issued before the date fixed for hearing. It is pertinent to note that after 31 October 2010, Petitioner did not address any communication to any of the authorities, including the Bank. She waited till issuance of warrant of attachment of 10 January 2011 after receipt of which, notice was addressed through her advocate on 15 January 2011 to the Recovery Officer and Manager of the bank. In that notice, for the first time Petitioner took the defence of fixing the date of hearing on '31 October 2010'. Thus till issuance of warrant of attachment, Petitioner did not bother to write to any of the authorities as to how recovery certificate could be issued before the fixed date of hearing of 31 October 2010. I therefore find the defence sought to be taken by Petitioner to be afterthought and dishonest.

13. The next point raised by Mr. Talkute is that a recovery certificate is issued in a haste and in violation of the procedure prescribed under Rules 86A to 86F of the Rules of 1961. Petitioner has contended

that since a reasoned and detailed Judgment is not passed by the Deputy Registrar, the recovery certificate would be in violation of mandatory requirement under Rule 86F. However, in the present case Petitioner has failed to appear before Deputy Registrar despite receipt of notice. She did not present any defence to the recovery application. In such circumstances, it is incomprehensible as to what reasons Deputy Registrar could have recorded if he was to write a detailed Judgment as is expected by Mr. Talkute under Rule 86F of the Rules of 1961. Perusal of the recovery certificate would indicate that the Dy. Registrar has recorded absence of Petitioner, co-borrower and guarantors and failure to file written statement and as well as his own observations. In such circumstances, it is difficult to accept that the recovery certificate would be rendered illegal on account of contravention of provisions of Rule 86F of the Rules of 1961.

14. The argument of haste, sought to be raised by Mr. Talkute deserves outright rejection. Recovery proceedings were initiated by filing an application on 08 September 2010. Two notices were issued to Petitioner, co-borrower and guarantors. Despite receipt of notices, they failed to appear before the Deputy Registrar. In such circumstances the recovery certificate issued on 30 October 2010 in absence of any defence cannot be treated as the one issued in haste.

15. Some objections are sought to be raised about the manner in which auction sale is conducted. It is submitted that prior approval for

fixation of upset price was not obtained. However it is pertinent to note that the Petitioner has not exercised the option of seeking the sale set aside under provisions of Sub-Rule 13 of Rule 107 by depositing 5% amount of the purchase price. Rule 107 (13) is reproduced as under :-

> **Rule-107 :-**
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> (13) (i) Where immovable property has been sold by the [Recovery 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
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> (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:
>
> **Provided** that, in case the Recovery Officer fails to handover, possession of the property for any reason within six months from the date of confirmation of the sale to the purchaser, amount deposited by the purchaser may be refunded to him on his demand.

16. The Petitioner admittedly failed to avail that opportunity. In ***Deendayal Nagari Sahakari Bank Ltd. & Anr. Vs. Munjaji & Ors.,*** (2022) 7 SCC 594, the Apex Court has held in paragraph No.12, 12.1 and 12.2, 13 and 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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> 12.1 *Firstly*, that after conducting the auction sale and sale of the property in favour of the auction purchaser, the borrower never applied to the Recovery Officer to set aside the sale on the grounds of material irregularity, mistake or fraud in publishing or conducting it;
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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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> 13. In the present case, Sale Certificate was issued in favour of the auction purchaser on 19.01.2011 after a period of thirty days from holding the auction sale. At this stage, it is required to be noted that even the Sale Certificate was issued by the Bank/Recovery Officer only after the receipt of the approval of the District Deputy Registrar. While approving the sale, the District Deputy Registrar noted in the approval dated 29.11.2010 that the valuation of the land was determined at Rs. 98,10,000/- according to the letter issued by the Government approved Valuer dated 10.06.2010 which was the upset price and the amount realised was Rs.1,26,00,000/-, which is higher than the upset price. Therefore, as such, even the District Deputy Registrar also did not doubt the valuation and the amount realised, i.e., Rs. 1,26,00,000/- against the upset price of Rs.98,10,000/-. Therefore, once the borrower failed to apply to the Recovery Officer to set aside the auction sale on the grounds of material irregularity, mistake or fraud in publishing or conducting the auction sale within a period of thirty days from the date of sale of immovable property, thereafter it was not open for the borrower to challenge the sale on the ground of material irregularity. All the grounds on which the High Court has set aside the auction sale/sale were available with the borrower and the borrower did not apply to set aside the sale on the said grounds of

> material irregularity, mistake or fraud. Therefore, once the borrower failed to apply to the Recovery Officer to set aside the sale on the ground of material irregularity within a period of thirty days from the date of sale of the immovable property and thereafter the Sale Certificate has been issued, normally the borrower cannot be permitted to challenge the same subsequently, having not raised any objection at the appropriate time and stage as per the statute, otherwise the statutory provisions would become nugatory and unworkable.
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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."
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> *(emphasis supplied)*

17. In ***Deendayal Nagari Sahakari Bank Ltd.*** (supra) there was violation of Rule 107(11)(e) and (f) as there was no gap of 30 days between the proclamation and the sale. A fresh proclamation as required under Rule 107(11)(f) was also not issued as the auction was adjourned for more than 7 days. The Apex Court held that no sale can be set aside on the ground of irregularities or fraud under the provisions of Rule 107(14)(i) unless Recovery Officer is satisfied that the applicant has sustained substantial injury by reason of said irregularity, mistake or fraud. That there was no finding recorded by the High Court in that case that the borrower sustained any substantial injury by reasons of irregularity. The Apex Court therefore set aside the order of the High Court and upheld the sale executed by the bank in favour of the auction purchaser.

18. I have also gone through the Revision Petition filed by the Petitioner before the Divisional Joint Registrar. After going through various grounds raised by her it is seen that the Petitioner has not disputed the factum of disbursal of loan or the correctness of the loan amount. She has failed to demonstrate any error in the amounts indicated in the recovery certificate. This would show that Petitioner is attempting to frustrate the auction sale and recovery proceedings by raising technical objections.

19. Mr. Talkute has relied upon Judgment of this Court in ***Sundeep Polymers Pvt. Ltd. & Anr. Vs. State of Maharashtra & Ors.***, 2010 (7) Mh.L.J. 538 in support of his contention that recovery certificate issued without following the due procedure and without prior notice of service is invalid. Perusal of the Judgment would indicate that there was failure to serve a notice of recovery proceedings in that case. In the present case the Petitioner admits receipt of notice however has taken a false stand that the date fixed for hearing was 31 October 2010, which is found to be totally false and dishonest. Therefore, the ratio of the Judgment in ***Sundeep Ploymers Pvt. Ltd. & Ors.*** (supra) would have no application to the present case.

20. Resultantly I find that Petitioner has failed to make out any case for interference of this Court in exercise of jurisdiction under Article 227 of the Constitution of India. Petition must fail. It is accordingly dismissed without any order as to costs. Rule is discharged.

21. After pronouncement of the order, Mr. Talkute would request this Court to continue ad-interim order granted by this Court on 17 May 2018 for a period of 8 weeks to enable Petitioner to test this Judgment before the Apex Court. The request is opposed by the learned counsels appearing for Respondents. Considering the fact that the protection was operational for a long time, ad-interim order granted by this Court on 17 May 2018 would continue to operate for the period of 08 weeks from today.

SANDEEP V. MARNE, J.