(2014) 06 BOM CK 0092

In the Bombay High Court

Case No : Writ Petition No. 4195 of 2012

Dilip APPELLANT

Vs

The Special Recovery Officer RESPONDENT

Date of Decision : 17-06-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)(g)
Maharashtra Co-operative Societies Act, 1960 — Section 101, 102, 107, 154, 154(2A)

Citation : (2015) 4 ABR 388 : (2014) 6 BomCR 668

Hon'ble Judges : N.W. Sambre, J

Bench : Single Bench

Advocate : V.J. Dixit, Senior Advocate i/by and Mr. A.N. Nagargoje, Advocate for the Appellant; V.D. Hon, Advocate for Respondents Nos. 1 and 2, Mr. P.R. Patil, Advocate for Respondent No. 3 and Mr. D.V. Tele, A.G.P. for Respondents nos. 4 to 6, Advocate for the Respondent

Final Decision : Dismissed

Judgement

N.W. Sambre, J.—Heard.

2. Rule. Rule made returnable forthwith and heard finally with the consent of parties.

3. The petitioners to the present petition, who are borrowers, have questioned the order dated 8th June, 2009, passed by respondent no. 4 District Deputy Registrar, confirming the auction sale. The petitioners have also questioned the order dated 31st March, 2012, passed by respondent no. 5-Divisional Joint Registrar, Co-operative Societies, in Revision Application No. R-149 of 2010, in addition to the validity of the auction Sale conducted by respondents no. 1 and 2.

4. The facts giving rise to the filing of the present petition are as under :-

Petitioners claim the owner and possessor of 12 plots, bearing plot nos. 1 to 5, 17 to 25 and 36, situated in Gat No. 81/B/1, situated at Nimkhedi Shivar, Jalgaon.

5. Since petitioner no. 1, who is a Medical Practitioner, has intention to provide latest medical facilities at Jalgaon, decided to construct a hospital and for said purpose he was in need of the finance. He approached respondent no. 2 Bank for sanction of cash credit loan. The petitioner no. 1 got cash credit facility upto a limit of Rs. 98 Lakhs on 20th January, 2005 by executing mortgage deed in favour of respondent no. 2 Bank, in respect of aforesaid property.

6. It is noticed that the loan borrowed by petitioner no. 1 to the tune of Rs. 98 Lakhs was carrying interest at the rate of 17% per annum. Petitioner no. 1 has defaulted in repaying the said loan and the amount outstanding as on 5th June, 2007 against the petitioner was Rs. 1,06,33,747/-, which rose to Rs. 1,16,23,894/- as on 11th July, 2012.

7. As a consequence of above, respondent no. 2 Bank approached the Registrar for issuance of recovery certificate u/s 101 of the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as the "Societies Act"), which came to be issued against petitioner no. 1 on 5th June, 2007.

8. Pursuant to the said recovery certificate, respondent no. 2 Bank has issued a demand notice on 30th July, 2007 under Rule 107 (3) of the Maharashtra Co-operative Societies Rules, 1961 (hereinafter referred to as "Rules").

9. Respondent no. 1-Special Recovery Officer attached the mortgaged property of petitioner, referred above, on 4th August, 2007.

10. The said recovery certificate was the subject-matter of Revision before the Joint Registrar, Co-operative Societies, Nashik. However, in view of the failure on the part of the petitioner to comply with the provisions of section 154(2A) of the Societies Act, i.e. failure to deposit 50% of dues recoverable, the said Revision came to be dismissed on 5th April, 2010.

11. It is further noticed that the petitioner had moved second revision before the State Government against the said recovery certificate. However, as the second revision was not maintainable in view of the provisions of section 154 of the Societies Act, the application/second revision of the petitioner came to be negated.

12. It is further noticed that the petitioners preferred Writ Petition No. 4229 of 2009, questioning the above referred recovery certificate and the order passed in the Revision. The said writ petition came to be dismissed by the Division Bench of this Court on 8th December, 2009. Challenge to the said judgment by the petitioners in Special Leave to Appeal (Civil) No. 3661 of 2010, came to be dismissed on 15th February, 2010.

13. It is further brought to the notice of this Court that after the above referred SLP preferred by the petitioners was dismissed on 15th February, 2010, a Review Application came to be moved by them before the Division Bench of this Court, which came to be rejected on 11th June, 2014.

14. So far as the present petition is concerned, as stated hereinabove, the petitioners have prayed for quashing of the order dated 31st March, 2012, passed by respondent no. 5 in Revision Application No. R-149 of 2010 and have further prayed for allowing the said Revision. The petitioners have further prayed for setting aside of the auction sale conducted on 20th April, 2009, so also the order dated 8th June, 2009, passed by respondent no. 4, granting approval to the auction sale. The petitioners have also questioned the execution of the sale certificate in favour of respondent no. 3 on 21st December, 2009.

15. In support of the prayers made in the petition, the petitioners have submitted that the act on the part of the present respondents is in contravention to Rule 107 of the Rules. Learned Senior Counsel for the petitioners submitted that at the time of obtaining the loan, the valuation of the mortgaged property was shown to be Rs. 3,16,40,000/-, whereas the valuation by Government Valuer, prior to the auction was approved by the District Deputy Registrar to be Rs. 34,32,000/-. The petitioners, as such, allege mala fides on the part of the respondents. The petitioners further submitted that the perusal of the said sale certificate further discloses that the same was stamped on 29th December, 2009 and was executed on the same day. Learned Senior Counsel further tried to urge that this demonstrates that the purchaser has failed to deposit the amount of stamp duty as contemplated under Rule 107 11 (h) of the Rules, within fifteen days from the date of sale. The petitioners have further tried to urge that there is a violation of sub-rule (g) of clause (11) of Rule 107 of the Rules, as the auction purchaser has not deposited the money equal to 15% of the price of the immovable property in the hands of the Sale Officer at the time of purchase. He further tried to urge that the remaining amount of the auction is not deposited by the auction purchaser within a period of thirty days as provided under sub-clause (h) of clause (11) of Rule 107 of the Rules. The petitioners further submitted that though they have taken recourse to the provisions of clause 14 of Rule 107 of the Rules by applying to the Recovery Officer to set aside the sale on the ground of material irregularity, mistake and fraud in doing or conducting it, the Recovery Officer has not decided the same and as such, prayed for setting aside the auction sale certificate. In support of his contentions, the learned Senior Counsel for the petitioners has relied on the law laid down by the Apex Court in the matter of Shilpa Shares and Securities and Others Vs. The National Co-operative Bank Ltd. and Others, and the judgment of this Court in the matter of Smita Janak Thacker Vs. Commissioner of Registrar, District Co-operative Societies, Pune and Others, . Learned Senior Counsel submits that the deposit of auction amount within the time stipulated under the Rules by the auction purchaser was held to be mandatory and failure to comply results into setting aside of the auction sale.

16. The learned Senior Counsel for the petitioners has sought to urge that the Recovery Officer, who was appointed in the matter, was not authorized to act, in view of the fact that his appointment was not notified. He has further urged that the Recovery Officer, as such, has acted without jurisdiction and on this count

alone, the auction sale in question, is liable to be set aside. The learned Senior Counsel for the petitioners, in addition to above, has submitted that when the matter was looked into by the Divisional Joint Registrar, in Revision Application No. 149 of 2010, though the Revision of the petitioners came to be dismissed, the observations are made by the said authority as regards the notice of auction, non-deposit of purchase money within the time stipulated, etc. The learned Senior Counsel for the petitioners has sought to urge that assuming without admitting that the amount was deposited by respondent no. 3-auction purchaser, same was deposited by him in his own account and not in the loan account and as such, on this ground, sale is liable to be set aside. It is also a contention of the petitioners that the auction notice was issued on 30th March, 2009 fixing the date of auction as 20th April, 2009. As the period of thirty days is not provided as per the statute, the auction notice is liable to be quashed and set aside.

17. While countering the above referred submissions, Mr. Hon, the learned Counsel for respondents no. 1 & 2 has strongly objected to the conduct of the present petitioners. He has urged that the petition in question is not maintainable in view of the express bar u/s 107 of the Societies Act, as respondent no. 2 Bank is put under liquidation as per the provisions of section 102 of the Societies Act. The learned Counsel further submits that the Liquidator is appointed on respondent no. 2 Bank on 29th March, 2012 and subsequent thereto, the present petition came to be filed. According to respondent no. 2, section 107 of the Societies Act puts an express rider on the right of the petitioners to initiate such proceeding, as once the Liquidator is appointed, no suit or other legal proceedings, shall be initiated or proceeded against respondent no. 2 society, except by leave of the Registrar.

18. Learned Counsel for respondent no. 2 further urged that after the certificate u/s 101 of the Societies Act was issued on 5th June, 2007 for recovery of an amount of Rs. 1,06,33,747/-, the petitioners have tried to challenge the said liability by taking recourse to various legal proceedings. Learned Counsel for respondent no. 2, as such, submits that the conduct of the petitioners dis-entitle them for the reliefs claimed in the present petition. So as to buttress his argument, the learned Counsel for respondent no. 2 has brought to the notice of this Court the following proceedings initiated by the petitioner or his blood relations :-

a) Writ Petition No. 4229 of 2009, which was preferred by petitioner and his wife, challenging recovery certificate, which came to be dismissed by the Division Bench of this Court on 8th December, 2009, with observation that it will be unreasonable to keep the auction purchaser in a hanging situation, waiting for fruits of his huge investment, for no fault on his part.

b) R.C.S. No. 235 of 2007, filed on 21.8.2007 by the mother of the petitioner viz. Kamlaabai Deoram Chaudhari through Sau. Kamlabai Chaudhari Charitable Trust, for injunction for transferring the property. The said suit is dismissed on 6.9.2007.

c) R.C.S. No. 22 of 2008 filed on 17.1.2008. On 30.4.2008 an application for interim injunction came to be dismissed, against which Misc. Civil Appeal No. 48 of 2008 was filed in the District Court. However, the same also came to be dismissed on 8.2.2011.

d) Pratik Deelip Chaudhari son of present petitioner filed R.C.S. No. 138 of 2008 on 3.5.2008 for injunction and there is no interim order.

e) Pratik Deelip Chaudhari, the son of the petitioner filed second Civil Suit bearing No. 77 of @010 in the Court of learned C.J.S.D. at Jalgaon. On 25.3.2010, an application for interim order came to be allowed. Against the said order, there is Misc. Civil Appeal No. 30 of 2010 filed by Satiskumar Parmanand Sharma and the same is pending.

f) Special Leave to Appeal (Civil) No. 3661 of 2010, dismissed on 15.2.2010, preferred by the petitioners against the judgment delivered by the Division Bench of this Court in Writ Petition No. 4229 of 2009, decided on 8th December, 2009.

g) Review Application preferred by the petitioners in Writ Petition No. 4229 of 2009, decided on 11th June, 2014 by the Division Bench of this Court.

19. The learned Counsel for respondent no. 2, as such, submits that the petitioners have left no stone unturned so as to defeat the object and the purpose of the certificate issued u/s 101 of the Societies Act, as according to respondents no. 1 and 2, the certificate dated 5th June, 2007 remained un-executed because of the conduct of the petitioners for last seven years.

20. The learned Counsel for respondent no. 2 further submitted that the valuation of the property of the petitioners was carried out by the Government approved Valuer and the upset price of the same was approved by the District Deputy Registrar, Co-operative Societies, Jalgaon, vide his communication dated 15th December, 2007. Respondent no. 2 further urged that the petitioner, though in vague terms has alleged mala fides, neither he has attributed specific mala fides against any Director or any party nor has impleaded such person as a party respondent to the present petition. Respondent no. 2 further urged that though the upset price was approved at Rs. 34,32,000/-, the fact remains that the property was sold for more than twice the amount of upset price, i.e. Rs. 96 Lakhs. Learned Counsel for respondent no. 2 invited attention of this Court to the fact that after the valuation of Rs. 34,32,000/-, the Bank issued auction notice in daily Lokmat on 13th January, 2008, fixing the date of auction as 23rd January, 2008. As nobody participated in the said auction, second auction notice was published on 13th February, 2008, in which the bid submitted by the highest bidder was Rs. 44,10,000/-. As the Bank disapproved the same, the third auction of the property in question was held on 28th July, 2008 and fourth on 13th January, 2009 and no bid was received. As such, the property was auctioned for fifth time on 20th April, 2009.

21. While responding to the fifth auction, the highest bidder-respondent no. 3 gave bid of Rs. 96 Lakhs. At the time of participating in the auction, the said bidder deposited Rs. 50,000/- in cash and Rs. 14,50,000/- by pay order and the balance 85% amount was deposited upto 2nd May, 2009. As such, the contention of the learned Counsel for respondent no. 2 was that the auction purchaser has acted strictly in accordance with the provisions of Rule 107 (g) and has deposited the entire amount within a period of thirty days and there is no violation as claimed by the learned Senior Counsel for the petitioners. The learned Counsel for respondent no. 2, as such, urged that as the entire consideration in response to the bid submitted by respondent no. 3 was received, a sale certificate came to be executed in favour of respondent no. 3 on 29th December, 2009. In the light of above, respondents no. 1 and 2 prayed for dismissal of the petition with exemplary costs, having regard to the conduct of the petitioners.

22. The learned Counsel for respondent no. 3-auction purchaser has invited attention of this Court to the observations made by the Division Bench of this Court in the judgment rendered in the Writ Petition No. 4229 of 2009, in relation to the claim put-forth by the petitioners about non-observance of statutory period qua the auction notice. Paragraphs no. 7 and 9 of the judgment delivered in Writ Petition No. 4229 of 2009 read thus :-

7. Mr. R.N. Dhorde, learned Counsel, contends that the auction notice dt. 30th March, 2009, which indicated sale of the property on 20th April, 2009, is not within the period of 30 days and hence, is contrary to law. The objections to the auction notice were raised on 1st April, 2009, which are not considered.

9. The petitioner got a Civil Suit (RCS No. 235 of 2007) filed through his mother, wherein he was arrayed as a defendant, claiming that the attached property was of trust. On hearing, the said proceedings were terminated against the petitioner on merits. The petitioner naturally could not succeed in stalling the Bank''s auction of proceeding ahead. The contention that the notice was issued on 30th March, 2009, and the auction is settled on 20th April, 2009, being contrary to Rule 86-D of the Rules of 1961, is negatived as, on 12.3.2009, a notice was issued to the petitioner intimating him about the contemplated action and then the auction was scheduled.

As such, the learned Counsel for respondent no. 3 submitted that the objection by the petitioners to the non-compliance of the statutory period qua auction notice was already looked into and rejected by the Division Bench. He has invited the attention of this Court to the observations made by the Division Bench in paragraphs no. 12 and 13, so as to substantiate his claim that respondent no. 3 has paid reasonable consideration for the property in question and is waiting to enjoy for the fruits of the property since the day he has deposited Rs. 96 Lakhs, i.e. from 2nd May, 2009. The learned Counsel for respondent no. 3 has invited attention of this Court to the photo copy of the pay order placed on record at page 202, so as to demonstrate that respondent no. 3 has paid an amount of Rs. 14,50,000/- by pay order dated 20th April, 2009, issued by the Bank of

Maharashtra, Jalgaon Road, Jalgaon, in favour of respondent no. 2 Bank. He has also filed on record the photo copy of the receipt for payment made to the Bank of Maharashtra for drawing the said pay order. The learned Counsel for respondent no. 3, so as to support his contention that respondent no. 3 has paid more than 15% of the amount contemplated under sub-clause (g) of clause (11) of Rule 107 of the Rules, has invited attention of this Court to the certificate issued by the Bank of Maharashtra, dated 11th July, 2012, certifying therein that the pay order dated 20th April, 2009 was issued on the account of respondent no. 3, vide Cheque No. 748909, dated 20th April, 2009 for an amount of Rs. 14,50,000/- in favour of Bhusawal Peoples Co-operative Bank Ltd., Bhusawal, i.e. respondent no. 2. The learned Counsel for respondent no. 3 submitted that the contention of the petitioners that amount was deposited by respondent no. 3 in his own account, that too at belated stage is not correct. He has invited attention of this Court to the account extract with respondent no. 2 Bank, so as to substantiate that the amount was deposited by him within stipulated time and was transferred to the loan account of the petitioners. The learned Counsel for respondent no. 3 further urged that most of the grounds raised in Writ Petition No. 4229 of 2009 and the prayers made therein are similar to that of the one made in the present petition and on this count alone, the present writ petition is liable to be rejected.

23. Having considered the rival contentions of the parties, it is noticed that Writ Petition No. 4229 of 2009, was preferred by the present petitioners with following prayers :-

A) Call for record and proceedings of the case;

B) Hold and declare that, the recovery certificate dated 05.06.2007 issued u/s 101 of the Maharashtra Cooperative Societies Act, 1960 by the Respondent No. 5 is contrary to the mandatory provisions of Rule 86 F of the Maharashtra Cooperative Societies Rules, 1961 as well as the section 101 of the Maharashtra Co-operative Societies Act, 1960 therefore same are in violation of the basic principles of natural justice, void-ab-initio, without authority and therefore is violative of Article 14, 19(1)(g) of the Constitution of India and hence same is liable to be quashed and set aside. "

C) Hold and declare that, the sale certificate dated 08.06.2009 confirming the auction sale by the Respondent No. 4 which is held on 20.04.2009 as per the auction notice dated 01.04.2009 are illegal, arbitrary and therefore violative of Article 14, 19(1)(g) of the Constitution of India and therefore, same are liable to be quashed and set aside.

D) Issue writ of mandamus or any other appropriate writ, order or directions in the nature of writ of mandamus directing the Respondent Nos. 4 and 6 to decide the objection raised by the petitioners dated 01.06.2009 to the said sale which has been held on 20.04.2009 in pursuance of the notice dated 01.04.2009 by setting up the upset price of Rs. 34,32,000/- and is being illegal, arbitrary and is violative of Article 14, 19(1)(g) of the Constitution of India and directing the Respondent Nos. 4 and 6 to decide the objection and for that purpose issue necessary orders;

E) Issue writ of mandamus or any other appropriate writ, order or directions in the nature of writ of mandamus directing the Respondent Nos. 4 and 5 to make enquiry in the valuation made by the Respondent No. 9 and cancel the same as well as take action against the Respondent No. 9 for making incorrect valuation and for that purpose issue necessary orders.

The said petition was dismissed by the Division Bench of this Court vide judgment dated 8th December, 2009, has covered majority of the issues canvassed by the present petitioners. It will not be out of place to mention here that the said judgment of the Division Bench of this Court was carried by the petitioners to the Apex Court. SLP preferred by the petitioners also came to be dismissed on 15th February, 2010. The observations made by the Division Bench in the said judgment, which are referred to hereinabove, make the issue clear as regards the findings given by the Court about fixation of upset price, the period of auction notice, etc.

The contention of mala fides alleged by the petitioners is liable to be rejected in view of the fact that the same is neither attributed to an individual nor such person is added as party respondent.

24. The foremost contention canvassed by the petitioners that there is a flagrant violation of Rule 107, clause (11), sub clause (g) and clause (14) is required to be rejected in view of the following observations.

25. The claim of the petitioners that respondent no. 3 has failed to deposit 15% of the price of the immovable property in the hands of the Sales Officer, at the time of purchase, is contrary to the record. The petitioners though tried to substantiate this contention based upon the figures and the dates mentioned in the sale certificate, i.e. the date of execution of sale certificate as 29th December, 2009 and the dates of payment mentioned therein as from 20th April, 2009 to 2nd May, 2009, the fact remains that the auction sale was conducted on 20th April, 2009. Respondent no. 3 has deposited an amount of Rs. 50,000/- (cash) + Rs. 14,50,000/- by pay order, totalling to Rs. 15 Lakhs, on the same day. The payment of amount of Rs. 15 Lakhs out of the total consideration of Rs. 96 Lakhs appears to be more than 15% and as such, there is no violation of sub-clause (g) of clause (11) of Rule 107 of the Rules. Furthermore, respondent no. 3 has deposited the amount towards consideration as under :-

The above referred payments are sought to be justified by the learned Counsel for respondents no. 2 and 3 from the record. On the record, respondents no. 2 and 3 have placed the extract of Ledger Account of respondent no. 3, so also a certificate to that effect issued by respondent no. 2 for payment of money. In that view of the matter, the contention of the petitioners that the amount was not paid within a period of thirty days as contemplated under sub-clause (g) of clause (11) of Rule 107 of the Rules, is liable to be rejected and accordingly stands rejected.

26. The reliance placed by the learned Senior Counsel for the petitioners, on the judgment in the matter of M/s. Shilpa Shares & Securities & ors. (cited supra) contemplates the setting aside of auction sale, in case auction purchaser, at the time of purchase, fails to deposit 15% of the price of the immovable property and remaining 85% of the purchase money within fifteen days from the date of such sale. Sub-clause (g) of clause (11) of Rule 107 of the Rules provides for deposit of the amount within a period of thirty days of the auction sale, whereas 15% of the amount at the time of purchase. In the present case, as respondent no. 3 has deposited more than 15% of the price of the immovable property on the date of auction, i.e. 20th April, 2009, the said judgment has no application to the present case. Similar is the view taken by the Division Bench of this Court in the matter of Mrs. Smita Janak Thacker (cited supra) on behalf of the petitioners.

27. The contention of the petitioners that the stamp duty amount was deposited by respondent no. 3 on 29th December, 2009 is of hardly any assistance to the petitioners, in view of the fact that respondent no. 3 has deposited the entire consideration within the stipulated period. Even if the amount of stamp duty is deposited later in point of time, the same will have hardly any bearing over the same. At the most, the same could be termed as irregularity and not illegality, as the entire auction amount or bid amount stood transferred to the account of the Bank, i.e. loan account of the present petitioners within the statutory period and the amount to be paid towards the stamp duty is required to be paid to the Government.

28. So far as the contention of the petitioners qua the observations made by the Divisional Joint Registrar in the order dated 31st March, 2012, in Revision Application No. 149 of 2010 in favour of the petitioners is concerned, the said observations are made by the Divisional Joint Registrar in a Revision which was rejected by him, knowing fully well that he has no authority to do so in view of non-compliance of the provisions of section 154(2A) of the Societies Act, by the petitioners.

29. As far as the contention of the petitioners that the sale proclamation ought to have been published by affixing the notice in the office of the Recovery Officer and the Taluka Officer at least thirty days prior to the date fixed for sale and also by beat of drums in the village is concerned, the perusal of the record indicates that there was sufficient publication of the sale and the said issue is already dealt with by the Division Bench of this Court in Writ Petition No. 4229 of 2009. As such, it is not open for the petitioners to canvass the same, especially in the light of the fact that the petitioners were having sufficient notice of the same and neither petitioners nor any other person on their behalf has objected to the same.

30. The next contention urged by the petitioners is that they have lodged objections prior to and after the notice of auction, as also after the auction was

over and as such, the said objections ought to have been decided by the authorities, in view of the provisions of clause (14) of Rule 107 of the Rules. According to the petitioners, the respondent authorities have failed to decide said objections and thus the auction is liable to be set aside. Clause 14 (1) of Rule 107 of the Rules provides that within thirty days from the date of the sale of immovable property, the petitioners or any person who is entitled to share in a rateable distribution of the 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 the auction. There is a rider provided to the said clause, which provides that, unless the Recovery Officer is satisfied that the person who has applied for setting aside the sale has sustained substantial injury by reason of such irregularity, mistake or fraud, the sale cannot be objected to. From the perusal of the observations made in the foregoing paragraphs and having regard to the conduct of the present petitioners, no mistake, fraud or irregularity was noticed in the auction process, which can be said to have caused any injury to the petitioners. In that view of the matter, the said contention of the petitioners also stands rejected.

31. The District Deputy Registrar, Co-operative Societies has passed an order on 8th June, 2009 approving the bid of Rs. 96 Lakhs given by respondent no. 3 in the auction of the property of the petitioners, which is the subject-matter of the present petition. The said approval by the District Deputy Registrar, if tested against the upset value given by the Government Valuer, it is clear that the offer received during the auction is two times more than that of the upset value and, as such, there is no scope for any irregularity, mistake or fraud in the auction process.

32. The petitioners have tried to place reliance upon the information received by them under the Right to Information Act, so as to demonstrate that the Special Recovery Officer Shri Markad was not authorized to work in the same capacity, in view of the fact that his appointment was not notified as contemplated u/s 156 of the Societies Act. Perusal of the record depicts that respondent no. 2 Bank has forwarded a proposal to the office of the District Deputy Registrar, Co-operative Societies, Jalgaon for conferring powers u/s 156 on Shri Markad. The said proposal was granted by the office of the District Deputy Registrar, conferring powers u/s 156 of the Societies Act on Shri Markad, by order dated 22nd December, 2000 and it was further informed to the petitioners that the same was forwarded to the Government Press for publication. What was informed to the petitioners was that the copies of notification are not available with the office of the District Deputy Registrar. However, that itself cannot conclude that the same was not published in the official gazette. In that view of the matter, the fact remains that Special Recovery Officer Shri Markad was exercising powers u/s 156 of the Societies Act, upon authorization to that effect given by the competent authority in his favour.

33. Furthermore, it is worth to mention here that the above referred objections,

i.e. about setting aside of sale in view of clause (14) of Rule 107 of the Rules and violation of section 156 of the Societies Act, in relation to non-production of notification conferring powers u/s 156 of the Societies Act on Special Recovery Officer Shri Markad are raised by the petitioners for the first time in the present petition. It was never canvassed or urged by the petitioners prior to the present proceedings. In that view of the matter, the argument of the petitioners, to the above extent, is liable to be rejected and accordingly it is rejected.

34. In the light of above observations, no case for interference in exercise of extra-ordinary jurisdiction of this Court is made out. The writ petition being devoid of merit, stands dismissed. Rule stands discharged with no order as to costs.

35. At this stage, Mr. A.N. Nagargoje, learned Counsel for the petitioners prays for stay of the judgment for a period of eight weeks. He submits that since the property was mortgaged in 2005 to the Bank, the petitioners are in peaceful possession of the property in question. The request made on behalf of the petitioners is strongly opposed by the learned Counsel for the respondents.

36. In view of the fact that the order passed by the Division Bench of this Court in Writ Petition No. 4229 of 2009 has attained finality in the Honourable Apex Court and having regard to the observations made in this judgment, the request made on behalf of the petitioners is rejected.