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

**WRIT PETITION NO.2919 OF 2008
WITH
INTERIM APPLICATION NO.7260 OF 2024
IN
WRIT PETITION NO.2919 OF 2008**

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Accentuate Developers Pvt. Ltd. ... Petitioner
V/s.
Anushool Metals Pvt. Ltd. & Ors. ... Respondents

**WITH
WRIT PETITION NO.1814 OF 2008**

Janata Sahakari Bank Ltd., Pune ... Petitioner
V/s.
Anushool Metals Pvt. Ltd. & Ors. ... Respondents

Mr. Nitin Gaware Patil with Ms. Sheetal Shah i/by
Mehta & Girdharlal for the petitioner in
WP/2919/2008 and for respondent Nos.2 and 4 in
WP/1814/2008.

Mr. Surel S. Shah with Mr. Indrajeet Suryawanshi, Ms.
Prachi Kolambekar and Ms. Ruchita Chavan i/by
Thodur Law Associates for respondent No.1 in both
WPs.

Mr. Benny Joseph with Ms. Pallavii Kaamath i/by BJ
Law Offices LLP, for respondent No.2 in
WP/2919/2008 and IA/7260/2024, and for the
petitioner in WP/1814/2008.

Ms. V. S. Nimbalkar, AGP for the State.

CORAM : AMIT BORKAR, J.

RESERVED ON : 9 MAY 2024

PRONOUNCED ON : 14 JUNE 2024

P.C.:

1. By this writ petition under Articles 226 and 227 of the Constitution of India, the petitioner in both the writ petitions are challenging the order dated 29 January 2008 passed by respondent No.4, thereby exercising power under section 154 of the Maharashtra Cooperative Societies Act, 1960 (hereafter referred to as "MCS Act", for short) setting aside auction sale dated 5 March 2007 whereby property in dispute was sold in favour of the petitioner.

2. The facts and circumstances giving rise to the present writ petitions are as under. For the sake of convenience, the facts in Writ Petition No.2919 of 2008 are noted.

3. Respondent No.1 had obtained a term loan and cash credit facility from respondent No.2 to the tune of Rs.2.95 Crores and 40 Lakhs by executing the mortgage of the property in dispute. On default committed by respondent No.1 towards repayment of the loan, respondent No.2 filed an application under section 101 of the MCS Act. On 9 August 2002, parties filed consent terms before the Assistant Registrar whereby respondent No.1 agreed to pay a sum of Rs.2.3 Crores. On default committed by respondent No.1 to make payment as per consent terms, respondent No.2 continued

with proceedings under section 101 of the MCS Act, which resulted in the issuance of two recovery certificates for Rs.3,75,54,765/- and Rs.57,95,850/-. Since respondent No.1 failed to make payment as per the recovery certificates, respondent No.3 issued an order of attachment concerning the property in dispute.

4. In March 2006, respondent No.1 approached respondent No.2 for a one-time settlement in accordance with guidelines issued by the Reserve Bank of India. On 31 March 2006, the managing committee of respondent No.2 passed a resolution permitting respondent No.1 to pay Rs.1,48,57,823.14/- as of 31 March 2006 with interest at the rate of 10.5% from 1 April 2006. However, respondent No.1 failed to pay the entire amount as agreed upon for a one-time settlement.

5. Respondent No.3, therefore, issued a proclamation for auction sale as required under Rule 107(11)(e) of the Maharashtra Cooperative Societies Rules, 1961 (hereafter referred to as "MCS Rules", for short). Respondent No.2 issued a public notice of auction sale fixing the auction on 27 February 2007. However, the said auction process could not be completed as the highest bidder failed to deposit 15% of the purchase price of the property as required by Rule 107(11)(g) of the MCS Rules. The auction sale was, therefore, adjourned to 5 March 2007, on which date the auction was held as per the second proviso of Rule 107(11)(f) of the MCS Rules. On 5 April 2007, the District Deputy Registrar issued an order confirming the sale of property in dispute in favour of the petitioner as the petitioner paid Rs.1.75 Crores as per the auction terms. On 11 April 2007, respondent No.3 issued a sale

certificate of the property in dispute in favour of the petitioner. On 11 April 2007, the petitioner's name was inserted in the 7/12 extract in relation to the property in dispute.

6. Respondent No.1 filed Revision Application No.355 of 2007, challenging the auction sale completed in favour of the petitioner. The respondent No.4, by the impugned order, set aside the auction sale. The petitioner has, therefore, filed present writ petition.

7. Learned counsel for the petitioner submitted that the revision application was not maintainable as respondent No.1 had not availed remedy under Rule 107(14) of the MCS Rules before the Recovery Officer to set aside the sale on the ground of material irregularity or mistake or fraud in publishing or conducting the auction proceeding. Since no application was made under Rule 107(14) of the MCS Rules, no decision or order passed by the Recovery Officer could be made subject matter of challenge under section 154 of the MCS Act by way of revision application. He submitted that the auction sale was adjourned as per the second proviso to Rule 107(11) of the MCS Rules. However, the revisional authority erroneously held that the auction proceeding should have been conducted afresh after issuing a fresh proclamation. He submitted that Rule 107(11)(j) of the MCS Rules is applicable only when 15% of the purchase price is deposited in accordance with Rule 107(11)(g) of the MCS Rules. Still, the remainder amount was not deposited in accordance with Rule 107(11)(h) of the MCS Rules. Relying on judgments in **Manager, Adarsh Mahila Nagri Sahakari Bank Ltd. & Anr. vs. State of Maharashtra & Ors.** reported in 2011 SCC OnLine Bom 1839 : (2012) 2 Bom CR 163, **Pundalik**

Ganapati Alias Bahirji Ingale vs. The District Deputy Registrar, Cooperative Societies in Writ Petition No.9027 of 2013 decided on 25 February 2014, **Ramchandra Sitaram Mulik and Anr. vs. Janata Nagari Sahakari Patsanstha Ltd., Hupari and Ors.** reported in 2018(2) Mh.L.J. 245, **Hanumant Pandurang Deshmukh vs. Vithal Maruti Bhosale and Ors.** reported in 2021(2) Mh.L.J. 252, **Deendayal Nagari Sahakari Bank Ltd. And Anr. vs. Munjaji and Ors.** reported in 2022 SCC OnLine SC 192 and **Niranjan D. Woody vs. South Indian Cooperative Bank Ltd. And Ors.** reported in 2006 SCC OnLine Bom 728, he submitted that the revision application of respondent No.1 was not maintainable. Hence, the impugned order deserves to be quashed and set aside.

8. Per contra, learned advocate for respondent No.1 submitted that the revisional authority is under obligation to decide the regularity of proceeding under section 154 of the MCS Act. He submitted that the expression "proceedings" includes auction proceedings and, therefore, the revisional authority rightly allowed the revision application filed by respondent No.1. He submitted that the adjournment of auction proceedings was not in accordance with Rule 107(11)(f) of the MCS Rules and, therefore, proclamation ought to have been issued by the Recovery Officer. Hence, he submitted that the revisional authority rightly considered material irregularity in conducting an auction, which requires no interference under Articles 226 and 227 of the Constitution of India.

9. To adjudicate the contentions raised on behalf of the petitioner that the revision application under section 154 of the

MCS Act is not maintainable in the absence of a decision or order, it is necessary to set out prayer clauses in the revision application filed by respondent No.1, which read as under:

“25. The Applicant Therefore, prays that:-

a) this Hon’ble Authority be pleased to call for record and proceeding of the so-called auction alleged to be conducted on 5.3.2007 in respect of property of the Applicant situated at Pune and the same be quashed and set aside.

b) This Hon’ble Authority be pleased to quash and set aside any illegal sale deed, etc. done by the respondents in respect of property of the applicants.”

10. On perusal of prayer clauses of the revision application filed by respondent No.1, it is evident that respondent No.1 had challenged the auction conducted on 5 March 2007 and also challenged the sale deed in respect of the property in dispute. This Court, in Writ Petition No.3500 of 2024 in the case of **Dattatraya Mahadev Ugale & Ors. vs. The State of Maharashtra and Ors.** decided on 10 May 2024, considered in detail an issue as to the maintainability of revision application under section 154 of the MCS Act to entertain a challenge to an administrative order and power of revisional authority to set aside proceedings under the Act after examining the regularity of proceedings. This Court in paragraph Nos.21 and 22 observed as under:

“21. The MCS Act prescribes various modes of action for carrying into effect a legal right of a member of society using provisions enumerated in section 152 of the Act. The provisions mentioned in section 152 recognise or create substantive rights favouring members of cooperative societies or societies themselves. The remedy by way of Appeal under Section 152 is provided to the aggrieved person concerning

proceedings affecting their rights conferred under the Act. Therefore, on consideration, the scheme of the Act and careful reading of sections 152 and 154(1) of the Act makes it clear that the expression 'proceedings' pending before subordinate officers first part of sub-section (1) of Section 154 of the Act need to be held as 'quasi-judicial proceedings'.

22. Moreover, there is an indication in Section 154(1) to suggest limitation to the exercise of these powers about 'proceedings' because the revisional authority has to satisfy itself as to the legality or propriety of any 'decision or order' passed or to the regularity of the 'proceedings'. Section 154 postulates the revisional authority under subclause (1) to modify, annul or reverse the subordinate officer's 'decision or order'. The power conferred on revisional authority by the second part of sub-section (1) of section 154 to modify, annul or reverse is restricted to 'decision or order' passed by subordinate officers mentioned therein. However, it does not empower quashing and setting aside 'proceedings' on the ground that there has been some irregularity in the proceedings. The provision empowers the revisional authority to ultimately modify, annul or reverse the 'decision or order' in the quasi judicial proceedings under the Act and rules. The purpose of inserting the expression 'regularity of such proceedings' appears to confer power on the revisional authority to examine the regularity of quasi judicial proceedings and if such proceedings are irregularly instituted or irregularly proceeded with, in that case, modify, annul or reverse 'decision or order' ultimately passed in such proceedings. Moreover, sub-section (2) provides for challenge only against 'decisions and orders' passed by the Registrar, Additional Registrar, Joint Registrar, or other subordinate officers and not against 'proceedings'. Therefore, in my considered opinion, Revisional Authority, after examining the regularity of proceedings, can not quash and set aside the proceedings under the Act and Rules.”

11. On consideration of reasons assigned in judgment in case of **Dattatraya Mahadev Ugale & Ors.** (supra), it is evident that revision under section 154 of the MCS Act is maintainable only against a quasi-judicial order and the revisional authority, while exercising power under section 154 of the MCS Act, can not quash and set aside 'proceedings' under the Act and Rules.

12. Moreover, Co-ordinate Bench of this Court in case of **Hanumant Pandurang Deshmukh** (supra), held that revisional jurisdiction under section 154 of the MCS Act can not be invoked without approaching Special Recovery Officer under Rule 107(14) of the MCS Rules.

13. This Court had interpreted the expression "decision or order" in **Sunil Sitaram Mahajan vs. Suryakant Pandurang Badave & Ors.** reported in 2016 (3) Mh.L.J. 373. The Bench was considering the exercise of power by the Registrar, setting aside a proposal for confirmation of sale on the ground that the District Deputy Registrar had no authority to review its order. The Single Judge of this Court held that notice for confirmation of sale can be said to be only sequitur to the auction sale and, therefore, is a logical consequence of the said auction proceedings and cannot be said to be a "decision or order" to enable respondent No.1 to invoke revisional jurisdiction. It is observed that the word "decision" appearing in Section 154 may take its colour from the word "order" appearing in the said provision.

14. Another Coordinate Bench of this Court, in **Rajesh B. Yemkanmardi vs. Praful J. Padiya**, reported in (2021) 1 Mah.L.J. 301: 2020 SCC OnLine Bom 701, held that the order confirming

sale is thus not an order in the real sense and cannot be treated as an order within the meaning of Section 154 of the MCS Act.

15. In **Manager, Adarsh Mahila Nagri Sahakari Bank Ltd. & Anr. vs. State of Maharashtra & Ors.** reported in (2012) 2 Bom CR 163, it was held that the order of the District Deputy Registrar confirming the sale is not an order as contemplated by Section 154 of the Act.

16. For the reasons stated above and in agreement with the consistent view taken by the Co-ordinate Benches of this Court, I hold that the expression "order or decision" referred to in Sub-section (1) of Section 154 of the MCS Act needs to be a quasi-judicial order or decision.

17. Therefore, the impugned order passed by the revisional authority in exercising its power under section 154 of the MCS Act to set aside 'auction proceedings' deserves to be quashed and set aside as revision was not maintainable.

18. Hence, Rule is made absolute in terms of prayer clause (b).

19. In view of the disposal of the writ petitions, pending interim application(s) stand disposed of as infructuous.

20. At this stage learned advocate for the *respondent No.1* seeks stay to the operation and execution of the order. Considering the point involved, the operation and the effect of the order is stayed for period of six weeks from today.

(AMIT BORKAR, J.)

Note:- This order is modified as per order dated 18 June 2024. The correction in 1st line of paragraph 20 is shown in italicize.