

*MPBalekar*

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

**WRIT PETITION NO. 18746 OF 2024**

M/s. Shilpa Shares and Securities and  
Ors. ... Petitioners  
**V/s.**  
The National Co-operative Bank Limited  
and Ors. ... Respondents

Mr. Vishal C. Ghosalkar for the petitioners.

Mr. Rajesh Tekale a/w Prajyot Shinde for Respondent  
No.1.

Ms. Aloka A. Nadkarni for the State.

Ms. Sheeja John a/w Vaishnavi M. i/by M.P. Savla &  
Co.

**CORAM : AMIT BORKAR, J.**

**DATED : APRIL 6, 2026**

**P.C.:**

1. The present writ petition is not first time matter between the parties. It is now coming for third time, which itself shows that dispute is continuing for long period and parties are repeatedly approaching authorities and Court. In the first round, the auction sale itself was set aside. The reason was clear. There was non-compliance of sub-rule (g) of Rule 107 of the Maharashtra Co-operative Societies Rules, 1961. That provision requires certain immediate deposit after auction. Authority had found that requirement not followed. Therefore, auction was not sustained. Thereafter, in second round, the petitioners who are borrowers

again tried to challenge the action. However, their challenge was not entertained. It was rejected on technical ground. It was held that mandatory requirement under Section 154-2A of the Maharashtra Co-operative Societies Act, 1960 was not complied. Thus, earlier failure was not on merits of auction, but on non-compliance of statutory condition for maintaining revision. Now, in present round, petitioners state that they have cured that defect. They say Section 154-2A is now complied. Therefore, according to them, their challenge deserves to be examined on merits.

**2.** The revision application filed by the petitioners challenges the auction sale itself and also the consequential order passed under Rule 107, particularly sub-rule 14. The main ground raised is again same. It is non-compliance of sub-rule (g) of Rule 107. According to petitioners, auction was concluded on 11 February 2008. However, the requirement of depositing 15% of the bid amount, which is to be done immediately, was not followed on same day. It was deposited on 13 February 2008. Thus, there is gap of one day. Petitioners are saying that the word “immediately” used in the Rule cannot be stretched to include such delay. According to them, requirement is strict. Even small delay will make auction bad. They rely on judgments of the Hon’ble Supreme Court in M/s. Shilpa Shares and Securities and also in Adishakti Developers. Their submission is that such requirement is mandatory in nature. If it is not followed, entire auction becomes void and cannot be cured. On other hand, Bank is opposing the petition. The Bank is not only defending auction, but also raising objection regarding maintainability of proceedings. It is contended that the auction

purchaser, whose rights are directly affected, was not made party in proceedings under sub-rule 14 of Rule 107. Therefore, according to Bank, the entire challenge is defective from beginning.

3. The auction purchaser has also opposed the petition independently. According to him, the conduct of the petitioners is not proper. He submits that petitioners have repeatedly approached authorities and Courts and have taken all possible grounds earlier. According to him, the issues now raised were already considered in earlier rounds of litigation. The matter has travelled up to the Supreme Court. Therefore, it is his contention that petitioners cannot be allowed to reopen the same controversy again in writ jurisdiction. He submits that writ jurisdiction is discretionary. It is not to be exercised in favour of a party who has been negligent or who is repeatedly litigating on same cause. Therefore, according to auction purchaser, petition deserves to be dismissed on this ground alone.

4. On careful perusal of the record, one important aspect becomes very clear. When the petitioners filed objection under sub-rule 14 of Rule 107, they did not implead the auction purchaser as a party. After completion of auction, the auction purchaser acquires certain rights in respect of property. If the auction is to be set aside, his rights will be directly affected. Therefore, he is necessary party. In absence of such party, any adjudication on validity of auction becomes incomplete and legally improper. In present case, petitioners are alleging non-compliance of sub-rule (g). Such allegation goes to root of auction. If accepted auction will be set

aside. Therefore presence of auction purchaser was absolutely necessary at that stage itself. The defect cannot be cured at later stage. Adding such party at revision stage under Section 154 will not correct earlier illegality. The original proceedings themselves were defective for non-joinder of necessary party. Therefore the adjudication made therein cannot be sustained. In such situation, if petitioners still desire to pursue their objection on ground of non-compliance of sub-rule (g), they must do so in proper manner by impleading auction purchaser at initial stage itself. Only then proper hearing can take place.

5. In view of above discussion, the impugned orders passed by the Revisional Authority as well as by the Special Recovery Officer cannot be sustained. They are therefore required to be quashed and set aside, as the foundational proceedings themselves were defective.

6. The petitioners are therefore permitted to amend application under sub-rule 14 of Rule 107. In such application they shall implead the auction purchaser as a party. Only after joining all necessary parties, the objection can be decided in accordance with law. The Special Recovery Officer shall give full opportunity of hearing to all concerned parties, including the auction purchaser and the Bank, and then decide the objection on its own merits.

7. The parties are directed to appear before the Special Recovery Officer on 15 April 2026 at 11.00 a.m. On that date, further schedule shall be fixed. The Special Recovery Officer shall make endeavour to decide the objection expeditiously. The

decision shall be rendered within a period of four weeks from the date of appearance of the parties.

8. It is made clear that if the decision of the Special Recovery Officer is adverse to any party, such party will be at liberty to challenge the same before appropriate forum, in accordance with law.

9. The writ petition stands disposed of in above terms. No costs.

**(AMIT BORKAR, J.)**