

(2009) 06 BOM CK 0031

In the Bombay High Court

Case No : Writ Petition No. 2455 of 1997

Kantilal Dhanrajji Ostwal

APPELLANT

Vs

Divisional Joint Registrar and Others

RESPONDENT

Date of Decision : 11-06-2009

Acts Referred:

Citation : (2009) 5 BomCR 123 : (2009) 6 MhLj 570

Hon'ble Judges : Chavan R.C., J

Bench : Single Bench

Advocate : P.C. Madkholkar and Gupta, for the Appellant; P.D. Meghe, for the Respondent

Judgement

Chavan R.C., J.—This petition is directed against order passed by Divisional Joint Registrar, Co-operative Societies, Nagpur on revision application Nos. 16 of 1992 and 50/1996.

2. The facts, which have led the petitioner to approach this Court are as under:

Respondent No. 4 Wasudeo Shyamshiv Bokilwar had taken a loan from respondent No. 3 Bank. To secure this loan he had mortgaged his field Survey No. 14/3 at village Bid-Anjangaon. Since he did not repay the loan, the Bank started recovery proceedings and after issuing several notices ultimately on 10th February, 1988 issued a notice for auctioning the field. This auction was held on 24th March, 1988 at which the petitioner purchased the field for a sum of Rs. 31,000/. Since the person whose property is sold at auction can have the auction set aside on payment of bid money with poundage fees within a stipulated period, the petitioner waited for some time and then applied by letter on 2nd January, 1990 for confirmation of sale. The defaulter i.e. respondent No. 4 conveyed to the authorities i.e. Assistant Registrar of Co-operative Societies, Hinganghat that he had no complaint in respect of the said auction sale, therefore, by order dated 15th January, 1990 the Assistant Registrar confirmed the sale.

3. Respondents Nos. 5 to 8, who claimed to have purchased the property from respondent No. 4, admittedly after the mortgage, preferred revision against this order in the year 1992 which was filed beyond the period of limitation without any application for condonation of delay. However, the learned Joint Registrar, Co-operative Societies entertained the revision, allowed it and while allowing it observed that the delay stood condoned. He remanded the matter to the Assistant Registrar, for fresh adjudication, directing that the Assistant Registrar should give opportunity of being heard to all the parties concerned and he should also ensure that the provisions of Rule 107 of the Maharashtra Co-operative Societies Rules and Section 134 of the Maharashtra Co-operative Societies Act are strictly followed. The petitioner did not object to this order and participated in the proceedings upon remand. Again the Assistant Registrar by his order dated 5.8.1996 confirmed the auction. This order was challenged by respondents Nos. 5 to 8 by preferring another revision before the same Joint Registrar of Co-operative Societies Shri Parate, who by his impugned order set aside the orders of the Assistant Registrar, issued on 15th January, 1990 and 5th August, 1996, confirming the sale. Aggrieved thereby the petitioner is before this Court.

4. I have heard learned Counsel for the petitioner as well as learned Counsel for respondent No. 3 Bank. Other respondents, though duly served, have not cared to appear.

5. Though the learned Counsel for the petitioner took exception to the first order passed upon the revision by the learned Joint Registrar on the ground that he had entertained the revision without there being any prayer for condonation of delay, I am not inclined to go into that aspect since the petitioner had submitted to the order and participated in the proceedings after remand.

6. As for the second order, which has been impugned, it does not give any inkling as to how the learned Joint Registrar came to the conclusion that there had been any breach of provisions of Section 133 of the Maharashtra Co-operative Societies Act. Section 133 of the Maharashtra Co-operative Societies Act governs sale of mortgaged property. It is not shown that any of the provisions of this section have been breached. Merely by repeatedly saying that provisions of Section 133 have not been followed one cannot alter the fact that the provisions have in fact been followed.

7. The powers u/s 133 can be exercised only after hearing objections if any of the mortgagor and mortgagee. In this case, as already pointed out the mortgagee is the Bank and therefore, it could have no objection to sale of the property. In fact, it was at the bank's instance that the property was put to sale. As far as mortgagor is concerned, he too had specifically stated on 2nd January, 1990 as recorded in the order of the Assistant Registrar that he had no objection. In fact, the first order of the Assistant Registrar recounts that notices regarding recovery of loan had been issued on 11.11.1985, 8.1.1986, 1.2.1986, 10.3.1986 and 10.2.1986. Public notice was issued on 10th February, 1988 putting the property to action which was to be held on 24th March, 1988. In spite of this

public notice no objection seems to have taken by the mortgagor. Therefore, it is not clear as to how the learned Joint Registrar came to conclude that there was any breach of provisions of Section 133 of the Maharashtra Co-operative Societies Act.

8. Rule 107 of the Maharashtra Co-operative Societies Rules provides elaborate procedure akin to that found in the CPC for attachment and sale of the property. If the purchaser wanted the sale to be avoided it was open to them to make deposit of the purchase money plus a sum equal to 5% of the purchase money as required under Clause 13 of Rule 107. This was not done by them.

9. It was pointed out by the learned Counsel for respondent No. 3 that purchasers, respondents Nos. 5 to 8, who had preferred revision were aware of the charge of the loan on the property purchased by them and in the sale-deed this charge had been specifically referred to, as has been noticed by the Assistant Registrar in his order upon remand. Therefore, it cannot be said that respondents Nos. 5 to 8 were taken by surprise or were not aware that they had purchased the land subject to mortgage and hence, they could not said to have any grievance. And so, such imaginary grievance could not at all have been heard.

10. As rightly pointed out by the learned Counsel for the petitioner the rights of the petitioner as purchaser at auction sale are protected in view of the provisions of Section 136, Sub-section (3) of the Maharashtra Cooperative Societies Act, which lays down that the title of the purchaser shall not be questioned even on the ground that the circumstances required for authorizing the sale had not arisen, or due notice of sale was not given, or power of sale was otherwise an irregular exercise. This provision has been made in order to ensure that people who purchased properties at public auctions do not suffer on account of vicissitudes of fortune of the lis.

11. In view of this, impugned orders of the Joint Registrar in Revision No. 50 of 1996 cannot at all be sustained. It is, therefore, set aside and the order of Assistant Registrar upon remand is restored.

12. In the circumstances, there shall be no order as to costs.