IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6481 OF 2023.

1. Dr. Annasaheb Chougule Urban
Co-Op Bank Ltd., Peth Vadgaon,
Tal. Hatkanangale District-Kolhapur

2. Special Recovery Officer
Dr. Annasaheb Chougule Urban
Co-op. Bank Ltd., Peth Vadgaon,
Tal. Hatkanangale District- Kolhapur ...Petitioners.

Versus

1.Jotirling Tractors
Prop Shri Ramchandra Dnyandev Mane
R/o. Shiroli (Pulachi), Tal. Hatkanangale,
District-Kolhapur

2. Deputy Registrar, Co-operative Societies,
Kolhapur

3. Sarjerao Rajaram Veer
(Since deceased thr. Legal heirs)
3a. Smt. Sangita Sarjerao Veer
Age.43 Occu. Housewife,

3b Sangram Sarjerao Veer
Age 24, Occ Nil

3c Vikram Sarjerao Veer
Respondent Nos.3a to 3c are

(R/o. C/o. Shreyas Grinding,
Megharaj Colony, Shiroli (Pulachi),
Tal. Hatkanangale, District-Kolhapur) ...Respondents.

WITH
WRIT PETITION NO. 13793 OF 2018.

1. Sarjerao Rajaram Veer
(Since deceased thr. Legal heirs)

1. Smt. Sangita Sarjerao Veer
Age.43 Occu. Housewife,

2. Sangram Sarjerao Veer
Age 24, Occ Nil

3. Vikram Sarjerao Veer

Respondent Nos.3a to 3c are
R/o. C/o. Shreyas Grinding,
Megharaj Colony, Shiroli (Pulachi),
Tal. Hatkanangale, District-Kolhapur ...Petitioners.

Versus

1. Jotirling Tractors Pvt. Ltd.
Thr. Its Prop.
Shri Ramchandra Dnyandeo Mane,
R/o. Shiroli Pulachi, Tal. Hatkanangle,
Dist. Kolhapur,

2.Dr. Annasaheb Chougule Urban Co-operative
Bank Ltd. Peth Vadgaon, Tal. Hatkanangle,
Dist. Kolhapur,

3.Special Recovery Officer,
Dr. Annasaheb Chougule Urban Co-operative
Bank Ltd. Peth Vadgaon, Tal. Hatkanangle,
Dist. Kolhapur,

4. District Sub-Registrar.

Co-operative Societies, Kolhapur,

5. Divisional Joint Registrar,
Co-operative Societies, Kolhapur Division,
Kolhapur. ...Respondents.

Mr. Umesh R. Mankapure a/w. Ms. Stefy J. Dias for the Petitioner in WP No.6481/2023 and for Respondent No.2 in WP No.13793/2018.
Mr. Vaibhav Gaikwad for the Petitioner in WP No.13793/2018.
Mr. S. R. Ganbavale for the Respondent No.1.
Ms. T. J. Kapre, AGP for Respondent Nos.4 and 5 in WP No.13793/2018 and for Respondent No.2 in WP NO.6481/2023.

Coram : Sharmila U. Deshmukh, J.

Date : 8th October, 2024.

JUDGMENT:

1. ***RULE.*** Rule made returnable forthwith and taken for final hearing with consent of the parties.

2. Both petitions take exception to the order dated 4th April 2018 passed in Revision Application 272 of 2017 by the Divisional Joint Registrar allowing the Revision Application filed by Respondent No.1 cancelling the sale certificate and the sale confirmation issued under Rule 107 (14) (v) of Maharashtra Co-operative Societies Rules, 1961.

3. The facts pleaded are that the Respondent No.1 had obtained financial assistance from the Petitioner bank of Rs.1,50,000/- . As there was default, application was made for issuance of recovery certificate under Section 101 of the Maharashtra Co-operative Societies Act, 1960 (for short, MCS Act). Pursuant thereto, recovery certificate was issued and the same was put into execution. The property of the Respondent No.1 came to be attached and sold in auction. Being aggrieved by the auction sale dated 18th December 2014, Respondent No.1 filed Revision Application No.139 of 2015 before the Divisional Joint Registrar challenging the auction sale alleging that after recovery certificate was obtained, the applicant had deposited certain amounts and therefore there is due and payable a sum of Rs.1,23,270/- and the property of Respondent No.1 has been auctioned for Rs.5,15,000/-. The Divisional Joint Registrar by order dated 22nd April 2015 rejected the Revision Application. Subsequently, Application was made for issuance of sale certificate and confirmation of sale by the Petitioner-bank which came to be allowed by order dated 1st October 2015.

4. Respondent No. 1 filed Revision Application under Section 154 of MCS Act challenging the auction sale dated 18th February 2014, sale certificate and confirmation of sale dated 1st October 2015. The Revision Application No.353 of 2015 came to be decided by order dated 5th May 2016 holding that the Revision against the auction sale is not maintainable and only against the sale certificate and confirmation of sale, matter was remanded for fresh hearing. On remand, the sale certificate and the sale confirmation was upheld by the Deputy

Registrar by order dated 7th December 2016.

5. Revision Application No.445 of 2016 was once again filed by Respondent No.1 before the Divisional Joint Registrar contending that no notice of auction sale was given to the Respondent No.1 and the auction sale is illegal. By order dated 19th April 2017 the matter was again remanded for fresh consideration on sale confirmation and sale certificate by the Divisional Joint Registrar. Upon remand the Deputy Registrar once again confirmed the sale certificate and sale confirmation.

6. Being aggrieved by order dated 15th September 2017 passed by the Deputy Registrar, Revision Application was again filed by Respondent being Revision Application No.272 of 2017. The Divisional Joint Registrar by the impugned order dated 4th April 2018 allowed the Revision Application and set aside the sale certificate and the sale confirmation on the ground that the upset price was approved on 29th April 2010 and auction had taken place on 18th February 2014 that is after four years.

7. Heard Mr. Umesh R. Mankapure for the Petitioner in WP No.6481/2023 and for Respondent No.2 in WP No.13793/2018 and Mr. Vaibhav Gaikwad for the Petitioner in WP No.13793/2018, Mr. S. R. Ganbavale for the Respondent No.1 and Ms. T. J. Kapre, AGP for Respondent Nos.4 and 5 in WP No.13793/2018 and for Respondent

No.2 in WP NO.6481/2023.

8. Mr. Mankapure, learned counsel for the Petitioner would submit that pursuant to the issuance of recovery certificate, same was put into execution and property of Respondent No.1 was attached and auctioned. He would submit that the only ground on which sale certificate and sale confirmation has been set aside is that the upset price was fixed on 20th October 2010 whereas sale has been conducted on 18th February 2014 after four years. He has tendered across the bar a compilation of documents pertaining to the previous revision Application and the orders which were passed and has taken this Court in detail through the documents. He submits that every effort has been made by Respondent No.1 defaulter to stall the proceedings. He submits that although auction sale was conducted on 18th February 2014 till date the auction purchaser could not be put into possession by reason of various orders of remand passed by the Divisional Joint Registrar. He submits that under Rule 107 (14) in case of sale of any immovable property the time limit prescribed is 30 days to set aside the sale on the ground of material irregularity, mistake or fraud and as per the proviso the sale can be set aside only if the recovery officer is satisfied that the applicant has sustained substantial injury by reason of such mistake and fraud. He submits that his first objection is to maintainability of the Revision Application against the sale certificate and sale confirmation. He tenders compilation of judgments and submits that it is a settled position in law that for the purpose of challenging either the auction sale or sale confirmation or sale certificate, revision under Section 154 is not maintainable. He would submit that the second submission is that the Divisional Joint Registrar sets aside the sale confirmation and sale certificate on the ground that upset price has been fixed in the year 2010 and the auction sale has been conducted in the year 2014. He submits that even if it is accepted, that the same constitutes a material irregularity, what was required to be shown is that by reason of the material irregularity, substantial injury is caused to the applicant. He submits that property has been sold for a sum of Rs.5,15,000/- whereas the upset price which was fixed was Rs.2,60,284/-.

9. Mr. Gaikwad, learned counsel appearing for the Petitioner in connected Writ Petition adopts the submissions of Mr. Mankapure.

10. *Per contra*, Mr. Ganbavale, learned counsel appearing for the Respondent would submit that under Rule 107(14), the Respondent No.1 was entitled to apply to the recovery officer to set aside the sale. Pointing out to the definition of the "Recovery Officer" in Rule 2 (h) of the MCS Rules 1961, he submits that the Recovery Officer exercised the powers of the Registrar under Section 156 of the MCS Act. He submits that the Application which was made before Divisional Joint

Registrar was under Section 156 and not under Section 154 and therefore the proceedings were maintainable. He would further submit that in the order dated 22nd April 2015 passed in Revision Application No.139/2015, the stand of the Bank was that if the Respondent No.1 paid Rs.1,80,382/- then the bank is ready to withdraw the auction sale. He submits that subsequently amount was paid, though not within the period prescribed, and therefore the auction sale could not have been conducted. He would further submit that in the decision in the case of ***Rajesh B. Yemkanmardi and Ors. vs. Praful J. Padiya and Ors.***[1] this court has observed that collusive auction process would amount to playing fraud and fraud would vitiate the entire auction process irrespective of whether Revision Application was maintainable against the sale certificate. He submits that in the present case even in proceedings under Article 227, issue of fraud can be raised and that fraud vitiates all acts. He submits that the fraud has been alleged in the Revision Application pleading that there was no auction sale notice to the Respondent No.1 and there is illegal auction of property on the basis of wrong upset price. He submits that it is one of the grounds in appeal that the Bank has not considered deposit of the amount as per the recovery certificate and satisfaction of the recovery certificate. He submits that specific case of fraud is therefore pleaded and by virtue of

1 *2021(1) Mh. L. J. 301*

fraud alleged, revision Application is maintainable.

11. Considered the submissions and perused the record.

12. Multiple Revision Applications were filed by Respondent No.1 right from the year 2015 after the auction sale was carried out on 18th February 2014. The First Revision Application challenged the auction sale dated 18th February 2014 and was filed under Section 154 of the MCS Act which came to be rejected so also the second Revision Application. On 1st October 2015 sale came to be confirmed under Rule 107(14)(v) and sale certificate was issued. Subsequently even the sale confirmation and the sale certificate was challenged by Respondent 1 claiming that no opportunity of hearing was given to the applicant while issuing sale permission and the sale certificate. The provisions of Rule 107 does not provide for any opportunity of hearing to be given to the defaulter while issuing sale certificate and for confirmation of the same. Despite thereof, the Divisional Joint Registrar remanded the matter twice and on both these occasions, Respondent No.1 was heard and sale certificate and sale came to be confirmed. Again an attempt was made by filing Revision Application No.272/2017 challenging the sale certificate which was confirmed after 2nd remand on 15th November 2017.

13. Before proceeding to analyze the findings in the impugned order it would be apposite to have brief look at Rule 107 of MCS Rules 1961 contained in Chapter XI setting out the procedure for attachment and sale of property. In the present case we are concerned with the objections which can be raised under Sub-Rule (13) and (14) of Rule 107. Perusal of Rule 107 would indicate that the same is complete Code in itself prescribing the procedure for attachment and sale of the property as also the contingencies in which such sale can be assailed by any person having interest in the said property. Sub Rule (13) and (14) of Rule 107 reads as under:

> *"(13) 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.

(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.]

(14) (i) At any time within thirty days from the date of the sale of immovable property, the applicant or any person entitled to share in a rateable distribution of the assets or whose interests are affected by the sale, may apply to the [District Deputy Registrar] to set aside the sale on the ground of a material irregularity or mistake or fraud in publishing or conducing it :Provided that no sale shall be set aside on the ground of irregularity or fraud unless the [District Deputy Registrar] is satisfied that the applicant has sustained Substantial injury by reason of such irregularity, mistake or fraud.

(ii) If the application be allowed, the Recovery shall set aside the sale and may direct a fresh one. [Expenses of the such set aside sale shall be borne by the society.]

(iii) On the expiration of thirty days from the date of sale, if no application to have the sale set aside is made or if such application has been made and rejected, the [District Deputy Registrar] shall make an order confirming the sale;

(iv) Whenever the sale of any immovable property is not so

confirmed or is set aside, the deposit or the purchase money, as the case may be, shall be returned to the purchaser.
(v) After the confirmation of any such sale, the [District Deputy Registrar] shall grant a certificate of sale bearing his seal and signature to the purchaser, and such certificate shall state the property sold and the name of the purchaser."

14. Reading of the above provisions would indicate that even after attachment of the immovable property and even where immovable property has been sold by the Recovery Officer, an opportunity is given to the defaulter or any person having any interest in the property to set aside the same subject to the conditions mentioned therein. If the proceedings are initiated under Sub Rule (13) of Rule 107 by which the purchase money as well as the amount of arrears is paid within 30 days from the date of sale, the Recovery Officer is enjoined to pass an order setting aside the sale and repay the money to the purchaser. If such a course is adopted by the concerned person then no Application can be filed under Sub Rule (14) of Rule 107 to set aside the sale on the ground of material irregularity or mistake or fraud.

15. In the present case, auction sale was conducted on 18th February 2014 which came to be challenged by way of Revision Application under Section 154 of the MCS Act. Irrespective of the position whether the Revision was maintainable or not, the fact remains that the order of 24th April 2015 records that as per the statutory provisions, the defaulter has not deposited the entire dues plus 5% as per Rule leading to rejection of Revision Application. Once an opportunity was given to the defaulter under Sub Rule (13) of Rule 107, it was expected that there would be due compliance in order to secure his own interest in the property which is stated to be residential house. However Respondent No.1 did not avail of that opportunity. Although it is stated that subsequently amounts were paid, the fact remains that there was non compliance of Sub Rule (13) as noted by the order dated 24th April 2015.

16. Having lost that opportunity, several attempts were then made by Respondent No.1 by filing Revision Applications for challenging the sale confirmation and the sale certificate. Sub Rule (14) of Rule 107 provides that within a period of 30 days from the date of sale of immovable property, the concerned person having interest can apply to the Recovery Officer to set aside the sale. As per the said provision, the Application for setting aside sale can be made only on the ground of material irregularity, mistake or fraud in publishing or conducting it and that too within a period of 30 days and the proviso makes it clear that where the sale is sought to be set aside on the ground of irregularity or fraud, the Recovery Officer must be satisfied that applicant has sustained substantial injury by reason of such mistake or fraud.

17. In the present case, even if it is assumed that the Revision Application was one filed under Sub-Rule (14) of Rule 107, it was not filed within prescribed period of 30 days and the challenge to the auction sale or the sale certificate and the confirmation of the sale by the Respondent 1 did not make out any case of material irregularity, mistake or fraud. The grounds on which the revision Application was filed was that no notice of auction sale was given to the applicant, that there has been illegal auction on the basis of wrong upset price, the applicant has deposited amount with the opponent bank and satisfied the recovery certificate.

18. Although it is sought to be alleged by Mr. Ganbavale, that by reason of the amount having been paid by the defaulter which is lying with the Petitioner bank, the sale of the property constitutes fraud, the fact remains that as recorded in the order of 22nd April 2015, there is non compliance of Sub Rule (13) of Rule 107. As far as the upset price being wrong or not giving auction sale notices, the said contentions cannot constitute an allegation of fraud and at the most can be said to be allegation of material irregularity in conducting the sale. In order to challenge the sale on the ground of material irregularity, there has to be a satisfaction that the applicant has sustained substantial injury by reason of such material irregularity. From the grounds made out in the revision Application and the averments therein, nothing has been demonstrated to this Court to show that even if the upset price was fixed four years prior to the auction sale, by reason of the sale, Respondent No.1 has sustained substantial injury. The proviso is very clear and specific and unless there is satisfaction recorded in the order of the Divisional Joint Registrar that there has been a Substantial injury caused to Respondent No.1 by reason of upset price fixed prior to four years, the sale confirmation and the sale certificate could not have been set aside.

19. The whole object of prescribing a time limit of 30 days under Sub-Rule (14) of Rule 107 and the grounds on which auction sale can be challenged by the defaulter or any any person interested is to ensure that the defaulters does not take advantage of the process of law and stall the auction proceedings and sale in favour of third parties. This is precisely what has happened in the present case. An auction which has been conducted in the year 2014 has not yet fructified in favour of the auction purchaser who has parted with valuable consideration in the year 2014 and still not put in possession of the auctioned property. Merely because there is some allegation made in the appeal memo as regards the upset price, which are bald allegation without any material to substantiate the said allegations, no conclusion could be reached that there is material irregularity or fraud in conducting the sale. It cannot be disputed that fraud must be pleaded specifically with clear details and cannot be only alleged and inferred. Perusal of the appeal memo would indicate that there are no clear pleadings as to fraud and therefore the contention of Mr. Ganbavale that the Revision Application would be maintainable where there is fraud in the auction sale resulting in vitiating and deserved to be rejected.

20. Now coming to the issue as regards the maintainability of the Revision Application under Section 154, Mr. Ganbavale has submitted that in view of the definition of Recovery Officer under Rule 2(h), the revision Application which was filed was in fact the Application under Section 156 of MCS Act which the recovery officer had power to adjudicate. Firstly Section 156 of the MCS Act deals with the power of the Registrar to recover certain sum by attachment or sale of the property and the said provision cannot be invoked for the purpose of challenging the auction sale as contemplated under Rule 107 of MCS Rules, 1961. The reliance on Rule 2(h) of the MCS Rules 1961 is also misplaced as the said Rule defines the expression "Recovery Officer" to mean the person who is empowered to exercise the powers of Registrar under Section 156 of MCS Act.

21. Although the provisions of Rule 107 read with Sub Rules prescribe the manner in which the challenge can be made to the auction sale, pursuant to the attachment in execution of the recovery certificate, a Revision Application was filed repeatedly by Respondent No.1 under Section 154 of MCS Act and entertained by the statutory authorities without noticing clear provisions of law contained in Rule 107 and the legal position which is now no longer *res integra* and settled by various decisions of this Court. In the decision of ***Rajesh Yemkanmardi*** *(supra)* it has been held that revision under Section 154 of the MCS ACT against confirmation of sale and issuance of sale certificate is not maintainable as the same are not orders within meaning of Section 154 of the Act and that adequate and efficacious remedy is provided under Rule 107(14)(i) of the Rules. The issue was also considered by the Apex Court in the case of ***Deendayal Nagari Sahakari Bank Limited and Anr. vs. Munjaji and Ors.***[2]**,** where the Apex Court has held that once the borrower fails to apply to the Recovery Officer to set aside the auction sale on the ground of material irregularity, mistake or fraud within a period of 30 days from the date of sale of immovable property thereafter it is not open for the borrower to challenge the same on the ground of material irregularity. In view of the clear enunciation of law by the Apex Court, apart from the fact that no revision Application was maintainable to challenge the same, the borrower did not have any remedy left to challenge the sale on the ground of material irregularity once the period of 30 days have

2 *(2022) 7 Supreme Court Cases 594*

expired.

22. The Learned Single Judge in the case of ***Ramchandra Sitaram Mulik and Anr vs. Janata Nagari Shakari Patsnastha Ltd. Hupari and Ors.***[3] has also has also taken a view that no revision is maintainable against sale and confirmation certificate issued by the Deputy Registrar. In recent decision of this Court in ***Accentuate Developers Pvt. Ltd. vs. Anushool Metals Pvt. Ltd. and Ors.***[4] the challenge was to auction sale and learned Single Judge have held that the auction sale cannot be challenged by way of Revision under Section 154 of MCS Act. From the long line of decisions which have been referred to it is very clear that auction sale or the sale confirmation and the sale certificate cannot be challenged by way of revision under section 154 of the MCS Act.

23. The decision in the case of ***Rajesh Yemkanmardi*** *(supra)* has taken a view that where there is fraud, which is demonstrable revision Application would be maintainable, as fraud would vitiate the entire auction process on the well settled proposition of law that fraud vitiates all acts and can be raised in any proceedings. However in the present case there is no material which has been brought on record to prove fraud. The submissions of Mr. Ganbavale read with the grounds in the revision Application do not set out any case of fraud. Even if it is

3 *2018(2) Mh. L. J. 245*
4 *Writ Petition No.2919/2008 dated 14/6/2024.*

held that the upset price was fixed prior to four years the same would not constitute fraud but would amount to material irregularity which as held by the Apex Court in the case of ***Deendayal Nagari Sahakari*** *(supra)* had to be raised within a period of 30 days and thereafter no such ground assailing the same would be raised. The fraud which according to Mr. Ganbavale has occurred is that the recovery certificate stood satisfied as the amount was deposited by the Petitioner. The provisions of Sub- Rule (13) of Rule 107 provides for deposit within a period of 30 days from the date of sale and admittedly in the present case the deposit, if any, was beyond the said date. In that event, the sale cannot be set aside on account of deposit if any made by Respondent No.1 and it is open for Respondent No.1 to adopt appropriate proceedings for recovery of the said amount.

24. Considering the above, in my view as the sale certificate and the confirmation of sale was not an order as is the consistent view of the co-ordinate Benches of this Court to which I am respectfully bound, Revision under Section 154 of the MCS Act before the Joint Divisional Registrar was not maintainable. Even for the Revision Application to be maintainable on ground of fraud there must be clear and specific pleading of fraud which pleadings are absent in the present case. The allegations made in the Revision Application are bald and vague allegations, on the basis of which no finding of fraud can be reached.

25. In light of the above, impugned order dated 4th April 2018 passed by the Divisional Joint Registrar setting aside the sale confirmation and sale certificate is clearly unsustainable and is hereby quashed and set aside. Consequently, the Petition succeeds.

26. Rule is made absolute in the above terms. In view of disposal of petitions, Interim/Civil Applications, if any, do not survive for consideration and stand disposed of.

[Sharmila U. Deshmukh, J.]