

AGK

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.644 OF 2022  
WITH  
WRIT PETITION NO.645 OF 2022**

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Suryaji Raghoba Mokashi

... Petitioner

**V/s.**

Janata Sahakari Bank Ltd.

Ajara & Ors.

... Respondents

Mr. Sandeep S. Koregave for the petitioner.

Mr. Dhiraj Patil for respondent Nos.1 to 3.

Mr. Nikhil Pawar for respondent No.4.

Mr. P.G. Sawant, AGP for respondent No.5/State.

**CORAM : AMIT BORKAR, J.**

**DATED : JANUARY 4, 2024**

**P.C.:**

**1.** The petitioner (borrower) is challenging orders passed by the revisional authority in exercise of powers under Section 154 of the Maharashtra Cooperative Societies Act, 1960 ("MCS Act" for short). In the revision, the petitioner challenged certificate issued under Section 101 of the MCS Act and sale certificate issued by the Special Recovery Officer appointed under Section 156 of the MCS Act. By the impugned order, the revisional authority dismissed both the revision applications.

**2.** On perusal of the record, it appears that the Assistant Registrar issued certificate under Section 101 of the MCS Act in

favour of respondent No.1/Bank on 29 March 2011. For recovery of the amount, the Special Recovery Officer started process under Rule 107 of the Maharashtra Cooperative Societies Rules, 1961 ("MCS Rules" for short).

**3.** The petitioner filed revision application in the year 2013 challenging steps taken by the Special Recovery Officer. The revisional authority dismissed the revision. The petitioner approached this Court. This Court in Writ Petition No.2226 of 2014 granted liberty to the petitioner to challenge the steps taken by the authorities to auction the property. This Court observed that the respondents will not raise issue of maintainability of such revision application.

**4.** In pursuance of such liberty, petitioner filed Revision Application Nos.161 of 2018 and 95 of 2018. In Revision Application No.161 of 2018, petitioner challenged not only the auction process but also certificate issued under Section 101 of the MCS Act.

**5.** It needs to be noted that the liberty granted by this Court was limited to raise challenge to the steps taken by the Special Recovery Officer under Rule 107 of the MCS Rules. The petitioner in the revision application itself submitted that this Court in Writ Petition No.2326 of 2014 set aside the earlier order and in the original revision application no relief challenging certificate under Section 101 issued on 29 March 2011 was sought, there is delay of seven years one month and five days in filing the revision application. The reason for delay is wrong legal advise.

**6.** It is undisputed that the auction process is complete. Sale certificate has already been issued in favour of the purchaser. Registered sale deed is also executed in favour of the purchaser. It is well settled that the authorities under the MCS Act have no power to set aside registered instrument and only remedy of the aggrieved person is to approach Civil Court to set aside the registered instrument. Therefore, the Divisional Joint Registrar in exercise of power under Section 154 of the MCS Act had no power to set aside registered instrument. Therefore, no fault can be found with the orders passed by the Divisional Joint Registrar.

**7.** Both the writ petitions stand dismissed. No costs.

**8.** The respondent No.1/Bank shall pay the petitioner amount of Rs.7 lakh deposited towards 50% of the dues as required under Section 154(2)(a) of the MCS Act and also balance amount, if any, received out of auction after satisfying legal dues of the bank within six weeks from today.

**(AMIT BORKAR, J.)**