(2018) 06 BOM CK 0045

In the Bombay High Court

Case No : WRIT PETITION NO.572, 650 OF 2014

BARINDRA OVERSEAS PRIVATE LTD, THROUGH DIRECTOR MR. DHANESH VIPIN PARIKH AND ANR — APPELLANT

Vs

SHILPA SHARES AND SECURITIES AND ORS — RESPONDENT

Date of Decision : 13-06-2018

Acts Referred:

Constitution of India, 1950 — Article 227
Maharashtra Co-operative Societies Act, 1960 — Section 101, 145(2A), 154, 154(2A), 156
Maharashtra Co-operative Societies Rules, 1961 — Rule 107, 107(11)(g), 107(14)(i), 107(14), 107(14)(III)

Citation : (2018) 06 BOM CK 0045

Hon'ble Judges : R.D. DHANUKA, J

Bench : Single Bench

Advocate : Prateek Seksaria, Heena Chheda, Bharatkumar Jain, Ashish Venugopal, Ajit N. Jakhadi, Amol A.Chile, Arun A. Chile, Vikram A. Jakhadi, Sukanta Karmarkar

Final Decision : Allowed

Judgement

1. By these two petitions filed under Article 227 of the Constitution of India, the petitioners have impugned the order dated 20th May, 2013 and the

order of condonation of delay dated 17th January, 2012 passed by the learned Divisional Joint Registrar, Co-operative Societies, Mumbai Division, the

respondent no. 5 herein thereby allowing the revision application filed by the respondent nos. 1 to 3 and condoning the delay in filing the revision

application.

2. By consent of parties, both the matters were heard together and are being disposed off by a common order.

3. Some of the relevant facts for the purpose of deciding these petitions are as

under:-

4. Writ Petition No. 572 of 2014, is filed by the purchasers of the property known as â??Parvati Niwasâ? consisting of ground plus three floors

standing on land ad-measuring 478.68 sq.meters situated at Mahant Road, Vile Parle (E), Mumbai, 400 057. The respondent no.1 was the borrower

and has availed of various facilities from the respondent no.4 i.e. the National Co-operative Bank Limited. The respondent nos.2 and 3 are the

partners of respondent no.1. The respondent no.5 is the Divisional Joint Registrar Co-operative Societies. The respondent no.6 is the Special Recovery

Officer attached to the National Co-operative Bank Limited. The petitioners in Writ Petition No.572 of 2014 are hereinafter described as the auction

purchasers. The respondent nos.1 to 3 are hereinafter described as the borrowers. The respondent no.4 - bank is described as the lender. The

petitioner in Writ Petition No. 650 of 2014 is the lender.

5. The respondent No.2 i.e. Mr. Hemant Sapale, who is the partner of the respondent no. 1 was the owner of the property known as â??Parvati

Niwasâ? described aforesaid. On 3rd September, 1997, the respondent no.1 applied for certain loan facilities from the said lender. The respondent no.

2 stood as guarantor to the said loan and deposited the title documents in respect of the said mortgage property as the collateral security in favour of

the said lender. The borrower had defaulted in making repayment of the loan obtained from the said lender. The lender thus filed recovery

proceedings on 26th December, 2000 inter-alia praying for a recovery certificate under Section 101 of the Maharashtra Co-operative Societies Act,

1960 (Said MCS Act) against respondent no. 1 and its guarantor for a sum of Rs. 56,77,016/- with further interest. The Assistant Co-operative Society

issued recovery certificate against the said borrowers and guarantors i.e. respondent nos. 1 to 3.

6. Being aggrieved by the said recovery certificate, the respondent nos.1 to 3 filed a Revision Application No.212 of 2001 on 4th April, 2001 before

the respondent no.5. The said borrowers also challenged the said recovery certificate by filing Writ Petition bearing no.2131 of 2001 before this court.

This court by order dated 30th April, 2001 directed the Divisional Joint Registrar to treat the deposit of Rs.5, 00,000/- paid by the purchasers towards

the compliance of Section 154(2A) of the MCS Act and further directed to deal with the said revision application filed by the borrowers in due process

of law. The Special Recovery Officer attached to the lender passed an order attaching the said mortgage property belonging to respondent no.2 on

2nd May, 2001. On 18th August, 2001 the lender took possession of the said property together with vacant possession of the third floor, which was

occupied by the respondent nos. 2 and 3, who are partners of the respondent no.1.

7. On 1st February, 2002 the Special Recovery Officer conducted an auction in respect of the said mortgage property. On 11th June, 2002, the first

revision application filed by the borrowers came to be dismissed by the learned Divisional Joint Registrar. The revision applications filed by the

borrowers i.e. nos. 2 of 2001, 47 of 2002 were dismissed on account of the borrowers not depositing 50% of the amount of the recovery certificate

under Section 154 (2A) of the said MCS Act. Since the auction purchaser of the first auction withdrew its bid, the said auction came to be cancelled.

In view of the cancellation of the said auction, the Divisional Joint Registrar dismissed another Revision Application No.444 of 2002, which was filed

by the borrowers.

8. The borrowers thereafter filed a writ petition bearing No.105 of 2003 in this court challenging the order passed by the learned Divisional Joint

Registrar. By an order dated 13th January, 2003 this court rejected the petition no.105 of 2003 at the stage of admission itself. The review petition

filed by the borrowers in the said Writ Petition No.105 of 2003 also came to be rejected by this court by an order dated 7th March, 2003. Being

aggrieved by this order passed by this court in the said writ petition, the borrowers filed Special Leave Petition. By an order and judgment dated 2nd

May, 2007 the Supreme Court allowed the Civil Appeals bearing Nos.6760 and 6761 of 2004 filed by the borrowers and was pleased to set aside the

first auction.

9. The borrowers thereafter filed an application for one time settlement with the lender somewhere in the year 2006. The said proposal of one time

settlement was rejected by the said lenders on the ground that the same was not within the norms of the RBI. The borrowers thereafter filed a writ

petition bearing no.1188 of 2007 praying for a direction to the said lender and considering the one time settlement submitted by the borrowers. This court disposed of the said writ petition without granting any relief in favour of the borrowers. The borrowers thereafter filed a Writ Petition bearing

No.97 of 2008 inter alia praying an implementation of the order passed by this court in writ petition no.1188 of 2007. The said writ petition also came

to be dismissed by this court.

10. In view of the Honâ??ble Supreme Court setting aside the first auction conducted by Special Recovery Officer attached to the said lender, a

fresh auction notice dated 5th January, 2008 came to be issued in various newspapers for sale of the said mortgage property. The auction purchasers

herein submitted their bid pursuant to the said public notice issued by the Special Recovery Officer. The Special Recovery Officer conducted an

auction on 11th February, 2008. It is the case of the petitioners that the petitioner no.2 participated and made a bid on behalf of the petitioner

no.1â?"company and was the highest bidder for an amount of Rs.5,05,00,000/-. The said auction was completed only around 3.00 p.m. on 11th

February, 2008. The Officers of the said lender thereafter made a demand for deposit of 15% of the highest bid amount by way of demand draft/pay

order payable under Rule 107(11) (g) of the Maharashtra Co-operative Societies Rules, 1961 (for short referred to as the said MCS Rules).

11. It is the case of the auction purchasers that the banking hours were over by the time, the demand in respect of the 15% amount of the bid amount

of Rs.5, 05, 00,000/- was made. The deposit of a sum of Rs.1 crore which was more than the amount of 15% of the bid amount was made by a

demand draft on 13th February, 2008. On 23rd February, 2008 the auction purchaser deposited the balance amount within the stipulated time limits of

15 days.

12. On 5th March, 2008 the borrowers filed an application bearing No. 1 of 2008 alongwith an application seeking ad-interim reliefs under section 156

of the said MCS Act, before the Special Recovery Officer inter-alia praying for cancellation of second auction on the ground that the said lender have

failed to consider the said one time settlement proposal given by the borrowers and also on the ground that the auction purchasers had not paid the bid

amount of Rs.5.05 crores and even 15% thereof within the time prescribed under the said MCS Rules.

13. On 5th March, 2008 the respondent nos. 1 to 3 also filed a Revision

Application No.93 of 2008 before the Divisional Joint Registrar inter alia praying for an order of permanent injunction restraining the said lender from execution of the said recovery certificate as contemplated in the second auction on the ground that the said second auction was not conducted in compliance with Rule 107 of the said MCS Rules. The said borrowers also applied for ad-interim relief in the said revision application.

14. Sometime in the month of March 2008, the Revision Application No.1 of 2008 was heard and was reserved for orders. The Special Recovery Officer passed an order rejecting the Application No. 1 of 2008 filed by the said borrowers. On 31st March, 2008, the Special Recovery Officer confirmed the second auction.

15. On 1st April, 2008 the said lender addressed a letter to the borrowers and informed that the second auction sale was confirmed and possession of the said property was already handed over to the auction purchaser. The borrowers were also informed that out of the sale proceeds received by the said lender, an amount of Rs.1,13,75,974/- was recovered and appropriated by the said lender and balance amount of Rs.3,91,24,026/- was transferred to the Current Account No.3501 of respondent no.1. The said lender also requested the said borrowers to take possession of movables lying in the said property which was mortgaged in favour of the said lender.

16. It is the case of the auction purchaser that on 2nd April, 2008 the Special Recovery Officer informed the borrowers about the order of rejection of Application No.1 of 2008. The documents, however, were returned unclaimed. An intimation was thus posted on 4th April, 2008.

17. On 9th April 2008, the borrowers filed an Application No. 2 of 2008 inter alia challenging the second auction and also filed an application for condonation of delay before the Special Recovery Officer on the ground that Mr. P.N. Chitalia, the petitioner no.2 had submitted the bid in the second auction in his personal capacity and not in any representative capacity of the specified person. By an order dated 24th April, 2008 the Special Recovery Officer rejected the said Application No.2 of 2008 filed by the said borrowers. On 23rd May, 2008 the said borrowers made an application for certified copy of the entire Roznama of Application Nos. 1 and 2 of 2008 to enable the borrowers to file an appeal.

18. On 26th May, 2008 the Special Recovery Officer issued a certificate of sale

under Rule 107(14)(III) of the said MCS Rules, in favour of the

auction purchaser. The auction purchaser thereafter paid stamp duty of Rs.25, 25,000/- on the said certificate of sale issued by the Special Recovery

Officer.

19. The said borrower through their Advocateâ??s letter dated 13th June, 2008 to the said lender and the said Special Recovery Officer disputed the

contents of the Case Credit Account No.3501 of the borrower on 31st March, 2008 and also disputed the credit of an amount of Rs.3,91,24,026/- in

the name of the respondent no.1. On 18th September, 2008 the Revision Application No.93 of 2008 filed by the said borrower came to be rejected at

the admission stage in view of the borrowers not having complied with the provisions of Section 154 (2A) of the said MCS Act, by not depositing 50%

amount mentioned in the Recovery Certificate.

20. On 20th September, 2008, Jeetendra Bhimshi Shah, one of the participant at the second auction filed a declaration and alleged that a perusal of the

proceedings of the public auction of the immovable property dated 11th February, 2008, indicated that the name â??Ashar or Askar Diamond Industry

Limitedâ? had been scored off and the words â??for and on behalf of nominee M/ s.Barindra Overseas Private Limitedâ? appears to have been

inserted, bracketed and counter signed by P.N. Chitalia.

21. On 28th January, 2010, this Court dismissed the Writ Petition No.1576 of 2009 which was filed by the borrowers thereby impugning the order

dated 18th September, 2008 passed by the respondent no.5, inter-alia praying for quashing and setting aside the second auction and for carrying out an

agreed and legal modifications as per the sanctioned one time settlement alleged to have been sanctioned in favour of the borrowers. The said writ

petition came to be dismissed by this Court on the ground that the borrowers had not deposited 50% of the amount of recoverable dues with the

lenders as per the provisions of section 154(2A) of the said M.C.S. Act. The borrowers challenged the said order dated 28th January, 2010 passed by

this Court before the Hon'ble Supreme Court of India by filing Special Leave Petition (Stamp) No.18073 of 2010. The Supreme Court dismissed the

said special leave petition and observed that the Revision Application No.93 of 2008 filed by the borrowers was not even otherwise maintainable as

the auction purchasers were not made parties to the said revision application.

22. On 3rd November, 2010, the borrowers filed a fresh Revision Application bearing No.395 of 2010, inter-alia challenging the second auction. The

borrowers also filed an application for condonation of delay in filing the revision application. It was alleged in the said revision application that a copy

of the order in Revision Application No.1 of 2008 was not available. On 26th July, 2011, the Divisional Joint

Registrar allowed the amendment to the Revision Application No.395 of 2010 pursuant to which the borrowers added the additional grounds of

challenge. On 23rd August, 2011, the auction purchasers filed an application before the Divisional Joint Registrar in the said Revision Application

No.395 of 2010 inter-alia praying for dismissal of the said revision application on the ground that the same was not maintainable in view of the

borrowers not having complied with the mandatory requirements of section 154(2A) of the said M.C.S. Act. On 17th January, 2012, the Divisional

Joint Registrar passed an order thereby condoning the delay in filing the Revision Application No.395 of 2010 and directed the parties to maintain

status-quo in respect of the second auction.

23. On 23rd October, 2012, the auction purchasers challenged the order dated 17th January, 2012 passed by the Divisional Joint Registrar by filing a

Writ Petition bearing No.3573 of 2012 in this Court. This Court admitted the said Writ Petition No.3573 of 2012 on 23rd August, 2012, however, did

not grant any interim relief to the auction purchasers.

24. In the month of January, 2013, the lenders Bank filed its written arguments in the Revision Application No.395 of 2010 contending that the said

revision application was barred by the principles of res-judicata and that the borrowers had failed to deposit the amounts in compliance with section

154(2A) of the said M.C.S. Act. On 20th May, 2013, the Divisional Joint Registrar passed an order thereby allowing the Revision Application No.395

of 2010 and was pleased to set aside the second auction conducted by the Special Recovery Officer. On 1st October, 2013, the lenders Bank filed a

Writ Petition No.650 of 2010 in this Court against the borrowers and the auction purchasers. On 31st December, 2013, the borrowers filed the Writ

Petition bearing No.173 of 2014 before this Court inter-alia praying for a direction that the lender shall process the application filed by the borrowers

for one time settlement and for other consequential reliefs. By an order dated

20th March, 2014, this Court dismissed the said Writ Petition No.173 of

2014 mainly on the ground that the Writ Petition No.650 of 2014 and Writ Petition No.572 of 2014 were still pending before this Court. On 30th April,

2014, this Court passed an order directing the parties to maintain status-quo in the writ petition.

25. On 20th June, 2014, in view of the final order having been passed in the Revision Application No.395 of 2010, the auction purchasers withdrew the

Writ Petition bearing No.3573 of 2012. On 26th July, 2014, the borrowers filed a Special Leave Petition bearing No.24712 of 2014 against the order

dated 20th March, 2014 passed in the Writ Petition No.173 of 2014 by this Court. On 20th September, 2014, the Supreme Court passed an order

directing the borrowers to deposit an amount of Rs.44, 97,000/- with the lenders Bank as a pre-condition for issuance of notice in the said Special

Leave Petition No.24712 of 2014. The borrowers deposited deposited the said amount of Rs.44, 97,000/- with the respondent no.4 lender.

26. On 19th April, 2016, the Supreme Court passed an order thereby setting aside the impugned judgment passed by this Court dated 20th March,

2014 in Writ Petition No.173 of 2014. The Supreme Court issued a direction to restore the said writ petition to the file of this Court for a consideration

afresh, after disposal of the Writ Petition No.572 of 2014 and Writ Petition No.650 of 2014.

27. On 6th December, 2017, this Court admitted both these writ petitions and granted interim relief in terms of prayer clause (b) in Writ Petition

No.572 of 2014 and issued further directions to the effect that the auction purchasers shall not part with possession, alienate or create any third party

rights or encumbrances on the property in question without obtaining the leave of the Court after at least three week's prior notice to the borrower's

advocate. It was further directed that the auction purchasers shall not claim any equities arising from the admission of these petitions and that the

rights of the auction purchasers to occupy and possession of the flat and its title subject to the outcome of these petitions.

28. Mr.Seksaria, leaned counsel appearing for the auction purchasers invited my attention to the pleadings and the documents annexed to the writ

petition filed by his client, some of the annexures to the Writ Petition No.1576 of 2009. It is submitted that his clients were legally advised that as per the provisions of the said M.C.S. Act, the cheque amount for the deposit of 15% would be accepted in the event of his client would be successful in

the bid. The auction purchasers had provided its representative i.e. the petitioner no.2 an authority to call for a cheque amounting to 15% of the bid

amount. The auction purchasers had necessary resources to deposit the amounts and to arrange for pay order or demand draft. He submits that the

auction proceedings had taken the entire day. The said auction was completed in the after-noon on 11th February, 2008. The bank officers only

thereafter around 3:00 p.m. made a demand of 15% of the bid amount offered by the auction purchasers by way of demand draft / pay order. He

submits that though the amount of 15% was ready and available with them, the pay order / demand draft could not have been prepared and kept till

such time highest bid was declared and the highest bid amount was known and was confirmed by the bank in its auction.

29. It is submitted that the demand draft could have been asked so long as the bank working hours were available to the auction purchasers. Since the

bank working hours were over, it was not possible to secure the demand draft immediately. He submits that in that event the demand by the Special

Recovery Officer for pay orders / demand draft immediately was not in the line with the provisions of the said M.C.S. Act read with Rules. The

demand draft however, for Rs.1.00 crore was ready on 13th February, 2008. When these difficulties were explained to the Special Recovery officer,

the said Special Recovery Officer was pleased to accept the said demand draft of Rs.1.00 crore and also accepted the remaining amount

subsequently which amounted to constructive compliance of the provisions of the said M.C.S. Act and its Rules.

30. It is submitted by the learned counsel that the borrowers had applied for setting aside the said auction and the recovery proceedings under Rule

107(14) of the said M.C.S. Rules however, avoided to attend the said proceedings before the concerned authority and did not pursue the said

application. The said application thus filed by the borrowers came to be dismissed by the Special Recovery Officer of the bank by passing a reasoned

order. On the application made by the bank, the said auction sale was confirmed in favour of the auction purchasers on 24th March, 2008 . The sale

came to be confirmed by the learned Registrar on 16th July, 2008. The Special Recovery Officer issued a certificate of sale on 27th May, 2008. The lender bank thereafter handed over possession of the suit premises along with vacant flat to the auction purchasers and since then the auction

purchasers are in uninterrupted use, occupation and possession of the said premises along with vacant flat.

31. It is submitted by the learned counsel that the said revision application filed by the borrowers challenging the second auction and the recovery

certificates was dismissed by the learned Divisional Joint Registrar by an order dated 18th September, 2008 on the ground that the borrowers had not

deposited 50% of the amount of the recoverable dues of the lender bank. The writ petition (1576 of 2009) filed by the borrowers against the said order

also came to be dismissed by this Court on 28th January, 2010 on the ground that the borrowers had failed to deposit 50% of the dues under the

recovery certificate under section 154(2A) of the said M.C.S. Act. The special leave petition filed by the borrowers came to be dismissed by the

Supreme Court on 24th September, 2010. In the said order, the Supreme Court however, observed that the said revision application itself was not

maintainable on the ground that the auction purchasers were not impleaded as party respondents to the said original revision application. He submits

that the order thus passed by the learned Divisional Joint Registrar dismissing the revision application filed by the borrowers thereby impugning the

auction sale in respect of the property in question attained finality against the borrowers.

32. It is submitted by the learned counsel that the impugned order passed by the Divisional Joint Registrar on 20th May, 2013 in Revision Application

No.395 of 2010 was in gross violation of the principles of res-judicata and also in violation of the orders passed by this Court on 28th January, 2010

and the order passed by the Supreme Court of India dated 24th September, 2010 by which the revision application filed by the borrowers was

dismissed without granting any liberty to them to file any fresh revision application or any other proceedings. Learned Divisional Joint Registrar thus

could not have entertained the second revision application since the same was filed by the borrowers without obtaining any leave from the Hon'ble

Supreme Court.

33. In his alternate submission, it is submitted by the learned counsel for the auction purchasers that though specific objection was raised by the

auction purchasers about the maintainability of the said revision application filed by the borrowers on the ground that the borrowers had not complied

with the mandatory requirements of deposit of 15% of the successful bid amount in compliance with section 154(2A) of the said M.C.S. Act, the

Divisional Joint Registrar did not bother to consider the said objection raised by the auction purchasers as well as the lenders and allowed the said

revision application filed by the borrowers contrary to the well settled principles of law laid by the Supreme Court and this Court and also contrary to

section 154(2A) of the said M.C.S. Act. Compliance of section 154(2A) of the said M.C.S. Act is mandatory. The order passed by the Divisional

Joint Registrar thereby entertaining the revision application filed by the borrowers is totally without jurisdiction and illegal.

34. It is submitted by the learned counsel that the second revision application filed by the borrowers was barred by res-judicata in view of the fact that

the impugned order passed by the Assistant Registrar granting certificate under section 101 of the said M.C.S. Act had attained finality and the

revision application filed by the borrowers against the said impugned came to be dismissed right upto the Hon'ble Supreme Court.

35. It is submitted by the learned counsel that the order passed by the learned Divisional Joint Registrar condoning the delay application filed by the

borrowers without insisting for deposit of 50% of the certificate amount on the ground that the borrowers had only challenged the auction sale and

therefore, the question of compliance of section 154(2A) of the said M.C.S. Act did not arise is ex-facie perverse and contrary to the order dated 28th

January, 2010 passed by this Court in the petition filed by the borrowers, who had raised similar issue and the same was rejected. He submits that the

said finding of the learned Divisional Joint Registrar is also ex-facie contrary to the principles laid down by this Court in Greater Bombay Co-operative

Bank Limited, Mumbai vs. Dhillion P. Shah & Shah, (2004) 1 Mh.L.J. and also contrary to the order dated 28th January, 2010 passed by this Court.

36. It is submitted by the learned counsel for the auction purchaser that the learned Divisional Joint Registrar had recorded one line observation that

the respondents to the said revision application had played fraud and manipulated the auction proceedings without recording any reasons and without

complying with the principles of natural justice and based on no evidence.

37. It is submitted by the learned counsel that the interpretation of Rule 107(11)(g) of the said M.C.S. Rules that the auction purchaser who ought to

have deposited the amount on the said day without going into the actual facts and merits of the case and without appropriate reasonings for such

finding is ex-facie perverse and contrary to the said provision and the same was inconsistent with the provisions of the said M.C.S. Act. The demand

draft of Rs.1.00 crore could not have been kept in anticipation of the declaration of the highest bidder along with the amounts which was concluded

only after 3:00 p.m. on the date of action by which time banking hours were already over.

38. Learned counsel for the auction purchasers placed reliance on the definition of the term â??immediatelyâ? from Judicial Dictionary of Words and

Phrases by Prem & Saharay's Second Edition which provides that it shall be construed such convenient time as is reasonably requisite for doing the

things. Learned counsel also placed reliance on the judgment of the Supreme Court in case of Rosali V. vs. Taico Bank & Ors., (2009) 17 SCC 690

and more particularly paragraphs 22, 27, 30 to 32, 38 and 41.

39. Insofar as the allegations of fraud / material irregularity made by the learned counsel for the borrowers in the first revision application is

concerned, it is submitted by the learned counsel for the auction purchasers that the said first revision application was dismissed on merits and had

attained finality. The second revision application filed by the borrowers also came to be dismissed. There was a a specific objection raised in the

revision application about the corrections made in the note of auction proceedings by P.N. Chitalia which allegation was subsequently rejected. The

subsequent application raising similar allegation was thus ex-facie barred by constructive res-judicata. He invited my attention to the additional grounds

raised in the first revision application. He also invited to the prayers in the Writ Petition No.1576 of 2009 which was filed by the auction purchasers in

this Court earlier.

40. Learned counsel also placed reliance on the judgment delivered by this Court in Writ Petition No.6999 of 2013 on the issue of mandatory deposit

of 50% of the bid amount under section 154(2A) of the said M.C.S. Act in which this Court had followed the principles laid down in the judgments

reported in case of M/s.Puran Automobiles vs. State of Maharashtra & Ors.

(2012) 5 All MR 145, The Greater Bombay Co-operative Bank Limited

& Anr. vs. Dhillion P. Shah & Ors., 2004(1) All M.R. 25 in support of his submission that even if an auction proceedings are challenged in a revision

application, compliance of mandatory requirement of 50% under section 154(2A) of the said M.C.S. Act is mandatory. He submits that though such

an objection was subsequently raised by the auction purchasers as well as by the lenders, the same has not been dealt with by the learned Divisional

Joint Registrar in the impugned order.

41. It is submitted by the learned counsel that the recovery certificate in this case was issued against the borrowers as far back as in the year 2001.

The borrowers however, had failed to pay the said certificate amount or any part thereof. He submits that in this case admittedly nine bidders had

participated in the auction proceeding. The highest bidder had quoted the bid of Rs.5, 05,00,000/- which is much more than the certificate amount and

also the upset price fixed by the authority. Mr.Jeetendra B. Shah, who had filed an affidavit in support of the borrowers had quoted and submitted his

bid for much lower amount than the upset price. He did not challenge the auction proceedings at any stage. P.N. Chitalia also did not make any

complaint or grievance in respect of the auction sale. Learned counsel also placed reliance on the judgment of the Supreme Court in case of Rosali V.

vs. Taico Bank & Ors., AIR 2007 SC 998 and Ram Karan Gupta vs. J.S. Exim Limited & Ors., AIR 2013 SC 24.

42. Insofar the bid submitted by P.N. Chitalia is concerned, the Special Recovery Officer confirmed the sale in favour of the said P.N. Chitalia on

behalf of Anchor Daewoo or in favour of its nominee. The amount of Rs.1.00 crore and the subsequent amount was paid by the sister company of the

Anchor Daewoo i.e. Barinda Overseas Private Limited. The said amount of Rs.1.00 crore was paid by the demand draft from the account of the said

Barinda Overseas Private Limited. It is the case of the borrowers that the balance 85% of the bid amount was not paid by the auction purchasers on

time.

43. Mr.Seksaria, learned counsel appearing for the petitioners also placed reliance on the proviso to Rule 107(14) of the M.C.S. Rules in support of

the submission that even if there was any irregularity in conducting the auction sale, the borrowers or the respondent no.6 claiming through the borrowers did not point out any substantial injury by reason of such alleged irregularity, mistake or fraud.

44. Mr.Kanade, learned counsel appearing for the lenders who are the petitioners in Writ Petition No.650 of 2014 adopted the submissions made by

Mr.Seksaria, learned counsel appearing for the auction purchasers, who were the petitioners in Writ Petition No.572 of 2014 and made the additional

submissions. It is submitted that though an issue of res-judicata as well as mandatory non-compliance of deposit of 50% of the bid amount under

section 154 (2A) of the M.C.S. Act was specifically raised by his client also, the same is not considered in the impugned order passed by the learned

Divisional Joint Registrar. He submits that the reserved price was fixed at Rs.91.00 lakh, whereas the auction purchasers in this case had submitted

the highest bid in the sum of Rs.5, 05, 00,000/- after several rounds of bid. The dues of the borrowers were worked out by the bank. None of the

auction purchasers had raised the objection about the procedure followed by the Special Recovery Officer. The name of the sister concern of the said

P.N. Chitalia was corrected. On 13th February, 2013, the amount of 15% of the bid was deposited with the bank. The auction proceedings came to be

over only in the afternoon on 11th February, 2013. The bank after adjusting the liabilities of the borrowers had deposited the balance amount in the

account of the borrowers. The said account was however, found dormant. He submits that it is not the case of the borrowers that the properties in

question was sold at under valuation price.

45. Mr.Jakhadi, learned counsel appearing for the borrowers would submit that the amounts sought to be deposited by the lenders bank was deposited

in a dormant account of the borrowers in the year 1997. His clients have thus not received any such amount. He submits that the entire auction

proceedings were fraudulent and in breach of the provisions of the said M.C.S. Act and Rule 107 of the said M.C.S. Rules. It is submitted that the

hand writing of the said P.N. Chitalia on the document at page 295 of the paper book and the hand writing in the corrections are totally different. He

led emphasis on the minutes of the auction proceedings and more particularly on page 295 signed by the Special Recovery Officer and the Sales

Officer stating that the sum of Rs.70,75,000/- after adjusting the earnest money deposit of Rs.5.00 lakh had been received from the successful bidder against the acknowledgement / receipt issued by the National Co-operative Bank Limited. He submits that the said acknowledgement was issued by

the Special Recovery officer on the date of auction sale itself though admittedly on the date of action, the auction purchasers had not deposited any

such amount with the Special Recovery Officer and Sales Officer or with the lenders Bank.

46. Learned counsel submits that the said acknowledgement of receipt of the said amount issued by the Special Recovery Officer and the Sales

Officers itself is fraudulent and reflected a false recording on the alleged receipt of receipt of 15% amount of the highest bid price. He submits that in

view of the fraudulent correction in the said document and fraudulent receipt issued by the Special Recovery Officer and the Sales Officer, the

borrowers were not precluded from filing a second revision application to disclose such fraud and fabrication committed by the respondents to the said

revision application.

47. Learned counsel for the borrowers also placed reliance on the letter dated 24th March, 2008 from the National Co-operative Bank Limited to the

Commissioner of Co-operation and Registrar alleging that P.N. Chitalia had informed the bank that it was not possible for them to bring the pay order

on the same day. M/s.Barindra Overseas Private Limited has submitted a pay order of Rs.1.00 crore in the morning of 13th February, 2008. He

submits that a perusal of this letter dated 24th March, 2008 issued by the lenders bank itself acknowledges and confirms that the pay order of Rs.1.00

crore was received only in the morning of 13th February, 2008. The receipt issued to the Special Recovery Officer acknowledging a sum of Rs.70,

75,000/- on the date of auction itself was ex-facie fraudulent and contrary to the letter addressed by the lenders bank. The Special Recovery Officer

had also taken signatures of all the bidders on the said minutes of the auction proceedings and gave a false receipt in favour of the auction purchasers.

48. Insofar as the maintainability of the second revision application is concerned, it is submitted that the Supreme Court did not dismiss the special

leave petition filed by the borrowers on merits, but had dismissed the same on the ground that the said revision application filed by the borrowers itself

was not maintainable in view of the fact that the auction purchasers were not impleaded as parties to the said revision application. The borrowers were thus entitled to file the second revision application by impleading the auction purchasers as parties and in any event were not precluded from

filing the second revision application in view of the fraud, fabrication etc. on the part of the respondents to the revision application.

49. It is submitted that the learned Special Recovery Officer has committed breach of condition no.7 of sale and also Rule 107(11)(g) of the M.C.S.

Rules. Learned counsel placed reliance on the judgments of this Court in case of Niranjan D. Woody vs. The South Indian Cooperative Bank Ltd. and

Ors. (2006) 5 B.C.R. 587 and the judgment in case of Jagdish Radhakisan Kayasth vs. Ramesh N. Wagh and Ors. AIR 2001, Bombay 152 and would

submit that the provisions of Rule 107 of the said M.C.S. Rules are mandatory and if the same are not complied with, the auction sale in violation of

such provision would be nullity. Learned counsel strongly placed reliance on the affidavit filed by Jeetendra Bhimshi Shah, alleging various fabrication

in the minutes of the auction proceedings. The said Jeetendra Bhimshi Shah was one of the participant in the said auction. Learned counsel for the

borrowers however, did not dispute that the said Jeetendra Bhimshi Shah did not challenge the said auction sale at any point of time. He submits that

the auction purchasers as well as the lenders did not deny the correctness of the contentions of the affidavit filed by said Jeetendra Bhimshi Shah.

50. Learned counsel for the borrowers placed reliance on the affidavit in rejoinder filed by the lenders and would submit that the case of the lenders is

inconsistent on the issue of participation of P.N. Chitalia and on the issue as to why the name of P.N. Chitalia was changed. It is submitted by the

learned counsel for the borrowers that since 15% amount was not deposited by the auction purchasers at the time of purchase of the suit property, the

suit property was required to be reauctioned forthwith and could not have been confirmed by the Special Recovery Officer.

51. Learned counsel placed reliance on the interim order dated 6th December, 2017 passed by this Court while admitting these writ petitions and

would submit that various conditions were imposed also upon the petitioners by this Court while admitting these petitions. It is already made clear in

the said order that the auction purchasers shall not claim any equity and that the auction sale is subject to the outcome of these writ petitions.

52. It is submitted by the learned counsel that on 2nd May, 2007, the Supreme Court had cancelled the earlier auction on the ground that 85% of

consideration amount was not paid by the auction purchasers within a period of 15 days from the date of auction. The same principles will apply also

to the second auction in respect of the same property.

53. Mr.Jakhadi, learned counsel for the borrowers placed reliance on the judgment of the Supreme Court in case of Meghmala & Ors. vs. G.

Narasimha Reddy & Ors. (2010) 8 SCC 383 and more particularly on paragraphs 36, 41 to 43 and 51 in support of the submission that in view of the

fraud alleged to have been committed by the auction purchasers, the lenders and the Special Recovery officer, the auction purchasers as well as the

lenders cannot be allowed to raise a plea of res-judicata. Neither the lenders nor the auction purchasers can be allowed to take advantage of such

fraud alleged to have been committed by them jointly with the Special Recovery Officer. It is submitted that in any event the second revision as well

as the first revision application filed by the borrowers were not between the same parties. The auction purchasers were admittedly not the parties to

the first revision application and the same was only against the lenders, whereas in the second revision, the auction purchasers were impleaded as one

of the party. The first revision application filed by the borrowers was not finally decided. The applicability of the res-judicata therefore, did not arise.

54. It is submitted that in the rejoinder filed in these proceedings, the auction purchasers have come out with a new story. Learned counsel strongly

placed reliance on the judgment of this Court delivered on 7th March, 2018 in case of Manisha Bijal Shah vs. Shankar Laxman Sutar & Ors. in Writ

Petition No.1965 of 2013 in support of his submission that since the auction purchasers, lenders as well as the Special Recovery Officer had

committed fraud, the second revision application filed by the borrowers was thus maintainable.

55. Mr.Seksaria, learned counsel for the auction purchasers in rejoinder distinguished the judgment of this Court in case of Manisha Bijal Shah (supra)

on the ground that the facts before this Court in the said judgment were totally different and in this case the borrowers have failed to demonstrate any

allegations of forgery, fabrication or tampering with. He strongly placed reliance on the proviso to Rule 107(14)(i) of the said M.C.S. Rules and would

submit that since the borrowers had failed to prove substantial injury alleged to have been suffered by the borrowers, the auction sale cannot be set aside. He distinguished the judgment of the Supreme Court in case of Meghmala & Ors. (supra) and invited my attention on paragraphs 41, 43, 45 and

51 and would submit that in this case the first revision application filed by the borrowers was decided on merits and thus the said judgment of the

Supreme Court would not assist the case of the borrowers.

56. It is submitted that the allegations made against the auction purchasers and the lenders were made not only in the second revision application but

were also made in the first revision application which came to be rejected all through out. Even in the writ petition filed by the borrowers earlier

challenging the auction sale, no assertion was made by the borrowers about the alleged substantial injustice to the borrowers arising out of the auction

sale. He also invited my attention to paragraph 9 of the affidavit in reply filed by the borrowers and would submit that even in the affidavit in reply, no

assertion is made by the respondents while submitting the auction sale deserves to be set aside as required in proviso 107(14) and more particularly

that substantial injustice was suffered by the borrowers.

57. Mr.Kanade, learned counsel for the lenders in rejoinder submits that the alleged fraud may affect the auction sale otherwise the same cannot be

considered. It is not the case of the borrowers that the lenders had received less amount of consideration from the auction purchasers or that the

property was sold by the Special Recovery Officer at undervalued price. The bid amount was much more than the upset price. None of the bidders,

including Jeetendra Bhimshi Shah raised any objection. The said Jeetendra Bhimshi Shah as well as other bidders did not challenge the auction at any

point of time. The bid amount of the said Jeetendra Bhimshi Shah was about Rs.2.92 crores, whereas the highest bid submitted by the auction

purchasers wherein was Rs.5, 05, 00,000/-.

58. Insofar as the receipt at page 295 of the writ petition strongly relied upon by the learned counsel for the borrowers in support of the submission

that though the said amount was not received on the date of action but was reflected in the said receipt and thus was false and incorrect statement is

concerned, it is submitted by Mr.Kanade, learned counsel for the lenders that the said receipt was printed on a format and would not indicate any

fraud. It was not the case of the borrowers that a sum of Rs.1.00 crore was not received by the lenders subsequently. The respondent nos.2 and 3 were present at the time of auction. No substantial injury is suffered by any of the borrowers.

59. Insofar as the change of name in the minutes of the auction proceedings is concerned, it is submitted that the lenders had received the demand

draft for 15% as well as 85% from M/s.Barindra Overseas Private Limited and not from P.N. Chitalia. In any event such alleged irregularity would

not vitiate the auction. P.N. Chitalia or his company did not challenge the auction sale or did not make any complaint as to why his name was scored

off and the name of M/s.Barindra Overseas Private Limited was recorded and as to why the suit property was sold in favour of that company.

60. Mr.Jakhadi, learned counsel for the auction purchasers submits that since the writ petition was not signed by both the auction purchasers i.e. in

Writ Petition No.572 of 2014, the entire writ petition deserves to be dismissed on that ground alone.

REASONS AND CONCLUSIONS

61. It is not in dispute that the respondent no.1 had applied for certain loan facilities from the respondent no.4 bank in respect of which transaction the

respondent no.2 had stood as guarantors. The respondent no.2 claimed to be an owner of the property known as Parvati Niwas consisting of ground

plus three floors standing on land admeasuring about 478.68 sq.mtrs. situated at Mahant Road, Vile Parle (E), Mumbai, 400 057. The respondent no.4

applied for recovery certificate under section 101 of the MCS Act against the borrower as well as the guarantors. The respondent nos. 1 to 3 filed a

writ petition bearing no.5522 of 2000 in this court challenging the validity of the order passed under section 101 of the MCS Act. By an order dated

16th October, 2000, the said writ petition came to be dismissed. The respondent no.4 thereafter took possession of the entire property on 18th August,

2001. The Deputy Registrar issued a recovery certificate on 4th April, 2001 against the borrower as well as the guarantor.

62. The respondent nos. 1 to 3 filed a revision application bearing no.212 of 2001 before the Divisional Joint Registrar, Mumbai. Since there was no

interim relief obtained by the respondent nos. 1 to 3 in the said revision application, the respondent no.4 took the property to auction on 1st February,

2002. The auction purchaser however withdrew from its bid and the said auction came to be cancelled. By an order dated 11th July, 2002, the learned

Divisional Joint Registrar dismissed the revision application filed by the respondent nos. 1 to 3 on the ground that the respondent nos. 1 to 3 had not

deposited 50% of the amount of the recovery certificate. The learned Registrar also dismissed Revision Application No.434 of 2002 for cancellation of

the first auction dated 1st February, 2002 under sub-rule 11(g) and (h) of the MCS Rules on 18th July, 2002.

63. The respondent nos. 1 to 3 had challenged the said order dated 18th July, 2002 before this court by filing writ petition no.105 of 2003. The learned

Single Judge of this court dismissed the said writ petition by an order and judgment dated 13th January, 2003. The respondent nos. 1 to 3 thereafter

challenged the said orders of this court before the Hon'ble Supreme Court of India by filing Special Leave Petitions which were converted into Civil

Appeals bearing nos.6760 and

6761 of 2004. By an order dated 2nd May, 2007, the Hon'ble Supreme Court allowed those civil appeals. Supreme Court noticed that the purchaser

had not deposited 85% of the purchase money within 15 days from the date of sale nor even thereafter. Supreme Court adverted to the judgment in

case of Manilal Mohanlal Shah and others vs. Sardar Sayed Ahmed Sayed Mahmad and another, AIR 1954 SC 349 and in case of Balram vs. Ilam

Singh and others, 1996(5) SCC 705 holding that the auction sale of the property of the respondent nos. 1 to 3 herein was in a nullity and there was no

valid auction sale.

64. Supreme Court was pleased to set aside the order passed by this court and directed that the said property of the respondent nos. 1 to 3 be again

re-auctioned after advertising in atleast two well known newspapers having wide circulation, mentioning therein the date, time and the place of the

auction sale and after complying with the procedure under Rule 107 of the MCS Rules. Pursuant to the said order passed by the Supreme Court, the

respondent no.4 bank issued a fresh advertisement and auction notice dated 5th January,2008 for the sale of the property in question proposing to

conduct auction sale on 11th February,2008.

65. It is the case of the petitioner that the petitioner no.2 participated and made a bid on behalf of Barindra Overseas Private Limited for an amount of

Rs.5,05,00,000/-. It is the case of the petitioner that the said second auction proceedings had taken the entire day and the auction was completed in late afternoon on 11th February, 2008. Only around 3 p.m., the bank officer of the respondent no.4 made a demand to the petitioner to deposit of 15% by way of demand draft/pay order. It is the case of the petitioners that the petitioners though had an amount of 15% of the highest bid amount which came around Rs.1 crore ready and available with the petitioners, since the respondent no.4 made a demand of deposit by pay order or demand draft, the said amount could not have been expected to be kept by the petitioners at the time of such demand, after the working hours were over when such demand for Rs.1 crore was made by the respondent no.4.

66. It is the case of the petitioners that the petitioner no.1 company tried to get the demand draft ready as expeditiously as possible but the same could be ready only on 13th February, 2008 which according to the petitioners was a constructive compliance of the provisions of MCS Act and its rules. It is not in dispute that the respondent nos. 1 to 3 thereafter applied for setting aside the said auction and recovery proceedings under sub-rule 14(I) of rule 107 of the MCS Rules before the special recovery officer vide Application No.1 of 2008. The respondent nos. 1 to 3 remained absent before the special recovery officer on the date of the hearing. After hearing the oral arguments made by the respondent no.4 bank, the special recovery officer and the sales officer passed an order rejecting the said application filed by the respondent nos. 1 to 3 and holding that there was no irregularity, fraud or mistake in publishing or conducting the auction of the property in question which may cause substantial injury to the respondent nos. 1 to 3 herein.

67. By an order dated 16th July, 2008, the said auction sale came to be confirmed by the learned Deputy Registrar. The special recovery officer accordingly issued a certificate of sale on 27th May, 2008. The respondent no.4 bank handed over possession of the said property along with the vacant flats to the petitioner no.1 company.

68. It is not in dispute that the respondent nos. 1 to 3 thereafter filed a revision application challenging the auction sale proceedings on various grounds including the ground that the auction was not conducted in compliance with Rule 107 of the MCS Rules. By an order dated 18th September, 2008, the learned Divisional Joint Registrar dismissed the said second revision application on the ground that the respondent nos. 1 to 3 had not deposited 15% of the amount of the recoverable dues of the respondent no.4. The respondent nos.

1 to 3 challenged the said order by filing a writ petition (1576 of 2009) in this court. By an order dated 28th January, 2010, this court dismissed the said writ petition filed by the respondent nos. 1 to 3 by holding that since 15% of the dues under the recovery certificate was not deposited by the respondent nos. 1 to 3, no interference with the impugned order passed by the learned Divisional Joint Registrar was warranted. Hon'ble Supreme Court of India by an order dated 24th September, 2010 dismissed the said writ petition. Supreme Court however observed that the auction purchaser was not even impleaded in the revision application filed by the respondent nos. 1 to 3. Necessary party must be impleaded in a case. Hence, revision application itself was not maintainable and consequently the writ petition and the special leave petition were also not maintainable and were accordingly dismissed.

69. It is not in dispute that the respondent nos. 1 to 3 thereafter filed a fresh Revision Application bearing No.395 of 2010 along with an application for condonation of delay before the learned Divisional Joint Registrar. By an order dated 17th January, 2012, the learned Divisional Joint Registrar allowed the application for condonation of delay filed by the respondent nos. 1 to 3 and admitted the said revision application and directed status quo regarding the impugned auction. Though the writ petition bearing no. 3573 of 2012 filed by the petitioners against the said order dated 17th January, 2012 was admitted, no interim relief was granted by this court in the said writ petition filed by the petitioners. The learned Divisional Joint Registrar accordingly proceeded with the hearing of the revision application filed by the respondent nos. 1 to 3 and allowed the said revision application and was pleased to set aside the impugned auction dated 11th February,2008. The said order dated 20th May, 2013 is impugned by the petitioners in Writ Petition No.572 of 2014. The respondent no.4 bank has also filed a separate writ petition (650 of 2014) impugning the said order which also is being disposed of by a common order.

70. Before going into the several other issues raised by both parties, in both these petitions, I shall first decide the issue raised by the petitioners in both the writ petitions whether the Divisional Joint Registrar could have entertained the revision application filed under section 154 of the MCS Act without the petitioners depositing 50% of the certificate amount under section 154(2A) of the MCS Act before the Divisional Joint Registrar or not.

71. A perusal of the order dated 18th September,2008 in Revision Application No.93 of 2008 filed by the respondent nos. 1 to 3 herein passed by the

Divisional Joint Registrar, Co-operative Societies, Mumbai clearly indicates that the said revision application was rejected for non-compliance under

section 154(A) of the MCS Act. The respondent nos. 1 to 3 had impugned the said order by filing a Writ Petition No.1576 of 2009. By an order and

judgment dated 28th January, 2010, this court dismissed the said Writ Petition No.1576 of 2009 filed by the respondent nos. 1 to 3 after adverting to

the judgment of this court in case of Greater Bombay Co-operative Bank Limited, Mumbai (supra) and held that since 50% of the dues under

recovery certificate was not deposited, the impugned order passed by the Divisional Joint Registrar dismissing the revision application on that ground

could not be interfered with. Supreme Court dismissed the Special Leave to Appeal (Civil) No.18073 of 2010. Supreme Court however held that since

the auction purchasers were not impleaded as parties in the revision application and were necessary parties, the revision application filed by the

respondent nos. 1 to 3 itself was not maintainable and consequently the Special Leave to Appeal was also not maintainable.

72. A perusal of the revision application filed by the respondent nos. 1 to 3 indicates that the respondent nos. 1 to 3 impleaded the petitioners herein to

the respondents to the fresh revision application in the said Revision Application No.395 of 2010 and challenged the auction proceedings also. It is not

in dispute that the petitioners in both the writ petitions objected to the maintainability to the said revision application on various grounds including on the

ground that the same could not be entertained in view of the respondent nos. 1 to 3 not having deposited 50% of the amount.

73. A perusal of the impugned order passed by the learned Divisional Joint Registrar indicates that though the learned authority has referred to the

objections of the maintainability of the revision application filed by the respondent nos. 1 to 3 in the impugned order and also referred to the judgment

of this court in case of Greater Bombay Co-operative Bank Limited, Mumbai (supra) referred to and relied upon by the petitioners, the Divisional Joint

Registrar in the impugned order has not dealt with the said objections about the maintainability of the revision application itself for non-compliance

under section 154(2A) of the MCS Act. However, while passing an order dated 9th February, 2012 condoning the delay on the application of the respondent nos. 1 to 3, the learned Divisional Joint Registrar had erroneously held that the respondent nos. 1 to 3 had already challenged the auction

sale and therefore the question of applicability of section 154(2A) of the MCS Act would not arise.

74. This court in case of Greater Bombay Co-operative Bank Limited, Mumbai (supra) has after considering the similar arguments that although the

question of maintainability of the revision was raised during the arguments before the revisional authority, same had been wrongly grossed over or

discarded by the revisional authority. This court in the said judgment held that it would be propsoterous to accept the stand that a person ""against

whom"", recovery certificate is issued, need not challenge the recovery certificate as such or for that matter, even if he has failed in the challenge to

the recovery certificate, yet would be entitled to interdict the process of recovery of the amount specified under the recovery certificate, by ostensibly

challenging only the derivative action by way of revisional application under section 154 of the MCS Act without complying the mandatory

requirement under Sub-section (2A) thereof of 50% payment of the total amount of the recoverable dues.

75. It is held that a person ""against whom"" recovery certificate has been duly issued and, who has not challenged the same or has failed in his

challenge thereto, cannot be in a better position than a person who intends to challenge the recovery certificate itself by way of revision application

under section 154 and who is then obliged to pay 50% of amount of recoverable dues. This court held that having regard to the purpose and the

legislative intent for introducing Sub-section (2A), the language of that provision would deserve liberal construction so as to encompass challenge to

the derivative actions, by way of revision application under section 154 of the Act, founded on the recovery certificate which has either not been

challenged or the challenge thereto has failed. The said sub-section 2A was introduced so as to ensure speedy recovery of the dues of the Societies

specified in section 101 of the Act and this provision facilitate immediate recovery of atleast 50% amount of the total amount of recoverable dues of

such Societies and not allow the entire amount being embroiled in a long drawn litigation. In my view, the said judgment of this court in case of Greater

Bombay Cooperative Bank Limited, Mumbai (supra) squarely applies to the facts of this case. I am respectfully bound by the said judgment.

76. This court in the judgment delivered on 8th August, 2013 in case of Atul Vijaykant Moog vs. Niwas Baburao Sarnaik & Ors. in Writ Petition

No.6999 of 2013 has after adverting to the judgment of this court in case of Greater Bombay Co-operative Bank Limited, Mumbai (supra) has set

aside the order passed by the Divisional Joint Registrar holding that the provisions of section 154(2A) of the Act would not apply to the facts of the

case as the respondent no.1 had challenged the auction procedure and the issue of sale certificate. In the judgment of this court in case of M/s.Puran

Automobiles Vs. The State of Maharashtra & Ors. reported in 2012(5) All M.R. 145 it is held that the respondent no.1 though had not challenged the

recovery certificate as stated by him, in fact he was challenging the same by challenging the auction proceedings.

77. It is held that the purpose and object of the provisions of sub section (2A) of Section 154 of the Act would be frustrated if a person against whom

a recovery certificate is issued is permitted to file a revision against the auction proceedings without making the mandatory deposit, on a plea that he is

not challenging the recovery certificate. This court accordingly in the said judgment was pleased to set aside the order passed by learned Divisional

Joint Registrar and upheld the preliminary objections raised by the petitioners to the tenability of the revision for non-compliance of the provisions of

section 145(2A) of the MCS Act. This court however accepted the request of the respondent no.1 therein to permit him to deposit the mandatory

amount before the Revisional Authority within four weeksâ?? time and directed the revisional authority to dispose of the revision as early as possible

upon the respondent no.1 depositing the said amount within a period of four weeks from the date of the said order.

78. In my view, the said judgment of this court in case of Atul Vijaykant Moog (supra) squarely applies to the facts of this case. The impugned order

passed by the Divisional Joint Registrar without dealing with the specific objections of the maintainability of the revision application for want of

compliance of the mandatory requirement of 50% of the recovery dues is ex-facie in teeth of the section 154(2A) of the MCS Act and the law laid

down by this court in the said aforesaid judgment.

79. In my view, the learned Divisional Joint Registrar at the first instance could not have entertained even the application for condonation of delay

before the respondent nos. 1 to 3 depositing 50% of the recoverable dues. The respondent nos. 1 to 3 were liable to deposit 50% of the recoverable

dues even while seeking relief of quashing and setting aside the auction of the property in question which was filed for enforcement of the recovery

certificate issued by the District Deputy Registrar. The provisions of section 154(2A) of the MCS Act were attracted to the said revision application

inter alia praying for quashing and setting aside the auction proceedings.

80. In my view, the learned Divisional Joint Registrar could not have entertained the revision application filed by the respondent nos. 1 to 3 on merits

and could not have set aside the auction sale without respondent nos. 1 to 3 first depositing 50% of the recoverable dues in compliance of section

154(2A) of the MCS Act. The impugned order thus deserves to be set aside on that ground alone. In view of this court proposing to set aside the

impugned orders passed by the learned Divisional Joint Registrar on 20th May, 2013 and 17th January, 2012 on the ground of those revision

applications not being maintainable, this court does not propose to go into the other issues raised by both the parties for consideration of this court and

the same are kept open. I, therefore, pass the following order:-

(a) Writ Petition Nos.572 of 2014 and 650 of 2014 are allowed in terms of prayer clause (a).

(b) Revision Application No. 395 of 2010 filed by the respondent nos. 1 to 3 before the Divisional Joint Registrar, Co-operative Societies, Mumbai

Division is restored to file along with application for condonation of delay filed by the respondent nos. 1 to 3 in Revision Application No.395 of 2010.

(c) The respondent nos. 1 to 3 are directed to comply with the mandatory requirement under section 154 (2A) of the Maharashtra Co-operative

Societies Act, 1960 within six weeks from today. If the respondent nos. 1 to 3 do comply with the said mandatory requirement within the time

prescribed, the Divisional Joint Registrar shall dispose of the application for condonation of delay and the revision application expeditiously on its own

merits without being influenced by the observations made and the conclusions drawn in the impugned order dated 20th May, 2013 and 17th January,

2012.

(d) If the respondent nos. 1 to 3 do not comply with the aforesaid direction, the application for condonation of delay as well as the revision application filed by the respondent nos. 1 to 3 to stand dismissed without further reference to court.

(e) The interim protection granted by this court by an order dated 6th December, 2017 while admitting the aforesaid two petitions to continue till

disposal of the application for condonation of delay and the Revision Application and for a period of two weeks from the date of communication of the

said order.

(f) Rule is made absolute in the aforesaid terms.

(g) There shall be no order as to costs.