

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

WRIT PETITION NO. 9422 OF 2023

Asha Milind Sonawane

... Petitioner

versus

The Special Recovery Officer,

Shri. Chhatrapati Rajashri Shahu Urban

Co-op. Bank Ltd. Beed & Others

... Respondents

.....

Mr. Akash Pandey for the Petitioner.

Mr. Prashant D. Patil for Respondent Nos. 1 and 2.

Mr. N.K. Rajpurohit, AGP for Respondent Nos. 3 and 4-State.

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**CORAM : NITIN JAMDAR &
SANDEEP V. MARNE, JJ.**

DATE : 31 JULY 2023

P.C.:

Heard the learned Counsel for the parties.

2. The Petitioner sought to question the auction sale conducted by Respondent Nos. 1 and 2 -Bank in respect of the subject property which is an agricultural land. The Petitioner was a guarantor for the loan availed by one M/s. Mhatoba Jogeshwari Sheti Bhandar, the borrower, and had mortgaged the land admeasuring 1H 3R. An order was passed by the Deputy Registrar Co-operative Society

under section 101 of the Maharashtra Co-operative Societies Act, 1960 (the Act of 1960) for recovery of Rs.64,89,253/- and Rs.56,60,738/-. Thereafter, the recovery certificate was issued and Respondent Nos. 1 and 2-Bank proceeded to recover the dues by putting the property for auction. The property was sold on 22 February 2023. The Petitioner deposited an amount of Rs.5,00,000/- on 27 February 2023 and Rs. 7,50,000/- on 23 March 2023. Based on these payments, the Petitioner questions the auction proceedings contended that after paying these amounts, which are 5 percent of the purchase money, the Petitioner is entitled to the protection under Rule 107 (13) of the Maharashtra Co-operative Societies Rules. 1961 (the Rules of 1961).

3. It is the contention of the Petitioner that having paid 5 percent of the purchase money, the Petitioner should have been given an opportunity to pay arrears and the Petitioner is ready to deposit the arrears even as on today. The learned Counsel for Respondent Nos. 1 and 2 -Bank states that the auction sale is already concluded and nothing prevented the Petitioner from making the balance payment.

4. The relevant part of Rule 107 (13) of the Rules of 1961 reads thus :

*“107. [Procedure for attachment and sale of property under Section 156.]:-
(1) to (12)*

(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

(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.

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5. Therefore, to claim the remedy/ right under the said Rule, these requirements need to be satisfied. That is, deposit of 5 percent of the purchase money to be made to the purchaser and deposit of the arrears specified in the proclamation of sale. Both these payments have to be made within 30 days. The Petitioner has only complied with Rule 13 (i) (a) and not Rule 13 (i) (b). Since, admittedly, these deposits have not been made, Respondent Nos 1 and 2- Bank cannot be prevented from proceeding further in the auction.

6. The learned Counsel for Respondent Nos. 1 and 2- Bank submitted that even otherwise the conduct of the Petitioner does not entitle him for any relief in the equitable jurisdiction of this Court since the Petitioner has made an attempt to sell the property after proclamation.

7. The Writ Petition is accordingly rejected.

(SANDEEP V. MARNE, J.)

(NITIN JAMDAR, J.)