



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 2692 OF 2019

**(Narayan s/o Gopalrao Jadhao Vs. The Divisional Joint Registrar, Co-operative Societies,
Amravati & Ors.)**

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Shri K.N. Jain h/f Shri S.S. Dhengale, Counsel for the
petitioner.

Shri S.B. Bissa, A.G.P for respondent nos. 1 and 2.

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CORAM : ANIL L. PANSARE, J.
SEPTEMBER 4, 2024

The learned Counsel for the petitioner has invited my attention to third proviso to Clause (f) of Rule 107 of the Maharashtra Co-operative Societies Rules, 1961, which provides that in auction process, the upset price shall be approved by the Registrar within one month from the date of receipt of proposal from the Recovery Officer, that too, after hearing the judgment debtor. The proviso further provides that such approved upset price shall be valid for six months from the date of approval.

2] In the present case, the learned Counsel for the petitioner submits that this approval has been not obtained by the Recovery Officer and, therefore, the auction process stands vitiated for non-compliance of the aforesaid provisions.

3] The learned A.G.P though made an attempt to justify the auction process, was required to concede that approval of the Registrar was not obtained.

4] To my mind, the third proviso has some significance. The Registrar is supposed to approve the upset price by considering the comparative prevailing price in the market, ready reckoner rates and by obtaining valuation by the approved valuer. The upset price is fixed by the Recovery Officer.

5] The second proviso to Clause (f) of Rule 107 indicates that the Recovery Officer is duty bound to obtain prior approval of the Registrar to the upset price of the immovable property before publication of proclamation of sale.

6] Thus, the Registrar has a specific role to play. While approving the upset price, he has to consider various prices, which includes market price and valuation report in order to ensure that the upset price, fixed by the Recovery Officer, is in tune with the prevailing rates of the property proposed to be sold in auction. The requirement under the proviso is, thus, mandatory in nature. Having not complied the same, the auction process under question is vitiated.

7] Respondent no.1, however, vide the impugned order, failed to recognize the aforesaid principle of law and rejected the request made by the petitioner to set aside the auction process.

8] The auction purchaser, i.e., respondent no.5 did not turn up today, rather nobody is appearing for her for last few hearing. Nobody is appearing for respondent nos. 3 and 4 as well. Thus, there is no counter to what has been submitted by the petitioner. Even otherwise, the

provisions of Rule 107 having been violated, the order impugned will not stand to scrutiny of law. The order impugned is, therefore, unsustainable.

9] The Writ Petition is accordingly partly allowed. The order dated 8/2/2019 passed by the Divisional Joint Registrar, Co-operative Society, Amravati, in Revision No. 43/2013, is quashed and set aside.

(ANIL L. PANSARE, J.)

Sumit