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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4712 OF 2011

1. Hanumant Mahadev Patil
2. Mangala Hanumant Patil
3. Sachin Hanumant Patil.

   Residing at C/o. Suresh Shyamrao Patil,
   Sector No. 28, Plot No. 999, Anushyam,
   Nigdi Pradhikaran, Pune 44.

… Petitioners

vs.

1. Special Recovery Officer,
   Rajaram Bapur Sahkari Bank Ltd Peth,
   Taluka Walva, District Sangli.
2. Rajaram Bapu Sahakari Bank Ltd
   Shivaji Nagar Branch, Shivaji Nagar,
   Pune 411 005.
3. Sambhaji Laxman Parate
4. Smita Sambhaji Parate
   Both adults, residing at 29/A,
   Kapoor Housing Society, Sector 28
   Pradhikaran, Nigadi, Pune 411 044.
5. Divisional Joint Registrar,
   Cooperative Societies, Pune Division,
   Pune.

… Respondents

Mr. Chetan G. Patil and Mr. Bhooshan R. Mandlik for the Petitioners.
Mr. Kunal Mehta i/b. Bhavake & Associates for Respondent No.1.
Mr. Tejpal S. Ingale for Respondent No.2.
Mr. Niranjan Bhavake i/b. Mr. Jayesh Joshi for Respondent Nos. 3 and 4.

CORAM : GAURI GODSE, J.
RESERVED ON : 18th JANUARY 2024
PRONOUNCED ON : 19th APRIL 2024

JUDGMENT :-

1. This petition is filed to challenge the judgment and order dated 10th December 2010 passed by the Divisional Joint Registrar, Cooperative Societies, in the Revision Application filed by the petitioners to challenge the auction sale conducted by the Special Recovery Officer on 26th March 2008.

2. Petitioners are the borrowers of respondent no.2-bank. Petitioners had taken two loans by way of cash credit facility of Rs. 10,00,000/- and Rs. 50,00,000/- for business purposes, and the third loan was the term loan for an amount of Rs 10,00,000/-. The auction proceedings were conducted for recovery of the outstanding loan amount in execution of the recovery certificates, issued on 26th July 2007 under Section 101 of the Maharashtra Cooperative Societies Act, 1960 ('MCS Act'). The recovery

certificates were put to execution under the Maharashtra Cooperative Societies Rules, 1960 ('MCS Rules') and the auction was conducted on 26th March 2008. The petitioners filed a revision application on 31st October 2008 to challenge the auction sale. The said Revision Application was dismissed by the Divisional Joint Registrar. Hence, the present petition.

SUBMISSIONS ON BEHALF OF THE PETITIONERS:

3. Learned counsel for the petitioners submitted that the property which was put to auction comprised of an open plot and a three storied constructed structure. However, by way of proclamation, only open land was advertised for sale. Though only open land was described in the proclamation, the proceedings for auction sale were conducted for open land as well as the constructed portion. The valuation of the constructed portion was Rs. 61,03,131/-, and the entire property was auctioned only for Rs. 36,00,000/-. In view of the provisions of Rule 107 of the MCS Rules, the auction must be scheduled 30 days after the date of publication of the proclamation. However, in the present case, admittedly, the auction was conducted before the completion of a period of 30 days from the date of proclamation. The notice of proclamation was never served upon the petitioners, and it was only published in the newspaper,

which hardly had any circulation. Thus, it was submitted that the auction proceedings were fabricated and false.

4. Learned counsel for the petitioners further submitted that the sale deed was only with respect to flat nos. 1 and 4 on the ground floor and flat nos. 5 and 8 on the first floor. However, while handing over possession to the auction purchaser, a possession of the flat on the second floor admeasuring 1100 square feet is also handed over. Thus, the sale deed executed by respondent no.2-Bank in favour of the auction purchaser was corrected by way of correction deed, and the flat admeasuring 1100 square feet was added in the sale deed. The petitioners had proposed to close the loan account by taking a loan from the Bank of Maharashtra for an amount of Rs 30,00,000/-. However, respondent no.2-bank, with a malafide intention to grab the entire property of the petitioners, refused to issue a No Objection Certificate.

5. The learned counsel for the petitioners submitted that by the impugned order of the Divisional Joint Registrar rejected the Revision Application as infructuous on the ground that the District Deputy Registrar, Sangli, confirmed the auction sale by order dated 16th September 2010 and that the petitioners never challenged the

said order.

6. The learned counsel for the petitioners pointed out the prayers in the Revision Application and submitted that the petitioners had challenged the entire auction sale proceedings conducted by respondent no.1 on 26th March 2008; hence, the Divisional Joint Registrar has erroneously rejected the Revision Application as infructuous without even examining the grounds on merits. Once the original auction proceedings were challenged, the Revision Application was erroneously rejected on the ground that the subsequent order of confirmation of sale was not challenged. If the petitioners succeed in the challenge to the original proceedings of conducting the auction sale, the subsequent orders would automatically be rendered ineffective.

7. On merits of the auction proceedings, learned counsel for the petitioners sought to contend that though ten persons were shown to have been present for the auction as reflected in the list of persons present, the proceedings are signed by only 9 persons, showing that 9 persons participated in the auction proceedings. There were blanks in the record of the auction proceedings with respect to the description of the property. Therefore, he submitted

that the relevant provisions of the MCS Rules for conducting an auction proceeding were not followed by respondent no.1. The auction purchaser was handed over the possession of the property, which was never auctioned. Hence, during the pendency of the Revision Application, a supplementary sale deed was executed with respect to a premises which was never a part of the auction proceedings. The upset price was also fixed by not valuing the property. He relied upon the valuation report tendered by the petitioners in support of the actual valuation of the property. Thus, he submitted that right from advertising the proclamation for auction sale respondent no.1 has fraudulently not described the entire property which was actually put to auction sale. After the auction proceedings were completed, possession of the premises, which were not part of the auction sale, was also handed over to the auction purchaser, and hence, the correction sale deed was illegally executed for the premises, which was not a part of the auction sale. Learned counsel for the petitioners, therefore, submitted that the auction sale conducted on 26th March 2008 was a fraudulent proceeding which deserves to be quashed and set aside. He thus submitted that all the further proceedings initiated pursuant to the auction sale are also illegal.

8. In support of his submissions, learned counsel for the petitioners relied upon the decision of this Court in the case of ***Manisha Shah Vs Shankar Sutar***[1]. He specifically relied upon paragraphs 53 and 58 of the said decision and submitted that even if the recovery certificates are not challenged, and the petitioners are able to show that there was fraud committed in affecting the sale certificates and if the sale is in violation of the MCS Act read with the MCS Rules, the remedy to challenge the said auction sale, as well as sale confirmation, is available by invoking the revisional jurisdiction under Section 154 of the MCS Act.

9. Learned counsel for the petitioners thus submitted that the Revisional Authority without recording any reasons on merits, erroneously dismissed the Revision Application only on the ground that it had become infructuous.

SUBMISSIONS ON BEHALF OF RESPONDENT NOS.1 AND 2:

10. Learned counsel appearing for respondent no.1 submitted that there is no substance in the grounds raised on behalf of the petitioners. The recovery certificates were issued on 26th July 2007. The petitioners' contention that an offer was given to respondent

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no.2-bank for repayment of the outstanding loan amount by requesting a No Objection Certificate for obtaining a loan from the Bank of Maharashtra was made on 29th September 2006. After the recovery certificates were issued, it is not even the case of the petitioners that they have made any attempt for repayment of the outstanding dues as per the recovery certificates. Respondent no. 1 had issued a notice dated 27th March 2008 informing about the auction sale and calling upon the petitioners to pay the outstanding dues. However, the petitioners failed to make payment. After following the due procedure, the auction sale was confirmed on 30th June 2008, and a sale certificate was issued to respondent nos. 3 and 4. Thereafter, the sale and correction deeds were executed, and possession was handed over to the auction purchasers.

11. The petitioners had filed Revision Application No. 422 of 2008 before the Divisional Joint Registrar, Kolhapur, challenging confirmation of sale. By order dated 21st August 2009, the said revision application was partly allowed, and the matter was remanded back to the District Deputy Registrar, Sangli, for a fresh hearing. Thereafter, by Order dated 16th September 2010, the District Deputy Registrar, Sangli, confirmed the auction sale. Hence, the petitioners had preferred Revision Application No. 62 of 2011,

which was rejected on 20th June 2011. He submitted that the objections raised by the petitioners in the present Revision Application were already raised by the petitioners in the aforesaid two Revision Applications, which stand rejected. Thus, it was submitted that there is no substance in the submissions made on behalf of the petitioners and that the Revisional Authority ought to have examined the matter on its merits. Hence, he submitted that the challenge to the attachment order and handing over possession is of no consequence as the rejection of the revision application challenging confirmation of sale on the same grounds is never challenged by the petitioners. He thus submitted that the Revisional Authority has rightly rejected the petitioners' Revision Application as infructuous.

12. Learned counsel for respondent no. 2-Bank made similar submissions and supported the submissions made by learned counsel for respondent no. 1. Respondent nos. 1 and 2 filed a common affidavit-in-reply. Hence, to avoid repetition, the submissions are not reproduced separately.

CONSIDERATION OF SUBMISSIONS AND FINDINGS:

13. I have considered the submissions made by the parties and perused the papers. It is not disputed that the petitioners had

defaulted in making payment of the three separate loans availed by them. Hence, three recovery certificates were issued on 26th July 2007 for recovery of a total outstanding amount of Rs. 26,50,938/-. It is also not disputed that the petitioners never challenged the recovery certificates. Petitioners failed to make payment, hence, the recovery certificates were put to execution. It is the case of respondent nos. 1 and 2 that after following due procedure auction sale was conducted on 26th March 2008. Respondent nos. 3 and 4 were the successful bidders with the highest bid for Rs. 36 Lakhs. It is the case of respondent nos. 1 and 2 that a notice dated 27th March 2008 was issued to the petitioners calling upon them to make the payment within 30 days, failing which the auction sale would be confirmed. Petitioners failed to make payment. Respondent no. 3 and 4 made payment of the sale price. By order dated 30th June 2008, the Deputy District Registrar confirmed the auction sale and the sale certificate was issued on 14th August 2008. The sale deed was executed in favour of respondent nos. 3 and 4. The petitioners filed Revision Application No. 214 of 2009 before the Divisional Joint Registrar for challenging the auction sale conducted on 26th March 2008. In the said revision application petitioners also challenged the order of attachment, order for possession and prayed for declaring the sale certificate illegal and for restoration of possession.

14. It is further not disputed that petitioners had already filed a separate revision application for challenging confirmation of sale in the meantime. The revision application was partly allowed on 21st August 2009, setting aside the order of confirmation of sale and the matter was remanded back to the District Deputy Registrar. The sale was confirmed after the remand by Order dated 16th September 2010. Hence, the petitioners challenged the same by filing another Revision Application No. 62 of 2011. By Order dated 20th June 2011, the said revision application was rejected. Admittedly, the said rejection has attained finality.

15. In the meantime, Revision Application No. 214 of 2009 was rejected by Order dated 10th December 2010. Hence, the present petition is filed. The petitioners do not further challenge the dismissal of the revision application challenging the order of confirmation of sale. Hence, it is the contention of respondent nos. 1 and 2 that the writ petition is rendered infructuous as the grounds of challenge in both the revision applications are the same. It is not disputed that the grounds of challenge in both the revision applications were the same.

16. By the impugned Order, the Divisional Joint Registrar has

rejected the Revision Application No. 214 of 2009 as infructuous. A perusal of the revision memo indicates that the petitioners had raised objections to the auction sale on the grounds that notice of demand was not served, the property was not attached and it was undervalued at Rs. 30 Lakhs. Petitioners also raised objections to the incorrect description of the property in the proclamation and that there was no notice for fixation of upset price. A perusal of the impugned judgment and order indicates that all the objections raised by the petitioners are examined. After scrutinizing the documents the revisional authority has observed that the revision was filed on different causes of action. It is observed that after the auction was conducted on 26th March 2008, the bank, by letter dated 27th March 2008, informed the petitioners about the auction and called upon them to make payment. It is not disputed that neither the recovery certificates are challenged nor any payment is made by the petitioners. The revisional authority has further observed that the sale is confirmed as per the provisions of Rule 107 (14)(3) of the MCS Rules. Thus, the revisional authority, i.e. the Divisional Joint Registrar, Pune Division, who has passed the impugned order, has taken into consideration the pending challenge to the confirmation of sale before the Divisional Joint Registrar Kolhapur and held that the proceedings about the confirmation of sale are directly related with the revision application and needs to be considered. It is further observed that in view of the circular issued by the Commissioner for Cooperation and the Registrar of Cooperative Societies Maharashtra State, Pune, regarding finalizing the upset price and confirmation of the sale of the property, the District Deputy Registrar had fixed the upset price and thereafter passed an order of confirmation of sale. Thus, it is further observed that since the order of confirmation of sale was still in existence, the revision application had become infructuous.

17. The learned counsel for the petitioners has therefore argued that the revision application could not have been dismissed as infructuous, as the challenge in the revision pertained to stages prior to the confirmation of sale. Hence, it was submitted that if the petitioners succeeded in the challenge to the stages prior to the confirmation of sale, then the consequent action of confirmation of sale would be redundant. Hence, the argument was that without recording any reasons on the grounds of challenge to the issuance of proclamation and procedure of conducting the auction sale, the revisional authority has erroneously dismissed the revision as

infructuous.

18. Hence, it is necessary to note the relevant provisions of Rule 107 of the MCS Rules governing the proceedings for conducting the auction sale in question. The unamended sub-rule 14(i) of Rule 107 of the MCS Rules applicable at the relevant time provides that 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 Recovery Officer to set aside the sale on the ground of a material irregularity or mistake or fraud in publishing or conducting it. The proviso to the sub-rule 14(i) states that no sale shall be set aside on the ground of irregularity or fraud unless the Recovery Officer is satisfied that the applicant has sustained substantial injury by reason of such irregularity, mistake or fraud. After the amendment in the year 2014, only the word 'Recovery Officer' is substituted with the word 'District Deputy Registrar'.

19. In the present case, the petitioners have failed to apply under sub-rule 13(i) or under sub-rule 14(i) of Rule 107 of the MCS Rules for setting aside the sale. However, has made those prayers by filing a revision application under Section 154 of the MCS Act. Hence, the learned counsel for respondent nos. 1 and 2 has relied upon the

decision of the Hon'ble Supreme Court in the case of ***Deenadayal Nagari Sahakari Bank Ltd & Another V/s. Munjaji and Ors***[2]. The Hon'ble Supreme Court, in similarly situated facts of the said case, has held as under;

> *"**11.** What was challenged before the High Court was the order passed by the Divisional Joint Registrar passed in Revision Application No. 11 of 2011 under Section 154 of the MCS Act, 1960. However, it is required to be noted that even the High Court in the impugned judgment and order has specifically observed in para 31 that as the borrower did not exercise the right under Rule 107(13) of the MCS Rules, it was not competent for the borrower to prefer revision before the Divisional Joint Registrar under Section 154 of the MCS Act, 1960. Therefore, once the revision application before the Divisional Joint Registrar under Section 154 of the MCS Act, 1960 was held to be not maintainable and/or competent at the instance of the borrower—Respondent 1 herein, thereafter the High Court ought not to have considered the writ petition on merits.*
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> ***12.*** *Even otherwise on merits also, the High Court has erred in entertaining the writ petition filed by the borrower and quashing and setting aside the auction-sale/sale by not bearing in mind the following aspects:*
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> ***12.1.Firstly, that after conducting the auction-sale and sale of the property in favour of the auction-purchaser, the borrower never applied to the Recovery Officer to set aside the sale on***

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the grounds of material irregularity, mistake or fraud in publishing or conducting it.

12.2.Secondly, as per proviso to Rule 107(14)(i) of the MCS Rules, no sale shall be set aside on the ground of irregularity or fraud unless the Recovery Officer is satisfied that the applicant has sustained substantial injury by reason of such irregularity, mistake or fraud.

12.3.Thirdly, as per Rule 107(14)(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 Recovery Officer shall make an order confirming the sale. *Rule 107(14) reads as under:*

*"**107. (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 Officer shall set aside the sale and may direct a fresh one.

(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:

Provided that if he shall have reason to believe that the sale ought to be set aside notwithstanding that no such application has been made or on grounds other than those alleged in any application which has been made and rejected, he may, after recording his reasons in writing, set aside 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."

13. *In the present case, the sale certificate was issued in favour of the auction-purchaser on 19-1-2011 after a period of thirty days from holding the auction-sale. At this stage, it is required to be noted that even the sale certificate was issued by the Bank/Recovery Officer only after the receipt of the approval of the District Deputy Registrar. While approving the sale, the District Deputy Registrar noted in the approval dated 29-11-2010 that the valuation of the land was determined at Rs 98,10,000 according to the letter issued by the Government approved Valuer dated 10-6-2010 which was the upset price and the amount realised was Rs 1,26,00,000, which is higher than the upset price. Therefore, as such, even the District Deputy Registrar also did not doubt the valuation and the amount realised i.e. Rs 1,26,00,000 against the upset* *price of Rs 98,10,000. Therefore, once the borrower failed to apply to the Recovery Officer to set aside the auction-sale on the grounds of material irregularity, mistake or fraud in publishing or conducting the auction-sale within a period of thirty days from the date of sale of immovable property, thereafter it was not open for the borrower to challenge the sale on the ground of material irregularity. All the grounds on which the High Court has set aside the auction-sale/sale were available with the borrower and the borrower did not apply to set aside the sale on the said grounds of material irregularity, mistake or fraud.* ***Therefore, once the borrower failed to apply to the Recovery Officer to set aside the sale on the ground of material irregularity within a period of thirty days from the date of sale of the immovable property and thereafter the sale certificate has been issued, normally the borrower cannot be permitted to challenge the same subsequently, having not raised any objection at the appropriate time and stage as per the statute, otherwise the statutory provisions would become nugatory and unworkable.***

14. *It is also required to be noted that even under Rule 107(14)(i) of the MCS Rules, 1961, no sale shall be set aside on the ground of material irregularity, mistake or fraud unless the Recovery Officer is satisfied that the applicant had sustained substantial injury by reason of such irregularity, mistake or fraud. In the present case, there is no finding recorded by the High Court that the borrower had sustained substantial injury and by reason of such irregularity the auction-sale had to be set aside. Under the above* *circumstances also, setting aside of auction-sale/sale by the High Court is just contrary to the proviso to Rule 107(14)(i) of the MCS Rules, 1961.*

emphasis applied

20. In the present case, the petitioners failed to raise any objection before the Recovery Officer. It is not disputed that pursuant to the sale confirmation, physical possession of the property was handed over on 13th August 2008. Hence, petitioners preferred Revision Application No. 214 of 2009, challenging the auction sale on the grounds of challenge covered by the scope of inquiry under sub-rules 13 and 14 of Rule 107 of the MCS Rules. The said revision application is dismissed by the impugned order.

21. The affidavit-in-reply filed on behalf of respondent nos. 1 and 2 indicates that the mortgaged property was attached. The District Deputy Registrar fixed the upset price by Order dated 14th February 2008. All the particulars are pleaded by the respondent nos. 1 and 2 to support their contentions that the procedure was followed for issuing the proclamation, service of notice of auction sale and all other steps taken in terms of Rule 107 of the MCS Rules. After confirmation of the sale, the necessary certificate was issued, and possession was handed over. The sale deed is executed, and the

description of the property is corrected by execution of a correction deed. No rejoinder is filed on behalf of petitioners raising any doubt on the said pleadings. A perusal of the pleadings in the revision memo does not indicate any substantial pleading to support the allegation of fraud. A perusal of the pleadings and documents on record does not indicate that the petitioners have sustained any injury by reason of any fraud, mistake or irregularity. Hence, the decision of this Court in the case of ***Manisha Shah*** is of no assistance to the petitioners.

22. All the grounds raised by the petitioners could have been raised before the Recovery Officer. Petitioners have not raised any valid ground for not filing the objections at the appropriate stage as per sub-rules 13 and 14 of Rule 107 of the MCS Rules. Hence, I do not see any valid reason available to the petitioners to raise all such grounds for the first time by filing a revision application. Hence, the principles of law laid down by the Hon'ble Supreme Court in the case of ***Deenadayal Nagari Sahakari Bank Ltd.*** squarely apply to the present case.

23. Though the revisional authority examined all the grounds of challenge, dismissed the revision application as infructuous on the

ground that the order confirming the sale was in existence. Hence, even assuming that an order of remand is required, in view of the law settled by the Hon'ble Supreme Court in the case of ***Deenadayal Nagari Sahakari Bank Ltd.,*** no purpose would be served by remitting back the matter.

24. Powers under Articles 226 and 227 of the Constitution of India are discretionary and equitable reliefs. This is not a fit case for exercising these powers.

25. For the reasons recorded above, the petition is dismissed.

(GAURI GODSE, J.)

26. At this stage, learned counsel for the petitioners request for extension of interim protection already granted in the matter.

27. Interim relief already granted in the petition to continue for a period of 8 weeks.

(GAURI GODSE, J.)