IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4190 OF 2018

Sau. Anjali Tatyarao Chikhale
Prop. Hotel Anjali, Shivaji Nagar, Beed
Now R/o Bansilal Nagar, Ambajogai **... Petitioner**

VERSES

1. The State Govt. Of Maharashtra
Cooperative Dept. Mantralaya Mumbai

2. The Chairman and Board of Director of
The Vaidyanath Urban Co-Opp. Bank Ltd.
Head Quarter Parli V. Dist. Beed

3. The Chief Executive officer & General Manager,
The Vaidyanath Urban Co-Opp. Bank Ltd.
Head Quarter Parli V. Dist. Beed

4. Special Recovery Officer,
The Vaidyanath Urban Co-Opp. Bank Ltd.
Head Quarter Parli V. Dist. Beed

5. The Branch Manager,
The Vaidyanath Urban Co-Opp. Bank Ltd.
Head Quarter Parli V. Br. Beed Dist. Beed

6. Shaikh Nizam S/O Shaikh Jainoddin & Other
R/O Subhash Road Beed, Dist. Beed.
At present the President, AIMIM Political Party,
Dist. Beed

7. Shri. Shrikant S. Deshmukh,
Div. Jt. Registrar, Co-Opp. Society Latur.
Dist. Latur

8. Dist. Deputy Registrar,
Co-Opp. Society Beed. Dist. Beed.

9. Chief Officer, Municipalty, Beed.

10. Dr. Arun S/O Vyankatrao Dawale,
Age-Major, Occu. Medical Practitioner
R/o Mukundraj Colony, Behind Police Station
Ambajogai Dist. Beed

11. Dr. Shrihari Nagargoje,
Age-Major Occu. Medical Practitioner,
R/o Vidyakunj Colony, Ambajogai Dist. Beed

12. Shri Ramkrishna Narayanrao Misal,
Age-Major R/o Shivaji Nagar, Beed.

13. Shri Gahininath Mahadev Pakhre,
Age- Major, R/o Shivaji Nagar, Beed.

14. Lahu Shamrao Dhakne, Age- Major,
R/o Shivaji Nagar, Beed.

15. Smt. Hausabai w/o Narayanrao Misal,
Age-70 Yrs. Occu. Housewife,
R/o Padali, Tq. Shirur (K) Dist. Beed

16. Dist. Dy. Registrar,
Gr. I Mudrank & Collector, Beed

17. Taluka Nirikshak, Bhumapak No.2,
Bhumi Abhilekh Office, Beed **.. Respondents**

Mr. T. S. Chikhale h/for Mrs. Anjali T. Chikhale, party in person/Power of Attorney Holder for the petitioner,
Ms. Bharti B. Gunjal, Advocate for the Respondents State
Mr. V. P. Golewar h/for Mr. A. R. Joshi, Advocate for Respondent Nos. 2 to 5

WITH

WRIT PETITION NO. 4247 OF 2018

Dr. Arun s/o Venkatrao Dawle **... Petitioner**
Aged: 65 years, Occu: Medical Practitioner
R/o Mukundraj Colony,
Behind Police Station, Ambajogai,
District Beed

VERSUS

1. The State of Maharashtra,
   Through the Secretary to the Government of Maharashtra, Cooperative Department,
   Mantralaya, Mumbai-32

2. The Joint Registrar for Cooperative Societies,
   Latur, District Latur

3. The District Deputy Registrar for Cooperative Societies, Beed, District Beed ... **Respondents**

4. The General Manager,
   Vaidyanath Urban Cooperative Bank Ltd.
   Parli-Vaijnath, District Beed

5. The Special Recovery Officer,
   Vaidyanath Urban Cooperative Bank Ltd.
   Beed Branch,H.O. Parli-Vaijnath, District Beed

6. The Proprietor of Hotel Anjali,
   Shivajinagar, Beed Through Sau. Anjali w/o Tatyarao Chikhale, Age 65 years, Occu: HH,
   R/o Shivajinagar, Now at Bansilalnagar,
   Ambajogai, District Beed

7. Dr. Shrihari s/o Gopalrao Nagargoje,
   Age 82 years, Occu: Medical Practitioner,
   R/o vidyakunj Colony, Ambajogai, Dist.Beed

Mrs. Rekha Chaudhary h/for Mr. S. S. Choudhary, Advocate for petitioner
Ms. Bharti B. Gunjal, Advocate for the Respondents State
Mr. V. P. Golewar h/for Mr. A. R. Joshi, Advocate for Respondent Nos. 4 to 5

CORAM : SANDIPKUMAR C. MORE & Y. G. KHOBRAGADE, JJ.

DATE : 10.12.2025

ORDER (Per: Y. G. Khobragade, J.)

1. In Writ Petition No. 4190 of 2018, the petitioner, loan borrower, put forth prayer clauses (B) and amended prayer clauses (C-1) and (C-2) as under:

"(B)- The judgment and order passed by the Divisional Joint Registrar for Cooperative Societies at Latur in Revision Petition No. 146 of 2015 on 20th December, 2017 may please be quashed and set aside by issuing writ of certiorari, order or directions or any other appropriate writ in the nature of writ of any certiorari.

(C1) The respondent bank / mortgagee has taken possession of Hotel Building on 10.01.1996. Since 10.01.1996 to 31.06.2024 Rs. 167.77 crore approximately calculated in respect of rent and profit u/s 76 of transfer of property act is worked out to pay to the petitioner / mortgager, to the extent that Rs. 25 crore (Twenty five crore) approximately to be paid as an Interim Relief to the petitioner immediately, till the finalization of all dues to that extent.

(C2) The bogus sale certificate issued by the on recovery officer cum branch manager 21.03.2003 and sale certificate issued, the required amount of 15% and at the end of month 100% of the sale with stamp amount, of an auction was referred by this court to the commissioner of court i.e. Chartered Accountant by court order Dt. 03.02.2020 and reply filed by court commissioner on Dt. 22.06.2023 in which no amount during the month received and carried out in the loan account of Hotel Anjali. Therefore the bogus sales certificate confirmed by the report of court commission. Hence the prosecution against the all concerned respondent under Cr.P.C. /I.P.C. allies Bhartiya Nagrik Suraksa Sanhita 2023 / Bhartiya Nyaya Sanhita 2023 respectively be direction to given to the Superintend of Police Beed to registered the crime against the culprit."

However, the petitioner has not pressed the petition in respect of amended prayer clause (C-3).

2. In Writ Petition No. 4247 of 2018, the petitioner who is Guarantor to the loan transaction between Loan borrower (*Sau. Anjali Tatyarao Chikhale- petitioner in WP No. 4190/2018*) and the Respondent

Financial Institution- Vaidyanath Urban Cooperative Bank Ltd., prayed to quash and set aside impugned order dated 20th December, 2017 passed by the Divisional Joint Registrar, Cooperative Societies at Latur, whereby the Revision Petition No. 51 of 2014, filed by him came to be rejected.

3. In both these petitions, the petitioners, who are borrower and guarantor respectively, have challenged the order dated 20.12.2017, passed by the Divisional Joint Registrar for Co-operative Societies at Latur, and as common question arises, both these petitions are heard together. The petitioner in W. P. No. 4190/2018 is a principal borrower and the petitioner in W.P. No. 4227 of 2018 is the guarantor, whereas the Respondent Vaidyanath Urban Cooperative Bank Ltd., is the Financial Institution who disbursed the loan to the Borrower, hence, for the sake of brevity parties to both the petitions will be referred in their original capacity.

4. Having regard to the submissions canvassed on behalf of both the sides, we have gone through the petition paper book. On face of record it appears that, on dated 30.12.1988, the respondent- Financial Institution sanctioned loan of Rs.7,50,000/- in favour of the Borrower i.e. Petitioner in Writ Petition No. 4190 of 2018 (hereinafter referred to as the Borrower) and subsequently, under sanction letter dated 27.01.1990 additional loan of Rs.5,40,000/- was sanctioned in favour of the Borrower. The Petitioner

in W.P. 4227 of 2018 stood guarantor to both loan transactions. Accordingly, a mortgage deed was executed on 06.01.1989 and 19.02.1990, thereby the borrower mortgaged the building of Hotel Anjali. However, the Borrower failed to repay said loan amount, which resulted in declaring Non Performance Assets (in short NPA). Therefore, the Financial Institution initiated recovery proceedings under section 101 of the Maharashtra Cooperative Societies Act, 1960. Accordingly, the competent authority, after following due process, issued recovery certificates dated 28.09.1993. Thereafter, upon obtaining the valuation certificate from the Government Valuer, the mortgaged property i.e. Hotel Anjali Building was put for public auction after issuing sale proclamation in widely circulated Newspaper on 07.02.2003. Accordingly, on 21.03.2003, auction sale was conducted and confirmed the sale in favour of the highest bidder. Thereafter, on 21.04.2003, the Special Recovery Officer of the Financial Institution issued sale certificate and confirmed the sale under Rule 107 of the Maharashtra Cooperative Societies Rules, 1961, (hereinafter referred as the MSC Rules).

5. Subsequently, on 05.04.2003, the Borrower raised objections with the Special Recovery Officer under Sub Rule 14 of Rule 107 of the MSC Rules and prayed for setting aside the auction sale, held on 21.03.2003. On 17.04.2003, the Special Recovery officer passed an order and rejected the objections holding that, the Financial Institution took

possession of the mortgaged property on 10.01.1996 and thereafter, the Financial Institution made every effort to put said property in auction sale but due to obstructions created by the borrower and due to Court proceedings, sale proceeding was deferred on seven times. So also, as per guidelines of the Reserve Bank of India, one time settlement proposal was given, however, the Borrower did not pay any heed. Ultimately, the Government Valuer was appointed for valuation of the property.

6. The Government Valuer assessed the value of property at Rs.29 Lacs and the mortgaged property was auctioned for consideration of Rs.29.75 Lacs, which is more than its valuation. Therefore, the auction conducted on 21.03.2003 is valid and legal. However, the Petitioner-Borrower did not challenge said auction sale before any competent authority for more than 12 years.

7. The power of attorney holder for the loan borrower canvassed that, the Financial Institution misused the blank papers signed by the petitioner while obtaining the loan and obtained recovery certificates without proper calculation of the principal loan amount as well as interest amount thereon. Therefore, said recovery certificates obtained by the respondent Financial Institution are illegal and bad in law. Further, while passing the impugned order dated 20.12.2017, the learned Division Joint

Registrar, Co-operative Societies, Latur, failed to consider the claim of the petitioner-Borrower. Hence, it is not sustainable in eyes of law.

8. Per contra, Shri Bhagwan Chokhaji Jadhav, Special Recovery Officer of the Financial Institution has filed affidavit in reply and denied claim of the petitioners-Borrower and guarantor. According to the Financial Institution, on 20.01.1990, the Financial Institution sanctioned the loan of Rs.12,90,000/- in favour of the borrower and disbursed the same in loan A/c. No.24/8. Again, on 02.02.1991 loan of Rs.2,11,000/- was sanctioned and disbursed to second loan A/c. No.15/2 of the Borrower. However, the petitioner-Borrower failed to repay the loan, which resulted in declaring both accounts as NPA.

9. The Guarantor (the petitioner in WP No. 4247/2018) was also served with notice but there were no repayment of loan. Therefore, the Financial Institution instituted the proceeding u/s 101 of the MCS Act and obtained recovery certificate after following due process of law. Further, the Petitioner/Borrower was served with the notice for One Time Settlement as per the guidelines of the Reserve Bank of India, but the Petitioner failed to settle said loan accounts. Ultimately, on 07.02.2003, the Financial Institution issued public notice for auction of the movable and immovable property after obtaining valuation of the property from the Government Valuer and put it in auction on 21.02.2003. Since, the bidder

gave highest bid, hence, said property was sold to the highest bidder. Accordingly, on 21.04.2003, the Special Recovery Officer issued Sale Certificate and confirmed the sale under Rule 107 of the MCS Rules.

10. It is further canvassed that, the Petitioner submitted an application/objections dated 25.03.2003, which was received by the Special Recovery Officer on 05.04.2003. The Petitioner/ borrower raised objection under Rule 107(14) of the MCS Rules, however, on 17.04.2003, the Special Recovery Officer, passed the order and rejected objections of the petitioner. Neither the borrower nor the guarantor had challenged order dated 17.04.2003 passed by the Special Recovery Officer before the Competent Authority for more than 12 years. However, after lapse of more than 12 years from the date of passing of order, the Petitioner-Guarantor had filed Revision Petition No. 51 of 2014 and the Borrower filed Revision Petition No. 146 of 2015 before the Divisional Joint Registrar, Cooperative Societies, challenging the auction sale dated 21.03.2003, which is confirmed by the Recovery officer on 21.04.2003.

11. On 20.12.2017, the Divisional Joint Registrar, Cooperative Societies passed an order and rejected both revisions holding that the property was sold in auction sale conducted on 21.03.2003. The petitioners have not raised any objection/revision in respect of any irregularity or fraud committed while publishing or conducting the auction

sale before the District Sub Registrar under Rule 107(14) of the MSC Rules. Therefore, it is submitted that, the present petitions are nothing but the misuse of writ jurisdiction, hence, prayed for dismissal of both the petitions.

12. Needless to say that, after issuance of recovery certificates dated 28.09.1993, the petitioner Borrower was dully served with notice for One Time Settlement as per guidelines issued by the Reserve Bank of India but the petitioner failed to settle the said loan accounts. It further appears that, although the respondent Financial Institution put the mortgaged property up for sale on seven occasions, due to obstructions caused by the petitioner–borrower and the filing of multiple litigations, the respondent Financial Institution could not succeed in proceeding with the auction sale of the mortgaged property. Ultimately, after attaining finality of all proceedings, the Respondent-Financial institution issued public sale proclamation in widely circulated newspaper on 10-02-2003 by fixing upset price of Rs. 29 Lacs as per Government Valuer. Thereafter, on 21.03.2003, the said property was auctioned and the highest bid was accepted for amount of Rs. 29.75 Lacs. Thereafter, the competent authority confirmed the sale under Rule 107 of the MCS Rules.

13. No doubt, on 25.03.2003/(05.04.2003) the Petitioner Borrower submitted objections to the public auction sale held on 21.03.2003 before

the Recovery Officer alleging that vide letter dated 10.02.2003, the borrower and guarantor was communicated about the auction notice published in the newspaper disclosing fact of obtaining recovery certificate of Rs.9,73,671.50 in respect of the mortgaged property, wherein the principal amount of Rs.4,36,900/- was shown as arrears from 01.07.1992. Another recovery certificate of Rs.1,08,892/- was obtained disclosing fact of arrears of loan amount of Rs.52,500/- w.e.f. 01.07.1992. Further, on 12.12.2001, a public notice was published in the newspaper *Dainik Sakal* in respect of recovery certificate of Rs.12,63,470.50, in which the principal amount of Rs.6,16,800/- and arrears shown outstanding w.e.f. 01.01.1993. Therefore, issuance of recovery of certificates are illegal, bad in law, hence, prayed to quash and set aside the sale proceeding.

14. The principal Borrower as well as guarantor further canvassed that, the Financial Institution failed to calculate the loan and interest. However, on 17.04.2003, the Special Recovery Officer rejected objections holding that, the Financial Institution already taken possession of the mortgaged property on 10.01.1996 and made attempts for seven times to auction it but no auction was conducted due to pending legal proceedings.

15. It is matter of record that, on 21.03.2003, the auction proceeding was conducted but the petitioner-Borrower did not challenge said auction before the appellate authority contemplated u/s 107 (14) of MCS Rules

and after lapse of more than 12 years, the petitioner filed Revision u/s 154 of MCS Act challenging the auction proceedings. Not only this but on 6th July, 2023, single Bench of this Court (Coram: N. J. Jamadar, J.) passed an order in W.P. No. 6804 of 2022 and confirmed the auction sale proceeding.

16. It is submitted that, the petitioners filed objection/revision under section 107(14) of the MSC Rules before the Divisional Joint Registrar for Cooperative Societies at Latur by filing Revision Petition No. 146 of 2015(by the borrower) and Revision Petition No. 51 of 2014 (by the guarantor) objecting the auction sale dated 03.03.2003, however, the said revisions came to be rejected vide order dated 20.12.2017 holding that the property was sold in auction sale conducted on 21.03.2003 and the petitioners have not raised any objection/revision in respect of any irregularity or mistake or fraud in publishing or conducting the auction sale proceeding before the District Sub Registrar under section 107(14) of the MSC Rules.

17. Section 107(14) (i) reads as under:

> *"Any time within 30 days from the date of sale of immovable property, the applicant or any person entitled to share in a ratable distribution of 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".*

> *Provided 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, or mistake or fraud."*

18. Needless to say that, on 3rd February, 2020, the Single Bench of this Court (Coram: Rohit B. Deo, J.) passed an order and appointed the Chartered Accountant for calculation of the principal loan and interest amount. Accordingly, SRVS & Associates, Chartered Accountant Firm examined said Loan Accounts Nos. 24/8 and 15/2 and submitted its Report before this Court on 22-06-2023 under Inward No. 2253/2023. The Court Commissioner's Report reveals that, the District Sub Registrar, Beed and sale certificate issued in favour of Shaikh Nizam Shaikh Jainoddin, the Financial Institution completed the process of auction on 21st March, 2003 and transferred the right of property for amount of Rs. 29,75,000/- and properly accounted the principal and interest amount. The record does not reveal that, the petitioners raised any objection to the Court Commissioner's report at the relevant time. However, if the petitioners having objections about calculation of principal loan and interest amount, the petitioners are having alternative remedy to file appropriate proceeding before the competent Court.

19. On 17.04.2003, the Special Recovery officer passed the impugned order holding that, the mortgaged property is sold for Rs.29.75 lakhs i.e. more than upset price/valuation determined by the Government

valuer and rejected the objection of the petitioner. Therefore, we do not find any substance in submissions canvassed on behalf of the petitioners.

20. In view of the above discussion, we are of view that, the Divisional Joint Registrar Co-operative has recorded appropriate findings and no substantial grounds are found to interfere with said findings. Therefore, both the petitions deserve to be dismissed. However, the petitioner-Borrower can ventilate his grievance in respect of prayer clauses (C1) and (C2) before the competent Court of law, if so desired subject to provisions of Limitation Act.

21. In view of above discussion both the petitions are dismissed.

22. Pending Civil applications also stand disposed of.

(Y. G. KHOBRAGADE, J.) **(SANDIPKUMAR C. MORE J.)**

JPChavan