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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6960 OF 2023

Babaso Shankar Patil and Others … Petitioners

Vs.

Shivkrupa Sahakari Patpedhi Ltd and Others … Respondents

Mr. Nilesh Wabale a/w. Mr. Umesh R. Mankapur for the Petitioners.
Mr. Bhupesh U. Samant a/w. Mr. Ganesh Kale for the Respondents.
Mr. P. V. Nelson Rajan, AGP for the State.

CORAM : GAURI GODSE, J.

DATE : 19th MARCH 2024

P.C.

1. This petition is filed for challenging Judgment and Order passed in a revision application filed by the petitioners for challenging approval of upset price, auction sale and confirmation of auction sale. Petitioners are the principal borrowers.

2. It is not disputed that the petitioners for the first time raised objection on the auction proceedings by filing a revision application after confirmation of the auction sale.

3. Learned counsel for the petitioners submitted that the valuation of the property approved by the District Deputy Registrar was lower than the market value of the property. He further submits that the petitioners are entitled to raise objection to approval of the upset price on the ground that the property is undervalued. He submits that the valuation of the property was much higher than the outstanding dues recoverable by the respondent – bank. He thus submits that it was not lawful on the part of the recovery officer to sell the entire property for recovery of the outstanding dues.

4. He submits that the proviso to sub-rule (15) of Rule 107 of the Maharashtra Co-operative Societies Rules, 1961 ("MCS Rules") provides that no larger section or portion of immovable property shall be sold than may be sufficient to discharge the amount due with interest and expenses of attachment, if any, from, the sale price. Learned counsel for the petitioners thus submitted that the petitioners were entitled to object to the confirmation of sale including the earlier order approving the upset price and the auction sale conducted on the ground that the property was undervalued.

5. Learned counsel appearing for respondent nos. 1 and 2 submitted that all the procedures for conducting auction sale as prescribed under Rule 107 of the MCS Rules are followed before conducting auction sale and confirmation of auction sale. He submitted that the petitioners had an option to object to the approval of the upset price after the proclamation was published. He further submitted that the petitioners also had an option to object to the auction sale within 30 days from the date of sale as provided in Sub-Rule 14(i) of Rule 107. He submitted that no objections were raised after the auction sale was conducted and hence after following due procedure the District Deputy Registrar has passed order confirming the sale. He further submitted that there was no basis or any supporting documents produced by the petitioners to contend that the property was undervalued.

6. He submitted that the recovery certificate was issued on 22nd January 2016 for recovery of total outstanding dues from the petitioners amounting to Rs.10,12,652/- with interest as on 31st March 2015 @ 16% from 1st April 2015. Thereafter, the demand notice was issued and after attachment of mortgaged property auction was

conducted on 19th November 2019. The petitioners never raised any objection during the entire auction proceedings. Hence auction proceedings were completed and after confirmation of the auction sale on 20th January 2020, physical possession of the property is also handed over to the auction purchaser on 30th January 2020. He submits that after completion of the entire procedure including handing over of the possession, the petitioners filed revision application which is correctly rejected by the revisional authority.

7. I have considered the submissions. I have perused the record. So far as the aforesaid dates regarding issuance of recovery certificate and the dates of all the stages of the auction sale as well as confirmation of sale are not disputed.

8. Perusal of the impugned order indicates that the revisional authority has examined all the relevant rules as well as compliance of all the rules for conducting auction sale as well as confirmation of the auction sale. Revisional authority has thus dismissed the revision on the ground that no objection was raised by the petitioners within the prescribed period i.e. after the date of auction sale and the order confirming auction sale. There is no dispute with regard to the notice

issued for attachment of the property and further procedure of publication of proclamation. All the stages after the auction sale are complied as referred to in the impugned order. Except for submitting that the property was undervalued, there is nothing on record to support the objection raised on behalf of the petitioners.

9. Learned counsel for the petitioners relied upon decision of this Court in the case of ***Rajesh B. Yemkanmardi and Others vs. Praful J. Padiya and others.***[1] By relying upon the said decision he submitted that when there is collusion or fraud in the auction sale and the sale certificate was an outcome of fraud, the revisional authority ought to have entertained the revision application filed by the petitioners.

10. I have perused the said decision. After considering the earlier decisions and the scope of Section 154 of the MCS Act, this Court in paragraph 45 of the said decision has held as under:

> *"45. In the light of the above the second question framed i.e., as to whether confirmation of sale under Rule 107(14) (iii) of the Rules and sale certificate issued under Rule 107(14)(v) of the Rules can be interfered with by the*

1 Writ Petition No. 1434 of 2015

> *revisional authority under Section 154 of the Act has to be answered in the negative. In the absence of fraud, such a revision application would not be maintainable".*

11. The revision application challenging confirmation of auction sale would not be maintainable in absence of fraud. In the present case learned counsel for the petitioners has raised objection to the auction proceedings only on the ground that the property was undervalued. Perusal of the revision memo as well as the impugned judgment does not indicate that the petitioners have pleaded any fraud with regard to the approval of an upset price. Considering the facts of the present case, the aforesaid decision of this Court relied upon by the learned counsel for petitioners is of no assistance to the petitioners.

12. The revisional authority by a well reasoned order has dismissed the revisional application. I do not find any error or illegality in the reasons recorded in the impugned order.

13. Petition is devoid of any merits. For reasons stated above, petition is dismissed.

[GAURI GODSE, J.]