IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5924 OF 2023.

Sachin Shubhas Phate ...Petitioner.

Versus

The State Of Maharashtra Thr
Its Secretary Dept. And Ors ...Respondents.

Mr. Ravindra S. Pachundkar a/w Adv. S. G. Phadtare for the Petitioner.
Mr. Y. D. Patil AGP for Respondent-State.
Mr. R. D. Phade for the Respondent No. 4-Bank.
Mr. Mahadeo A. Choudhari for the Respondent No. 5.

Coram : Sharmila U. Deshmukh, J.

Date : September 20, 2024.

P. C. :

1. Heard.

2. By this Petition, challenge is to two orders dated 25th May, 2022 passed by the Divisional Joint Registrar, Co-operative Societies, Pune Division, Pune in Revision Application No. 25 of 2018 and Revision Application No. 142 of 2022.

3. The facts of the case are that the Petitioner is an auction purchaser of the auctioned property which was mortgaged by the Respondent No. 5 with the Respondent No. 4-Bank for a loan amount of Rs. 45 lakhs. On 22nd July, 2016 recovery certificate was issued and subsequent thereto auction was held and sale certificate was confirmed pursuant to which the mutation entries were effected in favour of the Petitioner.

4. In the year 2018, Revision Application No. 25 of 2018 was filed seeking to challenge the sale certificate dated 22nd December 2017 before the Divisional Joint Registrar under Section 154 of The Maharashtra Co-Operative Societies Act, 1960, (the MCS Act). Similarly on 6th August 2018 Revision Application under Section 154 was filed seeking to challenge the recovery certificate issued under Section 101 of the MCS Act. By the impugned orders passed on 25th May, 2022 in both the Applications the Revision Applications came to be allowed remanding the matter to the Respondent No. 3 as far as the issuance of the recovery certificate is concerned and in the Revision Application No. 25 of 2018 setting aside the auction sale which was conducted in favour of the Petitioner.

5. Learned Counsel appearing for the Petitioner would submit that as far as the recovery certificate is issued the mandatory requirement of Section 154 (2A) of payment of 50% of the amount was not complied with in as much as clause-4 of the operative part of the order of the Respondent No. 3 directs that the demand draft of the Respondent No. 5 be deposited with the Respondent No. 4-Bank. He points out to Section 154 (2A) and would submit that the Revision Applicant was mandated to deposit the amount with the Respondent No. 4-Bank prior to the filing of the Revision Application which had not been done. He would further point out that the only ground on which the recovery certificate has been set aside is that the Respondent No. 5 was not heard whereas in the order passed issuing the recovery certificate it is specifically noted that the summons was issued to the Respondents which included the Respondent No. 5 and that the Respondent No. 5 had appeared and accepted the arrears of loan amount and had also submitted the Application seeking to make payment by installments. He submits that it is therefore clear that the order of 25th May, 2022 proceeds on a factually erroneous finding. He would further submit that the recovery certificate was issued on 22nd July, 2016 and the Application was filed on 6th October, 2018 and therefore barred by limitation. He would further submit that although by that time auction purchaser already taken place which was to the knowledge of the Respondent No. 5, the Respondent No. 5 did not implead the Petitioner as party to the proceedings and therefore there is violation of principal of natural justice.

6. As far as the order passed in Revision Application No. 25 of 2018 is concerned he would submit that the requisite compliances of Rule 107 was done and therefore the said order could not have been passed.

7. Learned Counsel appearing for the Respondent No. 4-Bank would submit that as far as Revision Application No. 25 of 2018 is concerned in Writ Petition (St) No. 23652 of 2018 by order dated 13th March 2019, this Court, by way of ad-interim relief had stayed further proceedings in Revision Application No. 25 of 2018 and despite thereof the order came to be passed. He would further submit that the order was thereafter implemented and the recovery certificate came to be quashed however no steps were taken by the Bank as the amount has been received by the Bank through the auction purchase.

8. *Per contra* learned Counsel appearing for the Respondent No. 5 would point out the findings of the Respondent No. 3 in the order passed in the Revision Application No. 25 of 2018 and would submit that there is a specific finding about 50% of the amount being deposited with the Respondent No. 3 and therefore there is sufficient compliance of Section 154 (2A). He would further submit that the findings would indicate non compliance of Rule 107 of MCS rules and therefore the auction purchase had rightly being set aside.

9. Considered the submissions and perused the record.

10. Before this Court two orders of even dates are challenged, one passed in Revision Application No. 142 of 2022 by which the recovery certificate issued in respect of the outstanding loan amount has been quashed and set aside and second order is passed in Revision Application No. 25 of 2018 whereby the auction sale has been set aside. As far as the order passed in Revision Application No. 142 of 2022 is concerned the said Revision Application has been filed in the year 2018 challenging the recovery certificate which has been issued on 22nd July, 2016.

11. From the material which is produced on record there is nothing to demonstrate that an Application for condonation of delay had been filed. Infact perusal of the said order does not indicate that any such submission was made and that the delay has been condoned. Section 154 (3) of the MCS Act makes it clear that no Application for Revision shall be entertained after a period of 2 months from the date of the communication of order and if sufficient cause is shown the Application may be entertained after such period.

12. In the present case the Application has been filed after a period of 2 years without seeking to condone the delay caused in preferring the Revision Application and the impugned order does not indicate that the delay has been condoned. Another fallacy in the order of the Respondent No. 3 while allowing the Revision Application is that the Authority has held that there was non compliance of the principal of natural justice qua the Respondent No. 5 without noticing the observation in the order issuing recovery certificate in which it is clearly recorded that the Respondent No. 5 was present during the hearing and had admitted the outstanding loan amount and was requesting to make payment by installments. The said fact could not be brought to the notice of the Revisional Authority as the Petitioner was not made a party to the proceedings. Obviously once the amount has been received by the Bank, the Bank would have no further interest in the matter and therefore despite knowing that the property has been sold in an auction sale by virtue of which the auction purchaser has acquired rights in the property the Respondent No. 5 did not implead the present Petitioner as a party. The Respondent No. 3-Revisional Authority was seized of the connected matter pertaining to the challenge to the auction sale and was thus aware of the entire facts of the matter and despite thereof did not issue any direction for impleading the Petitioner as a party. The Petitioner was a necessary party to the proceedings as the challenge to the recovery certificate affected his rights in the property and therefore the impugned order is legally unsustainable.

13. Another ground on which the impugned order cannot be sustained is the non compliance of the pre deposit of 50% of the recovery certificate. Although it is sought to be contended by learned Counsel appearing for the Respondent No. 5 that there was a deposit which has been noted in the order dated 25th May, 2022, perusal of sub

Section 2A of Section 154 makes it clear that the Application for the Revision will not be entertained unless the Revision Applicant deposits with the concerned society 50% of the total amount of recoverable dues. The mandate of the legislature is therefore the deposit of 50% with the Bank and not with the Revisional Authority. The fact that the amount has not been deposited with the Bank is amply evident from clause-4 of the operative part of the order which then directs that the demand draft of the Applicant be deposited in the Respondent No. 4-Bank. The said deposit after the hearing does not satisfy the requirement of sub Section 2-A of Section 154 and therefore without the compliance of the same, the Revision Application itself could not have been entertained.

14. In light thereof the impugned order dated 25th May, 2022 passed in Revision Application No. 142 of 2022 was clearly unsustainable. To summarize, the order suffers from the following infirmities,

(a) Non compliance of sub Section 2A of Section 154 of the MCS Act as the pre requsite of 50% deposit was not met.

(b) Non compliance of sub Section 3 of Section 154 as the Revision Application was filed beyond the period of limitation without any Application for condonation of delay and without the delay been condoned.

(c) Sets aside the recovery certificate on the factually erroneous ground of violation of principles of natural justice.

(d) Non-impleadment of Petitioner despite being a necessary party.

15. Now coming to the order dated 25th May, 2022 passed in Revision Application No. 25 of 2018, considering that by an order dated 30th March 2019 passed by this Court in Writ Petition (st) No. 23652 of 2018 further proceedings in the Revision Application No. 25 of 2018 were stayed, the Respondent No. 3-Authority could not have proceeded with the Revision Application and passed the impugned order. On this sole ground the impugned order infact should be dismissed. However subsequently it appears that the Petition was withdrawn by the Respondent No. 4-Bank. Although the same would not alter the fact that Respondent No. 3 has committed contempt of the order of this Court I have refrained from issuing any contempt notice as I intend to quash the impugned orders on other grounds.

16. As far as Revision Application No. 25 of 2018 is concerned, the same has been filed under Section 154 of the MCS Act challenging the sale certificate dated 22nd December 2017 passed in favour of the Petitioner. By the impugned order the Respondent No. 3 has set aside the auction sale on the ground that there is a violation of Rule 107 (11) (d) (i), 107 (1) (f) and 107 (11) (h). Perusal of the Rule 107 would indicate that sub rule 14 of Rule 107 provides that at any time within 30 days from the date of the sale of the immovable property, the applicant whose interest are affected by the same may apply to the District Deputy Registrar to set aside the sale on the ground of a material irregularity of mistake of fraud in publishing or conducting it. Rule 107 which deals with the procedure for attachment and sale of the property is complete code in itself providing for objections to be raised to the sale which has been conducted within a period of 30 days on the ground of a material irregularity of mistake of fraud in publishing or conducting it. Admittedly in the present case no application was made within the prescribed period of 30 days and sub Rule (14) of Rule 107 was not invoked. An Application was filed under Section 154 of the MCS Act which was clearly not maintainable. As the remedy under sub Rule 14 of rule 107 was not availed by the Respondent No. 1, the Revision Application No. 25 of 2018 was clearly with an intent to by pass the limitation period of 30 days which is prescribed under sub rule 14 of rule 17. The Respondent No. 3-Authority without noticing the statutory provisions has allowed the Revision Application on the ground of non compliance of sub Rule 11 of Rule 107 when remedy has been clearly provided under Sub Rule (14) of rule 11.

17. In light of the above, the impugned order passed in

Revision Application No. 25 of 2018 also cannot be sustained.

18. Resultantly, the Petition succeeds. The impugned orders dated 25th May, 2022 passed in Revision Application No. 25 of 2018 and Revision Application No. 142 of 2022 are hereby quashed and set aside.

[Sharmila U. Deshmukh, J.]