

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4137 OF 2011

Bhimabai w/o Bhagwan Patil,
Age 65 years, Occu. Agri.,
r/o Dhar, Post Surkheda,
Tq. Dharangaon, Dist. Jalgaon.

...PETITIONER

VERSUS

1. The District Deputy Registrar,
Cooperative Societies,
Jalgaon, Dist. Jalgaon.
2. Agresar Urban Co-operative Society Ltd.,
at Plot No.21, Khwajamiya Chowk,
Ring Road, Jalgaon, Dist. Jalgaon,
through its Chairman.
3. The Special Recovery Officer,
Agresar Urban Co-operative Society Ltd.,
at Plot No.21, Khwajamiya Chowk,
Ring Road, Jalgaon, Dist. Jalgaon.
4. Suresh s/o Pandharinath Joshi,
Age: 60 years, Occu: Business,
r/o Khalchi Aali, Near Holi Maidan,
Nashirabad, Dist. Jalgaon.
5. The State of Maharashtra,
Through its Secretary, Co-operation
and Textiles Dept., Mantralaya,
Mumbai 32.

...RESPONDENTS

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Advocate for Petitioners : Mr. Sharad V Natu

AGP for respondent State:Mr. V.G.Shelke.

Advocate for respondent nos. 2 and 3: Mr.

A.R.Kale.

Advocate for respondent no.4: Mr. V.B.Patil.

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CORAM : K.U. CHANDIWAL, J.

Dated: January 31, 2012

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PER COURT :-

1. Heard finally.

2. The guarantor, owner of the property, is before this Court, questioning the auction of property and issuance of sale certificate.

3. The paramount contention of Mr.Natu is, there is violence to mandatory conditions in Rule 107 (11) (g) and (11) (h) of the Maharashtra Cooperative Societies Rules, 1961, hence without resorting to available remedies under Section 154 of the Maharashtra Cooperative Societies Act, 1960, writ is maintainable.

4. In order to stress his point, learned Counsel has placed reliance to the judgment of this Court in the matter of **Niranjan D. Woody Vs. South Indian Cooperative Bank Ltd. (2006 (5) Bom.C.R. 587)** wherein this Court has considered that effect of Rule 107 (11) (g) which has the postulates of treating it as mandatory. The obligation of the purchaser to deposit the full purchase money in time is mandatory requirement and non compliance of Rule 107 is not a mere irregularity.

5. Learned Counsel has also placed reliance to the judgment of Full Bench in the matter of **Shireen Sami Gadiali & anr Vs. Spenta Co.op.Hsg.Soc.Ltd. & others (2011 (3) Bom.C.R. 465)**, to address that in peculiar facts and situation, without resorting to the remedies under Section 154 of the Maharashtra Cooperative Societies Act, writ jurisdiction under Article 226 or Article 227 of the Constitution of India can be availed. Paragraph no.14 reads as under:

"14. The observations of the Supreme Court in its judgment in the case of Everent Apartment's case are thus based on the unamended provisions of Section 154 when there was no right in a party to move the revisional authority by an application. In other words, provision was not made for invoking revisional jurisdiction of the State Government or the Registrar by making an application. But now because of the amendment in Section 154, a party has a right to move an application under Section 154 invoking revisional jurisdiction of the State Government and the Registrar. In our opinion, however, merely because a party has a right to make an application invoking the revisional jurisdiction of the Registrar and the State Government under Section 154, whether it can be treated as alternate remedy entitling the High Court to decline to exercise its writ jurisdiction is a question which is not capable of being answered generally. That question has to be considered and answered in the facts and circumstances of each case. Firstly, because availability of alternate remedy is not a statutory bar to the exercise either of writ jurisdiction

under Article 226 of the Constitution or supervisory jurisdiction under Article 227 of the Constitution. That is a rule of self discipline and therefore it is for the High Court to consider in each case whether in a particular case availability of revisional jurisdiction is an alternate remedy to the jurisdiction of this court under Articles 226 or 227 or not. In a given case, because the revisional jurisdiction can now be exercised as a matter of right, it may be treated as alternate remedy. In another case it may not be so treated. For example, in a case the High Court may find that the question which is raised in the petition is covered by a finding precedent in favour of the Petitioner, therefore may not ask the Petitioner to exhaust the alternate remedy. The High Court will adopt the same course when it finds that the impugned order is passed in violation of the principles of natural justice or fundamental rights or is without authority of law or is obviously wrong or illegal. In another case, the High Court may find that the question raised in the petition is capable of being decided in revisional jurisdiction also and therefore the High Court may decline to entertain the petition. Thus, in our opinion, it can be definitely said that after its amendments in the year 1974, a remedy of revision under Section 154 is available to an aggrieved party as a matter of right. However no general rule where it will always operate as an alternate remedy to the remedy of filing a petition under Articles 226 and 227 of the Constitution of India can be laid down. That question will have to be considered and decided in each case on the facts and law peculiar to that case. Question No.2 is, therefore, answered accordingly."

6. The objection raised by Mr.Natu about non compliance of Rule 107 (11) (g) basically does not figure in as there is compliance of 15 per cent deposit within time schedule by purchaser Suresh. This is more so demonstrated in the correspondence, and not now disputed by the petitioner.

The other grievance raised by the petitioner is, non compliance of rule 107 (11) (h) in respect of remainder of the purchase money, and the amount required for general stamp for the sale certificate, shall be paid within fifteen days from the date of sale.

7. Learned Counsel for the purchaser (respondent no.4), while criticizing conduct of the petitioner by referring to several documents, has pointed huge deposits ranging around Rs. 17,00,000/- (Rs. seventeen lacs) of the respondent no.4 as purchaser, are lying with the Credit Cooperative Society, and in terms of Rule 107 (11) (g), proviso, he is entitled to set off the purchase money under clause (k) and the Sale Officer is bound to dispense with requirement of clause (g).

8. On perusal of the record, I find substance in the submission of respondent no.4 - the purchaser.

9. So far as alternate remedy is concerned, the record illustrate that on 20.12.2008, the order of confirmation of sale has become final. On 31.12.2008, a letter was addressed by the Special Recovery Officer to the purchaser (respondent no.4), borrower and the petitioner thereby, the petitioner, as guarantor, was requested, along with borrower, to remit the amount due, to stop the sale proceedings, or to terminate execution of the sale deed in favour of respondent no.4 Suresh. This has not been complied with by the petitioner.

10. During the course of submission, Mr.Patil has also informed that the land is not free from encumbrances; it is a tenanted property. Consequently, the purchaser was required, again, to move to the Sub Divisional Officer, Jalgaon, for appropriate permission and, after great deal of exercise, such permission is extended on conditions.

Second feature informed by him is, the borrower and the petitioners have already raised liability in respect of same agricultural property which the auction purchaser (respondent no.4) has to independently dwell upon. Learned Counsel passingly submits, it is not easy exercise for the purchaser to take fruits of the sale proceeds, or the certificate. He says, the society is coordinating with the borrower /

guarantor, the petitioner, to sabotage right of respondent no.4.

11. Mr.Natu submits, provisions of Rule 107 (11) (g) and set off in terms of clause (k) would be applicable only to applicant society (creditor) and this clause would not be applicable to others.

Though clause (k) takes care of this eventuality, however, in the instant case, as it is, there is no grievance of non compliance of rule 107 (11) (g), as fifteen per cent of the sale proceeds, or the remainder of price of the immoveable property was with society belonging to respondent no.4 purchaser. The society had only to appropriate the amount of purchase already lying with it. This was even so requested.

12. Survey of the events also illustrate that the petitioner, as a guarantor to the loan arrangement to her son, had mortgaged the property with society. She allowed the situation to be worsened and, thereafter, belatedly, and consciously challenged the action of sale, knowing full well that much water has flown. The sale certificate, which was issued after virtually eleven months of the auction, is challenged on 13.4.2011 after a period of three years. These laches, and the conduct of the petitioner, do not call for interference in the

impugned orders regarding issuance of sale certificate on 28.8.2009.

The writ petition lacks merit, dismissed.

The observations are to be restricted to the controversy in question. If the petitioner or the borrower exhaust the remedies under Section 154 of the Maharashtra Cooperative Societies Act, the revisional authority shall independently deal with the same.

(K.U. CHANDIWAL, J.)

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