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

WRIT PETITION NO.96 OF 2024

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Priti Sundeep Patel

... Petitioner

V/s.

The State of Maharashtra & Ors.

... Respondents

Mr. Kishor Tembre with Mr. Dhananjay Mahamuni and
Mr. Gaurav Jain for the petitioner.

Mr. D.A. Nalavade with Mr. Subhash Bane for
respondent Nos. 2 and 3.

CORAM : AMIT BORKAR, J.

DATED : JANUARY 4, 2024

PC.:

1. The petitioner who claims to be in possession of property bearing Block No.2/76, Suprabhat Cooperative Housing Society Limited, Bhulabhai Desai Road, Mumbai-400026 is challenging order passed by the Magistrate in exercise of power under Rule 107(11)(d)(vi)(a) of the Maharashtra Co-operative Societies Rules, 1961.

2. The respondent No.3-bank filed a dispute under section 91 of the Maharashtra Co-operative Societies Act, 1960 bearing No.CC/I/30 of 2014. The Judge, Co-operative Court No.1, by the judgment and award dated 23rd October 2017, directed respondent Nos.6 and 7 herein to pay amount of Rs.15 Lakh and Rs.12 Lakh

along with interest at the rate of 19% per annum. As of today, there is no stay to the judgment and award passed by the Co-operative Court.

3. The Special Recovery Officer appointed in exercise of power under section 156 of the Maharashtra Co-operative Societies Act, 1960, on 10th May 2018, passed an order of attachment under Rule 107(11) of the Maharashtra Co-operative Societies Rules, 1961.

4. The petitioner raised an objection before the Special Recovery Officer on 22nd May 2018. The Special Recovery Officer, by order dated 7th August 2018, rejected the petitioner's objection and confirmed the attachment. The petitioner being aggrieved by the order of attachment, on 20th September 2018, filed Revision Application No.441 of 2018. The Divisional Joint Registrar, by order dated 29th June 2022, dismissed the petitioner's revision application. The petitioner has filed writ petition in this Court but there is no order restraining the bank from proceeding with auction of the attached property.

5. As is required under Rule 107(11)(d-1) of the Maharashtra Co-operative Societies Rules, 1961, no sale of immovable property can take place without possession of property being taken or caused to be taken. The Special Recovery Officer, therefore, applied before the Additional Chief Metropolitan Magistrate under Clause (vi) of the said Rule for taking possession of the property. Accordingly, the Magistrate has passed the order on 26th October 2023.

6. According to learned advocate for the petitioner, the award

was passed against respondent Nos.6 and 7. Therefore, possession cannot be taken from the petitioner as the petitioner is not party to the award. It needs to be noted that if person like petitioner claims any right, title or interest in the property which is put to an auction under Rule 107 of the Maharashtra Co-operative Societies Rules, 1961, such person can raise an objection before the Special Recovery Officer claiming either independent right or title over the property. Such objection needs to be decided by the Special Recovery Officer under Sub-rule (19) of Rule 107 of the Maharashtra Co-operative Societies Rules, 1961. Such adjudication by the Special Recovery Officer is made further subject to either civil suit or revision under section 154 of the Maharashtra Co-operative Societies Act, 1960.

7. In the facts of the case, the Special Recovery Officer has already adjudicated upon the rights of the petitioner. The revisional Court has confirmed such adjudication and the writ petition filed by the petitioner is pending in this Court. There is no ad-interim relief or interim relief granted in the said writ petition.

8. In absence of any relief in favour of the petitioner, the petitioner cannot challenge the order passed by the Additional Chief Metropolitan Magistrate which is in the nature of executory order. The Additional Chief Metropolitan Magistrate while passing such order, is not required to adjudicate rights of the parties. Therefore, persons like petitioner cannot make any grievance against passing of such order on the ground of non-application of mind or errors in the order. In substance, the Magistrate is performing duty conferred on it under Rule 107(11)(vi) of the

Maharashtra Co-operative Societies Rules, 1961. Therefore, the petitioner having failed in substantiating his objection under Sub-rule (19) of Rule 107 of the Maharashtra Co-operative Societies Rules, 1961, is not entitled to any relief in the present writ petition.

9. The writ petition is dismissed. No costs.

(AMIT BORKAR, J.)