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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.475 OF 2025

Ajit Prakash Deshmukh … Petitioner
V/s.
The State of Maharashtra & Ors. … Respondents

Mr. Suhas Inamdar with Mr. Priyal G. Sarda and Seema S. Dighe for the petitioner.

Mr. Sarang S. Aradhye with Shantanu Gurav and Gauri Velankar for respondent Nos.5 and 6.

Ms. Savita Prabhune, AGP for the State-respondent Nos.1 to 3.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 28, 2025

P.C.:

1. By this petition under Article 226 of the Constitution of India, the petitioner seeks to assail the legality and propriety of the judgment and order dated 18 October 2024 passed by respondent No.2, dismissing the revision application filed by the petitioner, thereby affirming the order of confirmation of sale passed by respondent No.6 in respect of the immovable property of the petitioner.

2. The facts leading to the present petition are briefly stated as follows: Respondent No.5-Society initiated proceedings under Section 101 of the Maharashtra Cooperative Societies Act, 1960

("MCS Act") for the recovery of an outstanding loan amount advanced to the petitioner. A recovery certificate dated 7 July 2021 was issued by respondent No.3 in favour of respondent No.5-Society for an amount of Rs.29,51,412/- along with interest at the rate of 15% per annum.

3. Pursuant to the said certificate, respondent No.6 proceeded to attach land bearing Gat No.716, admeasuring 1H.04R, situated at village Hivare Budruk, Taluka Junnar, District Pune. The upset price of the property was fixed at Rs.98,80,000/- by order dated 26 December 2022. An auction notice was published on 16 January 2023, initially scheduling the auction on 21 February 2023, which was subsequently rescheduled to 20 May 2023 and then further postponed to 23 June 2023. On the said date, the auction process was purportedly completed, and the sale was confirmed by respondent No.3 on 17 January 2024, directing the Society to return any balance amount after deducting the outstanding loan arrears as per the recovery certificate issued under Section 101 of the MCS Act.

4. The petitioner, being aggrieved by the confirmation of sale, preferred Revision Application No.64 of 2024 before respondent No.2. The revisional authority, by the impugned order dated 18 October 2024, dismissed the revision, thereby prompting the petitioner to invoke the writ jurisdiction of this Court.

5. Learned counsel for the petitioner submitted that the auction was not conducted on 23 June 2023 in the manner prescribed under law, and the process was merely projected to have taken place. The sale of the petitioner's property was grossly disproportionate to the recoverable dues of Rs.29,51,412/-, as the property's upset price was fixed at Rs.98,80,000/-, which was significantly higher. The petitioner contended that the market price of the property exceeded even the upset price, and thus, the auction was vitiated by material irregularity.

6. The petitioner placed reliance on the judgment of the Hon'ble Supreme Court in *Ambati Narasayya vs. M. Subba Rao*, 1989 (Supp.2) SCC 693, wherein it was held that in execution of a decree, only such portion of the property should be auctioned as is sufficient to satisfy the decree. The petitioner also relied on the judgment in *Arjun Fakira Bari vs. Divisional Joint Registrar, Co-operative Societies and Others*, 2021 (5) AIR Bom R 417, to contend that in cases where the auction process is tainted by fraud, a revision under Section 154 of the MCS Act is maintainable.

7. Learned counsel for respondent No.5-Society opposed the petition, arguing that the revision filed by the petitioner was not maintainable in light of a catena of judgments of this Court, the latest being an unreported judgment in *Hanumant Pandurang Deshmukh vs. Vithal Maruti Bhosale & Ors.*, Writ Petition No.263 of 2016, wherein it was held that a borrower cannot challenge the auction sale and sale certificate as he is provided with alternative remedies under the Maharashtra Cooperative Societies Rules, including Sub-rule (14)(i) and Sub-rule (13) of the relevant Rules.

8. The respondent submitted that due process was adhered to, with the auction notice being published in local newspapers and proper proclamation being made. The auction purchaser duly deposited the amount as per the rules, and hence, the impugned order did not warrant interference in exercise of writ jurisdiction.

9. Having heard the learned advocates for the respective parties, and upon a careful perusal of the material placed on record, it becomes evident that the petitioner has assailed the order dated 17 January 2024, whereby the sale in question has been confirmed. The pivotal issue that arises for consideration is whether a revision against an order of confirmation of sale is maintainable under the provisions of the Maharashtra Cooperative Societies Act, 1960 and the Maharashtra Cooperative Societies Rules, 1961.

10. This Court, in a catena of judgments, has consistently expounded that an order confirming the sale of property in execution proceedings is not quasi-judicial in nature and, consequently, does not attract the revisional jurisdiction under Section 154 of the Maharashtra Cooperative Societies Act, 1960. In *Manager, Adarsh Mahila Nagri Sahakari Bank Ltd., & Anr. vs. State of Maharashtra & Ors.*, 2012 (2) Bom.C.R. 163, it was unequivocally held that the confirmation of sale is a ministerial act and does not partake the character of a quasi-judicial determination, thereby ousting the jurisdiction of the revisional authority. Similarly, in *Pundlik Ganapati Alias Bahirji Ingale vs. The District Deputy Registrar, Co-operative Societies* in Writ Petition No. 9027 of 2013, this Court reiterated that once the sale is confirmed, the purchaser acquires an indefeasible right, which cannot be unsettled in revision, barring allegations of fraud or material irregularity of a nature that vitiates the entire process.

11. The position of law has been further fortified in *Palus Sahakari Bank Ltd. and Anr. vs. Sunil Shamrao Salunkhe and Ors.*, 2018 (5) Mh.L.J. 279, wherein it was enunciated that the revisional authority is bereft of jurisdiction to interfere in matters of sale confirmation, particularly when an alternative remedy under Sub-rules (13) and (14) of Rule 107 of the Maharashtra Cooperative Societies Rules, 1961 is available to the aggrieved party. In the case of *Hanumant Pandurang Deshmukh v. State of Maharashtra & Ors.*, the Court emphasized the statutory mechanism provided under Rule 107, which empowers the Special Recovery Officer to rectify any material irregularities, rendering the invocation of revisional jurisdiction redundant and unsustainable.

12. The settled principle of law is that when a statute provides for an efficacious and adequate alternative remedy, a party must first exhaust the same before invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. Unless there exists a gross miscarriage of justice or a patent illegality, writ jurisdiction should not be exercised when alternative remedies remain unexhausted.

13. In view of the aforestated legal position, it is manifest that the revisional authority, namely respondent No.2, has rightly dismissed the revision application. The petitioner, if aggrieved by the process of execution or sale confirmation, ought to have availed the remedy before the Special Recovery Officer as delineated under Sub-rules (13) and (14) of Rule 107 of the Maharashtra Cooperative Societies Rules, 1961.

14. It is a well-established principle that in matters of execution proceedings, the jurisdiction of the revisional authority is circumscribed by the nature of the order being impugned. The confirmation of sale, being a consequential ministerial act following due compliance with statutory prerequisites, does not entail the exercise of revisional jurisdiction. Any interference at this stage would amount to unsettling settled transactions, leading to unnecessary judicial interference in matters which are statutorily provided for by way of special remedies.

15. Consequently, no interference is warranted in the impugned order passed by the revisional authority, as the revision itself was not maintainable. The writ petition, being devoid of any substantive legal grounds necessitating the invocation of extraordinary jurisdiction, is liable to be dismissed. Accordingly, the petition stands dismissed, with no order as to costs.

16. Pending interlocutory application(s), if any, stand disposed of.

(AMIT BORKAR, J.)