



{1}

wp 8117.24 R.odt

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

WRIT PETITION NO. 8117 OF 2024

**MARKAND DEVIDAS JAMDAR
VERSUS
THE SPECIAL RECOVERY OFFICER
AND OTHERS.**

...

Mr. Suvidh S. Kulkarni, Advocate for petitioner
Mr. N.D. Raje, AGP for respondent/State.

CORAM : S.G. CHAPALGAONKAR, J.

DATE :- 1st AUGUST, 2024.

ORDER :-

1. The petitioner impugns the order dated 20.6.2024 passed by District Deputy Registrar – Respondent No.2 in Proceeding No. 4226 of 2024, thereby fixing the upset price under Rule 107 of the Maharashtra Cooperative Societies Act, 1961.

2. Mr. Suvidh Kulkarni, learned advocate for the petitioner submits that the petitioner had borrowed loan of Rs. 7 Lakhs from respondent No.4 Bank. On 30.7.2015, the respondent Bank obtained Recovery Certificate under Section 101 of the Maharashtra Cooperative Societies Act for Rs. 6,17,054/- against the petitioner. On 20.6.2024, the respondent No.1/ Special Recovery Officer, filed an application to fix the upset price for mortgaged the property. The respondent No.2 allowed the said application vide impugned order dated 20.6.2024. The petitioner came to know about said order on 1st July, 2024 and immediately approached this Court. Mr. Kulkarni submits the respondent

No.2 failed to follow procedure prescribed under clause (e) of sub-Rule 11 of Rule 107 of the MCS Act while deciding the upset price. He endeavours to impress upon this court that valuation of the property is more than Rs. 1 Crore but meager upset price has been determined, without following due procedure of law.

3. Learned AGP raises an objection that the petitioner has alternate and efficacious remedy of filing the revision against the order impugned, therefore, writ petition may not be entertained.

4. Having considered submissions advanced, it is apparent that Recovery Certificate under Section 101 of the MCS Act has been issued against petitioner and same has attained finality. So far as dues of bank against the petitioner, no dispute is raised. On 20.6.2024, the respondent No.1 applied for fixing upset price for mortgaged property. The documents suggest that a Paper Proclamation was issued by respondent No.2 and petitioner was made aware of the proceeding. Thereafter, final order dated 20.6.2024 fixing upset price has been passed.

5. The order passed by respondent No.2 can certainly be challenged before the Joint Registrar in revision. It is argued that the auction of the property is scheduled tomorrow i.e. 2.8.2024 at 12.00 Noon. Apparently, the paper publication for auction is made on 29.6.2024. Present petition is filed on 30.7.2024. Petitioner could have definitely availed alternate remedy immediately after getting knowledge if he was aggrieved by the order of fixing upset price. The petition is moved just a day before the auction and prayer is made to stay the same.

6. In the circumstances, it can be gathered from the conduct of the petitioner that he is interested in avoiding the auction rather than his grievance regarding procedural aspects. No circumstances are brought to the notice of this court to invoke writ jurisdiction under Article 227 of the Constitution of India. In that view of the matter, writ petition stand dismissed without entering into merits with liberty to the petitioner to avail alternate remedy, as is permissible in law.

[S.G. CHAPALGAONKAR]
JUDGE

grt/-