IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 207 OF 2008

1) Mahavir Devappa Khot Age-41 Yrs. Occu-Business Residing of Parshwanath Nagar Kupwad Road, Sangli	]]]	**...Petitioners.**

Versus

1) Sangli Urban Co-op. Bank Ltd. Head Office – 404, Khanbhag Sangli	]]	
2) Special Recovery Officer Sangli Urban Co-op. Bank Ltd. Head Office- 404, Khanbhag Sangli	]]	
3) Seema Manadeo Jadhav Age- 47 Yrs. Occu-Business Residing At Sanchayani Park Flat No. 8, Rajaram Puri, Kolhapur	]]]]	
4) Mahadeo Shamrao Patil **[Deleted]** Age- Adult, Occu-Driver Resident of Rajaram Nagar Post Sakrale, Tal. Walwa Dist. Sangli	]]]]	
5) Prafulla Ganpatrao Jadhav **[Deleted]** Age- 72 Yrs., Occu- Household Residing at 4th Stop, Phule Wadi Kolhapur, Dist. Kolhapur	]]]]	
6) Shivprasad Annasaheb Kore **[Deleted]** Age- 43 Yrs. Occu. Agri. Resident of Korewada, Nadives Patil Galli, Miraj, Dist-Sangli	]]]]	
7) Joint Registrar Co-op. Societies Kolhapur Division Kolhapure	]]	

8) The Deputy Registrar Co-op. Societies Sangli.]

...Respondents.

Mr. Umesh Mankapure a/w Mr. Amol Kanaki for the Petitioner.

Mr. G. H. Keluskar for the Respondent No.1.

Mr. Ashutosh Kulkarni, a/w Ms. Vrushali Maindad, Adv. Shaheen Kapadia, Ms. Simran Raut, Adv. Surbhi Kulkarni for Respondent No.3.

Mr. P. V. Nelson Rajan, AGP for Respondent-State.

Coram :	**Sharmila U. Deshmukh, J.**
Reserved on:	**December 5, 2024.**
Pronounced on :	**December 13, 2024.**

JUDGMENT :

1. Rule was issued by this Court on 10th August 2009.

ISSUE:

2. The issue is whether the jurisdiction under Article 227 of Constitution of India should be exercised at the instance of auction purchaser, in whose favour there is no sale certificate as the sale has not been confirmed, to re-open the satisfaction of debt between the Co-operative Bank and the borrower particularly when there is no adjudication into the validity of auction sale.

THE CHALLENGE:

3. The present Petition is at the instance of the auction purchaser challenging the order dated 11th December 2007, passed by the Divisional Joint Registrar, Co-operative Societies in Revision Application No. 254 of 2007, disposing the Revision Petition filed by the Respondent No. 3-Borrower on the ground that the cause of action of the Revision is over as the Respondent No. 3-Borrower has satisfied the dues of the Respondent No. 1-Bank.

FACTUAL MATRIX:

4. The undisputed facts of the case are that the Respondent No. 1-Bank had advanced financial assistance of Rs 1,40,000/ to the Respondent No. 3 in the year 1999. Due to default in repayment, the Respondent No. 1 filed Co-operative Case No. 514 of 1999, for recovery of loan amount of Rs. 1,98,449/- along with interest which was decreed and the award was passed holding the Respondent Nos. 3 to 6 jointly and severally liable to pay the said amount. As the Award remained unsatisfied, the Award was put in execution and notice for auction of the mortgaged property was published by the Respondent Nos. 1 and 2. The auction was to be conducted on 15th June 2007 at 1.00 A.M. and the Petitioner's bid of Rs. 5,65,000/-, came to be accepted on the same date on 15th June 2007, with the Petitioner depositing 50% of the total amount of the bid. On 15th June 2007, the Special Recovery Officer intimated the Respondent Nos. 3 to 6 about auction calling upon them to make payment of Rs. 3,45,714/- plus interest plus surcharge plus other expenses and 5% of the auction price on or before 15th July, 2007 upon which the auction would be cancelled or else the approval of the District Deputy Registrar to the auction will be sought. Inspite of the notice, Respondent No. 3 failed to repay the amount and confirmation of the auction proceeding was sought from the Deputy Registrar of Co-operative Society which was not granted in view of the pending Revision Application filed by the Respondent No. 3.

5. In the interregnum, Revision Application No. 254 of 2007, had been filed by the Respondent No. 3 before the Divisional Joint Registrar, Co-operative Society seeking inspection of loan account and for cancellation of auction sale. By Roznama of 5th September, 2007, it was recorded that the Respondent No 3 is ready to deposit the amount of auction and the Respondent Nos. 1 and 2 were directed to accept the amount as per Rule. In compliance, the Respondent No. 3 made payment of Rs. 3,45,000/- and as Respondent No 1 and 2 were demanding additional amount, an application was filed by Respondent No 3 on 6th October, 2007 for direction to the bank to accept Rs. 3,46,756/- and issue NOC. On the same day, the Respondent Nos. 1 and 2 filed their reply contending that the outstanding was Rs. 4,02,518/- and the auction proceedings may be confirmed. On 10th October, 2007 the Petitioner sought impleadment in the proceedings and was impleaded vide order dated 29th October, 2007. On 10th October 2007, the Respondent No. 2-Special Recovery Officer filed Pursis before the Divisional Joint Registrar giving the no dues certificate in view of the sum of Rs. 3,45,714/- plus surcharge having being paid by the Respondent No 3.

6. In light of the No Dues Certificate issued, the Divisional Joint Registrar by order dated 11th December 2007, disposed of the Revision Application, which is impugned herein.

SUBMISSIONS:

7. Mr. Mankapure, learned Counsel for Petitioner would submit that the loan was obtained in the year 1995, the Award was passed on 29th January 2005 and the auction was conducted on 15th June 2007, and the payment of entire auction amount of Rs. 5,65,000/- is not disputed. He submits that the notice issued to the Respondent No. 3 to make the payment before 15th July 2007, was not complied with. He submits that the only reason why auction was not confirmed was because of pendency of the Revision. Pointing out to the roznama, he submits that the Revisional Authority without any power directed the Bank to accept the amount on 5th September 2007, by reason of which the Bank accepted the amount and no dues certificate was issued.

8. He submits that Ground "F" of the Revision Application would indicate that the Respondent No. 3 was not ready to deposit the entire amount as per Rule 107 (13) of the MCS Rules, 1961. He submits that the Revision itself is not maintainable and no direction could have been given to the Bank to accept the money and that too after the statutory period for payment is over. He submits that the amount was not deposited along with Revision Application and it was not unconditional and unqualified deposit in view of ground "F" of the Revision Application. In support he relies upon the following decisions:---

Dr. Annasaheb Chougule Urban Co-operative Bank Ltd Vs. Jotirling Tractors[1]
Hanumant Pandurang Deshmukh Vs. Vithal Maruti Bhosale [2]
Rao Mahmood Ahmad Khan Vs. Ranbir Singh[3]
Deendayal Nagari Sahakari Bank Ltd Vs. Munjaji .[4]
Ram Karan Gupta vs. J.S. Exim Bank Limited[5]
Sukumar Kumar Patil vs. Prakash Appaso Patil[6]
Mohan Lal vs. Hari Prasad Yadav[7]
Hukumchand vs. Bansilal [8]
Dadi Jagannadham vs. Jammulu Ramulu[9]
Ram Maurya Vs. Kailsash Nath [10]**.**

9. *Per contra,* Mr. Kulkarni, *l*earned Counsel appearing for the Respondent No. 3 would submit that the auction was conducted on 15th June 2007, and the Revision Application was filed within period of 30 days on 28th June 2007. He submits that the order of confirmation

1 Writ Petition No. 6481 of 2023 dated 8th October, 2024
2 Writ Petition No. 263 of 2016 dated 12th August 2020
3 1995 Supp (4) SCC 275
4 (2022) 7 SCC 594
5 (2012) 13 SCC 568
6 2015 (3) Mh.L.J.
7 (1994) 4 SCC 177
8 (1967) 3 SCR 695
9 (2001) 7 SCC 71
10 (1999) 9 SCC 276

of sale is not revisable and as in the present case there is no confirmation of sale and no sale certificate issued the revision was maintainable. Drawing support from the decision in the case of ***Aniruddha s/o Sadashiv Pande vs. Divisional Joint Registrar, Co-operative Societies, Amravati***[11] , he submits that this Court has held that as confirmation of sale had not taken place, the auction purchaser had only nebulous right and no vested right created in his favour and therefore the Petitioner has no locus. He submits that though confirmation of sale was sought on 26th June 2007, the same was not granted. He submits that the case of the Respondent No. 3 would fall within Sub Rule 12 of Rule 107 of the Rules of 1961 in view of specific pleading in paragraph No. 10 of the Revision Application that the tender of the amount on 15th June, 2007 by Respondent No. 3 was not accepted by the Bank. He submits that the auction purchaser is entitled to the refund of the auction amount and as there is no confirmation of sale, he has no locus to challenge the order. He submits that in the affidavit-in-reply, the Bank has not specifically denied that on 15th June 2007, the Respondent No. 3 had visited the Bank and tendered the amount. He submits that as per the terms and conditions of auction sale, the agreement was that the bid will be confirmed only upon receiving confirmation of sale.

11 [2019 (2) Mh. L.J.

10. In rejoinder, Mr. Mankapure, would submit that the Ground (F) of the Revision Application would make it clear that the Petitioner was not willing to comply with the requirements of Sub Rule 13 of Rule 107 of MCS Rules. He submits that the decision in the case of ***Aniruddha s/o Sadashiv Pande (supra)*** does not deal with the issue of maintainability of Revision. He distinguishes the Judgment by pointing that in that case, the Bank had sent the demand drafts of the entire amount deposited by the Auction Purchaser along with 5% commission amount. He submits that Sub Rule (12) of Rule 107 is not applicable as the same refers to a date prior to date fixed for sale and not the same day of sale. He submits that as the sale has not been set aside the auction purchaser has locus. He draws support from the decision of ***Hukumchand vs. Bansilal*** *(supra)* to contend that there is no requirement of confirmation of sale as the sale becomes absolute after period of 30 days if no application is made or is made and disallowed. He would submit that Rule 107(14)(iii) provides that if there is no application for setting aside sale, the District Deputy Registrar is required to make an order confirming the sale.

REASONS & ANALYSIS:

11. The undisputed facts of the case are that on 15th June, 2007 the auction was conducted and by communication dated 15th June, 2007 the Special Recovery Officer called upon the Respondent

No 3 to make the payment of the amounts stated therein within a period of 30 days failing which the auction will be confirmed by obtaining approval of the Deputy Registrar. As per Rule 107(13) of MCS Rules, the period of thirty days is available to set aside the auction sale. The period of 30 days would have expired on 15th July, 2007 and the Revision Application was filed before expiry of period of 30 days. On 28th June, 2007, specifically pleading that on 15th June, 2007, the entire loan amount was tendered to the Respondent No. 1 Bank by the Respondent No. 3 which was not accepted by the Bank, the Revision Application was filed. The affidavit of Respondent No. 1 Bank does not specifically deny the pleading of Respondent No. 3.

12. The pleading makes it clear that the Respondent No 3 attempted to comply with the notice dated 15th June, 2007 which would have the effect of setting aside the auction sale. The Respondent No. 3 was prevented from tendering the amount as the Respondent No. 1 Bank refused to accept the amount. Thereafter the Divisional Joint Registrar, upon the plea raised by the Respondent No. 3, by order dated 5th September, 2007, directed the Respondent No. 1 Bank to accept the amount as per Rules. All that the Divisional Joint Registrar did was to enforce the compliance by Respondent No. 1 Bank of their own notice dated 15th June, 2007. The Respondent No. 1 Bank did not challenge the order dated 5th September, 2007 and accepted the payment from Respondent No. 3. The result was that the loan account was closed and the debt was duly satisfied.

13. The Respondent Nos. 1 and 2 filed a pursis on 10th October, 2007 that they have received the dues and issued No Dues Certificate. The debt having been satisfied and No Dues Certificate having been issued by the Bank, nothing survived for consideration of Divisional Joint Registrar and Application was disposed of.

14. The Application was instituted by the Respondent No. 3 seeking cancellation of auction sale. There was no necessity for the Divisional Joint Registrar to go into the validity of auction sale as the debt came to be satisfied. The Divisional Joint Registrar merely disposed of the Revision Application as it had been rendered infructuous. Nothing stopped the Petitioner from adopting appropriate proceedings to enforce the auction sale in his favour. The Divisional Joint Registrar was not required to deal with the rival contentions as regards the auction proceedings in view of the No Dues Certificate issued by the Bank. The Petitioner had no locus to challenge the settlement between the Bank and borrower in absence of any vested right.

15. The Petitioner though being the successful bidder, the sale was not confirmed by the District Deputy Registrar and no sale certificate was issued in his favour. It is to be noted that one of the conditions of the auction sale was that the sale will be confirmed only after the approval was received. Admittedly no approval was granted to the auction sale by the District Deputy Registrar and no steps were taken by the Petitioner for seeking the confirmation of sale and sale certificate. The Petitioner thus did not acquire any vested right in the auctioned property and had only an inchoate right in the mortgaged property and thus could not have objected to the settlement of the debt. In ***Aniruddha s/s Sadashiv Pande vs Divisional Joint Registrar*** (supra), the Co-ordinate Bench was considering the issue of vested right of auction purchaser in the context of permission granted to the borrower to deposit the due amount. In similar facts, the borrower therein was permitted to deposit the due amount and the District Deputy Registrar had closed the case as entire dues were paid. The Learned Single Judge held that till confirmation of sale, the auction purchaser had only a nebulous right and there was no vested right created in his favour. As in that case the amounts came to be deposited before confirmation of sale, the order of District Deputy Registrar was upheld.

16. In the present case, the facts are similar as the debt came to be settled before the confirmation of the sale in favour of the auction purchaser. The right of the auction purchaser in such a case is to seek refund of the auction money alongwith interest.

17. Coming to the decisions relied upon by the learned Counsel appearing for the Petitioner, in the case of ***Dr. Annasaheb Chougule*** *(supra)* and ***Hanumant Pandurang Deshmukh*** *(supra)*, the sale was confirmed in favour of the auction purchaser and sale certificate had been issued and in that context the Petition at the instance of the auction purchaser and the Bank were considered and maintainability of Revision Application. In the present case the Bank has accepted settlement of the dues and has closed the loan account.

18. In the decision of the Apex Court in the case of ***Rao Mahmood Ahmad Khan (supra)*** the question under consideration was whether payment of ¼th of the amount of auction sale by cheque was valid tender within the meaning of U.P. Zamindari Abolition and Land Reforms Rules, 1952. In that context the Court considered the provisions of Order 21 Rule 84 to 86 of CPC which were para materia with provisions of U.P. Zamindari Abolition and Land Reforms Rules, 1952 and it was held that provisions are mandatory. The facts are clearly distinguishable.

19. In the case of ***Deendayal Nagari Sahakari Vs. Munjaji*** *(supra)* the sale certificate was issued in favour of the auction purchaser and the sale deed was also executed in favour of the auction purchaser and no steps were taken by the borrower to set aside the sale or make payment. In face of the inaction by the borrower, the Apex

Court has held that where the borrower fails to apply to the recovery officer to settle the auction amount within the period of 30 days, it is not open for borrower to challenge the sale on the ground of material irregularity. There is no quarrel with the said proposition, however the decision is not applicable as the Divisional Joint Registrar has not gone in the validity of auction and has disposed the Revision Application.

20. The next decision in the case of ***Ram Karan Gupta vs. J.S. Exim Bank Limited*** *(supra)* was considered by the Co-ordinate bench in the case of ***Aniruddha s/o Sadashiv Pande vs. Divisional Joint Registrar, Co-operative Societies, Amravati*** *(supra)* and it has been distinguished by holding that procedure of sale of property and recovery of dues was governed by the MCS Act and Rules.

21. In the case of ***Sukumar Kumar Patil vs. Prakash Appaso Patil*** *(supra)* the provisions of Section 210 of the Maharashtra Land Revenue Code were considered in the context of the Application made for setting aside the sale by a person having interest in the property. In that case the Court noted the decision in ***Ram Karan Gupta vs. J.S. Exim Bank Limited*** *(supra)* which had held that the sale would not be set aside unless the entire amount specified is deposited within prescribed period and deposit made must be unconditional and unqualified.

22. In the present case, there is specific pleading in the

Revision Application that on 15th June 2007, the Respondent No. 3 had visited the Bank for tendering the amount which was not accepted and thereafter within period of 30 days the Revision Application was filed which was disposed of in view of the satisfaction of debt. The auction sale was not set aside. Therefore the decision is not applicable as it is specifically held that auction cannot be set aside.

23. In the case of ***Hukumchand vs. Bansilal*** *(supra)* the Apex Court was considering the provisions of Order 21 of CPC and it held that in normal course the sale is required to be confirmed after 30 days. There is no dispute with the said proposition but in the present case before the expiry of period of 15 days the amount was offered by the borrower which was not accepted by the Bank leading to filing of the Revision Application within the period of 30 days.

24. The decision in the case of ***Ram Maurya Vs. Kailsash Nath*** (supra) was in the context of the auction sale being vitiated by material irregularity and fraud. The facts are completely different and are not applicable in the present case.

25. All the decisions relied upon by learned Counsel for Petitioner is in context of orders adjudicating the auction sale. The distinguishing feature in our case is that the Divisional Joint Registrar, by accepting the No Dues Certificate has disposed of the Revision without adjudicating validity of auction sale.

CONCLUSION:

26. Once the payment has been accepted by the Respondent Nos. 1 and 2 in satisfaction of the debt and the loan account has been closed, nothing survived for consideration of Revisional Authority and the Revision Application was disposed of. It was open for the auction purchaser to adopt appropriate remedy to seek the necessary relief for confirmation of sale, which was not done. In exercise of powers under Article 227, I am not inclined to re-open the settlement of the year 2007 at the instance of the auction purchaser, having an inchoate right. The scope and ambit of exercise of jurisdiction under Article 227 of Constitution of India was expounded in ***Garment Craft vs Prakash Chand Goel***[12] **as under:**

> *" 15. Having heard the counsel for the parties, we are clearly of the view that the impugned order is contrary to law and cannot be sustained for several reasons, but primarily for deviation from the limited jurisdiction exercised by the High Court under Article 227 of Constitution of India. The High Court exercising supervisory jurisdiction does not act as a court of first appeal to reappreciate, reweigh the evidence or facts upon which the determination under challenge is based. Supervisory jurisdiction is not to correct every error of fact or even a legal flaw when the final finding is justified or can be supported. The High Court is not to substitute its own decision on facts and conclusion, for that of the inferior court or tribunal.1 The jurisdiction exercised is in the nature of*

12 (2022) 4 SCC 181

correctional jurisdiction to set right grave dereliction of duty or flagrant abuse, violation of fundamental principles of law or justice. The power under Article 227 is exercised sparingly in appropriate cases, like when there is no evidence at all to justify, or the finding is so perverse that no reasonable person can possibly come to such a conclusion that the court or tribunal has come to. It is axiomatic that such discretionary relief must be exercised to ensure there is no miscarriage of justice.

16. Explaining the scope of jurisdiction under Article 227, this Court in Estralla Rubber v. Dass Estate (P) Ltd.2 has observed:-

"6. The scope and ambit of exercise of power and jurisdiction by a High Court under Article 227 of the Constitution of India is examined and explained in a number of decisions of this Court. The exercise of power under this article involves a duty on the High Court to keep inferior courts and tribunals within the bounds of their authority and to see that they do the duty expected or required of them in a legal manner. The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the subordinate courts or tribunals. Exercise of this power and interfering with the orders of the courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if the High Court does not interfere, a grave injustice remains uncorrected. It is also well settled that the High Court while acting under this article cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record. The High Court can set aside or ignore the findings of facts of an inferior court or tribunal, if there is no evidence

> *at all to justify or the finding is so perverse, that no reasonable person can possibly come to such a conclusion, which the court or tribunal has come to."*

27. It has been held that in exercise of powers under Article 227, the High Court is not expected to correct every error of law or even a legal flaw unless non interference would result in grave injustice. It is unnecessary to go into the issue of the maintainability of the Revision Application or to re-consider and re-open the settlement between the Bank and the borrower of the year 2007 on the argument of non-compliance of procedure for attachment and sale of the property at the instance of the Petitioner who has not acquired any vested right in the auctioned property in the absence of confirmation of sale in his favour.

28. In light of the above discussion, I am not inclined to interfere under Article 227 of Constitution of India. Petition is dismissed. Rule stands discharged.

[Sharmila U. Deshmukh, J.]

29. At this stage, a request is made for continuation of interim relief of *status quo* granted for a period of six weeks. The order of *status quo* granted earlier is extended for a period of six weeks from the date of uploading of this Judgment.

[Sharmila U. Deshmukh, J.]