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WP-1862-2024

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**WRIT PETITION NO. 1862 OF 2024
WITH
CIVIL APPLICATION NO. 7232 OF 2024
IN WP/1862/2024**

Vishal Subhash Bhore Through its Power of Attorney Vikas Subhash Bhore
and Anr.

VERSUS

The State of Maharashtra through its Secretary and Ors.

Mr. A. N. Irpatgire, Advocate for Petitioners.

Mr. R. K. Ingole, AGP for Respondent Nos. 1 to 3, 8 and 9.

Mr. V. S. Kadam Advocate for Respondent No.4 and 5.

Mr. P. S. Dighe Advocate for Respondent No.6.

CORAM	: KISHORE C. SANT, J.
RESERVED ON	: 27th NOVEMBER 2024
PRONOUNCED ON	: 4th DECEMBER 2024

PC :-

1. The Petitioner No.1 before this Court is the principal borrower, who failed to repay the amount of loan taken from one Prabhat Sahakari Patpedhi Ltd.-Respondent No.5. The Petitioner No.2 is the guarantor to the said loan. Respondent Nos.1 to 3, 8 and 9 are the State Authorities. Respondent No.4 is the Recovery Officer of Respondent No.5-Patpedhi. Respondent No.6 is the person who has purchased the property in an auction that was attached by the Patpedhi pursuant to recovery proceedings against the petitioners. Respondent No.7 is the second

guarantor.

2. The challenge in the petition is to the Recovery Certificate and the proceedings under Rule 86-F of the Maharashtra Co-operative Societies Rules, 1961. It is prayed to declare that the said certificate is nullity and cannot be enforced. It is further prayed that the sale confirmation certificate dated 4th July 2023 and certificate of purchase dated 27th September 2023, be quashed. Further order passed by the learned Additional District Magistrate, Dharashiv dated 19th December 2023 also is prayed to be quashed and interim reliefs are prayed seeking stay to the certificate issued by the learned Additional District Magistrate under Rule 107 of the Maharashtra Co-operative Societies Rules, 1961.

3. The facts in the petition are not disputed. Few facts which are relevant for the purpose of deciding the petition are as under:

Petitioner No.1 availed cash credit facility of Rs.12,00,000/- from the Patpedhi. The cash credit facility was sanctioned. The petitioner No.2 and Respondent No.7 stood guarantor. The property i.e. house No.27/341/1 admeasuring 74.3 sq.m. on CTS No.4500/B owned by petitioner No.1 was mortgaged towards security. The petitioners, however, failed to repay the amount of loan. On 22nd April 2019, the said loan account came to be declared as Non-Performing Asset (N.P.A.).

Pursuant to that, a notice came to be issued by Patpedhi on 15th June 2020, asking for repayment of the amount of Rs.13,22,600/- as is stood by that time. On 18th January 2021, the society filed an application under Section 101 of the Maharashtra Co-operative Societies Act for issuance of recovery certificate. The Assistant Registrar Co-operative Societies, Osmanabad issued notice to the petitioners. The petitioners however, failed to cause appearance before the Assistant Registrar in spite of receipt of notice. A notice was therefore published in news-paper on 8th June 2021. In spite of service by publication of notice, the petitioners failed to appear. The Assistant Registrar, therefore, issued recovery certificate for an amount of Rs.13,51,769/- on 17th June 2021. The recovery officer again issued notice to the petitioners calling upon them to pay the outstanding dues. In spite of these opportunities, the petitioners failed to make the payment.

4. The recovery officer, pursuant to recovery certificate, proceeded further to take action of attachment of the property mortgaged with the *Patpedhi*. Thereafter, the recovery officer filed an application for fixing the upset price of the property before the District Deputy Registrar ("DDR" for short). The DDR issued notice to the petitioners in the said proceeding. The petitioners however failed to remain present even before the DDR. Thereafter, they filed an application for adjournment. The DDR

again issued notice on 19th August 2022 for hearing on 25th August 2022. On which date, only petitioner No.2 remain present and sought time. Time was granted till 1st September 2022. The petitioner No.2 again asked for an adjournment and the matter was adjourned to 29th September 2022. However, even on that day, they remained absent. The DDR therefore, passed an order fixing the upset price at Rs.11,19,352/-.

5. In spite of fixing the upset price, the petitioners did not turn up to make payment of outstanding. It was, therefore, decided to put the property for auction and again notice was issued on 7th November 2022. However, still there was no response from the petitioners. The recovery officer, thereafter issued auction notice in daily news-paper '*Punyanagari*' on 21st November 2022. Pursuant to the auction, the respondent No.6 took part in the auction proceedings alongwith other bidders. Respondent No.6 offered the highest bid for Rs.20,50,000/-. There was no objection raised by the petitioners to the said auction proceedings. As the Respondent No.6 was the highest bidder, his offer came to be accepted. The auction purchaser deposited the requisite amount on acceptance of his bid on 25th January 2023. Even after the auction, the *Patpedhi* again issued notice to the petitioners on 27th January 2023, as there was no response, the society accepted remaining amount from Respondent No.6 on 14th February 2023.

6. After all this exercise, the recovery officer made an application to the DDR of the societies for confirmation of sale. Notice was again issued by the DDR to the petitioners on 1st March 2023. However, even then the amount is not paid. On 23rd March 2023 again only petitioner No.2 appeared before the DDR and sought time. Time was granted. On 20th April 2023, the petitioner No.1 appeared and again sought time. However, still no amount was paid. The DDR thus proceeded to confirm the sale in favour of Respondent No.6 by an order dated 4th July 2023. Thereafter, the petitioners issued cheque on 10th August 2023 for an amount of Rs.5,00,000/-. However, the said cheque came to be dishonoured. Lastly, on 27th September 2023, the *Patpedhi* executed sale certificate in favour of the auction purchaser. On issuing sale certificate, the *Patpedhi* applied to the Collector for possession of the property on 25th October 2023. The Collector issued order dated 19th December 2023 directing to hand over the possession. Pursuant to the said order, the Tahsildar issued letter to Circle Officer asking him to take possession of property on 15th January 2024. It is only after this, the petitioners have directly come to this Court by filing a writ petition on 10th February 2024.

7. On this from the dates and even as stated earlier, right from initiation of proceedings under Section 101 of the Maharashtra Co-operative Societies Act, till issuing sale certificate, the petitioners never

appeared before any of the authorities to participate in any of the proceedings except asking for adjournment. He never offered to pay any amount. Only one cheque was issued that also came to be dishonoured. The petitioners have not challenged any of the action taken by *Patpedhi* or order passed any of the authorities. Now, the ground is taken in the writ petition that, the upset price was not properly fixed by the DDR. No proper procedure is followed under Rule 86-F of the Maharashtra Co-operative Societies Rules. The upset price is fixed at much lessor price than the market value. The *Patpedhi* has acted in collusion with Respondent No.6. The amount offered by Respondent No.6 is also much on the lower side than the market value and thus, now the petitioners have sought relief of cancellation of the entire action. As stated earlier, even 101 certificate is not challenge by the petitioner.

8. Learned Advocate for the petitioners vehemently argued all the grounds. However, could not answer as to why 101 certificate was not ever to challenged by the petitioners. There is also no answer as to why the subsequent orders passed by the DDR, order of fixing upset price, action of auction was not filed. There is no answer as to why in spite of after confirmation of sale, no opportunity was availed. The only answer given about the dishonoure of cheque is that the cheque was presented after two months of giving the cheque to *Patpedhi*. It is also argued that

for two months, the petitioners maintained sufficient balance in the account. However, deliberately the society did not present its cheque when there was sufficient balance in the account. It is only when it was found that there was no sufficient balance in the account of the petitioner, the cheque was presented with malafide. The petitioners thus prayed for allowing the writ petition.

9. As against that, the Respondent - Patpedhi and learned Advocate for Respondent No.6 vehemently argued that, no case is made out to call for any interference at the hands of this Court. The conduct of the petitioners do not deserve any relief. Every time opportunity was given to the petitioners. However, for the reasons based known to the petitioners, they never paid an amount nor challenged such actions promptly. There is no justification offered in the petition as to why the notices were not replied and as to why the petitioners did not participate in any of the proceedings in spite of giving several chances. On every action and passing orders, sufficient opportunities were given to the petitioners and still there was no response given. They thus pray for rejection of the writ petition.

10. Learned AGP appearing for Respondent Nos.1 to 3, 8 and 9 also supports the action of the authorities. It is submitted that every authority has acted strictly in accordance with law. Notices were issued to the

petitioners every time. There is nothing to show that the authorities have not followed any procedure. He also prays for rejection of the writ petition.

11. Learned Advocate for the Respondent No.6 relied on the judgment of this Court in the case of **Shivangi D. Shah Vs. Greater Bombay Co-operative Bank Ltd and Ors.**¹, wherein this Court at principal seat has observed in paragraph No.20, which reads as under:-

“20. Be that as it may, there is other formidable reason for which the contention raised in the present writ petition ought to be discarded. Counsel for the respondent No.5 has rightly invited my attention to Rule 107(14) which mandates that any grievance with regard to sale has to be raised within thirty days from the date of the sale by the concerned persons, whether be in relation to material irregularity or mistake or fraud in publishing or conducting the same. The petitioners did not take recourse to that remedy and specifically raise this contention and more over failed to specifically raise the same in the proceedings, to which, they resorted to at a later point of time before the appropriate authority by way of miscellaneous application or Revision Application. Assuming that the petitioners could be permitted to challenge the same on the grounds now pressed into service, the petitioners ought to have asked for declaration before the appropriate Court and that too within reasonable period much less within the period of limitation specified by the Law. The petitioners have chosen to amend the writ petition to take up the ground now pressed into service by filing application for the first time on 29th May, 2007 which indeed has been granted by this Court under order dated 17th July 2007, subject to objection to be raised by the concerned respondents at the hearing of the petition. In other words, allowing the said Chamber Summons does not necessarily mean that the petitioners would be free to raise this contention though precluded on account of Rule 107(14) of the Rules.

1 2009 (Supp.) Bom.C.R. 560

12. After hearing the parties, this Court finds that ample opportunities were given to the petitioners. The petitioners did not file revision application challenging 101 certificate. There is no allegation in the petition that the petitioners were not properly served with the notice before passing any order. On the contrary, the proceedings and the orders would show that the notices were duly served on the petitioners. It is only after the satisfaction that the petitioners were served, the authorities proceeded to pass order. The recovery certificate was issued on 17th June 2021 under 101. While issuing 101 certificate, the notice was duly served still the petitioners did not appear in the proceedings. By way of abundant precaution, notice was published in news paper on 8th June 2021 and still the petitioners remain absent.

13. Thus, the conduct of the petitioners shows that they never challenged any of the action. Without challenging the basic certificate under 101, they cannot avoid liability to pay the amount. On one hand, it is seen that by the action of not challenging 101 certificate, he has accepted the liability and on the other hand, he is challenging the actual recovery. At every stage, he had the knowledge of the proceeding. Petitioners maintained silence till actual handing over of possession of the property. A person cannot avoid a consequences of the recovery certificate in absence of challenging the certificate. Except the allegation

that the Patpedhi in collusion with Respondent No.6 has fixed the upset price at much lower rate at market value nothing is challenged. Further allegation to upset price was fixed at Rs.11,19,312/-. However, still the bid offered by Respondent No.6 was of Rs.20,50,000/-. It cannot be said that it is in collusion. Nothing is brought on record to show the authorities have any reason to have collusion with the Respondent No.6.

14. Thus, considering all these, in view of the Maharashtra Co-operative Society Rule 107(14), a person has to challenge the same within 30 days from the date of such sale. In the present case, nothing is shown as to what prevented the petitioners from challenging the same in spite of having knowledge. It was necessary for the petitioners to challenge the same under Rule 107(14). It needs to be observed that while exercising the jurisdiction under Article 227 of the Constitution of India, the Court also has to see the conduct of the petitioner. The petitioners may invoke the extra ordinary jurisdiction as to show that he has availed the remedy and the authorities have acted beyond jurisdiction and their power or the power is exercised with material irregularities. The petitioners by avoiding to resort to the remedies provided under law should not be allowed to approach High Court directly and allege malafides on the part of the respondents. The petitioner as to show that he has availed all the possible remedies before coming to this Court. In the present case, the

facts are very glaring that the petitioners were given the opportunities at every stage. It is the petitioner who did not avail those opportunities. Even after passing orders, though remedies were available to challenge recovery certificate, they did not prefer any revision. Thereafter, there was remedy available to approach to the higher authority under Rule 107(14) of the Maharashtra Co-operative Societies Rule. He did not avail that remedy. In such case, this Court is not at all inclined to entertain this petition.

15. For all above reasons, the petition must fail. Hence, the following order.

ORDER

- (i) Writ Petition stands dismissed.
- (ii) No order as to costs.
- (iii) Pending Civil Applications stand disposed off.

[KISHORE C. SANT, J.]