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**(2015) 04 BOM CK 0175**

**In the Bombay High Court**

**Case No : Writ Petition Nos. 253 and 323 of 2013**

Karmaveer Bhaurao Patil and Others

APPELLANT

Vs

Baban Dattu Mole and Others

RESPONDENT

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**Date of Decision : 13-04-2015**

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227

Maharashtra Co-operative Societies Act, 1960 — Section 101

**Citation :** (2015) 4 ALLMR 293 : (2016) 1 BomCR 138 : (2015) 4 MhLj 457

**Hon'ble Judges :** Anoop V. Mohta, J

**Bench :** Single Bench

**Advocate :** T.S. Ingale, for the Appellant; M.A. Choudhari, Advocates for the Respondent

**Final Decision :** Allowed

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## **Judgement**

Anoop V. Mohta, J.—Since the issues and the parties involved in both these matters are common, therefore, this common Judgment.

2 On 13/10/2001, Respondent Nos. 1 and 2, the borrowers, had made an Application with the Petitioner Credit Society for sanctioning a loan amount of Rs. 12,00,000/-. The Petitioner/Society had sanctioned the same on 13/10/2001. The borrowers had agreed to repay the same alongwith interest @ 17% p.a. within a period of 5-years. For the loan amount, Respondent Nos. 3 and 4 stood as guarantors. The guarantors had also given security of their agricultural lands situated at Sangvade, Tal. Karveer, Dist. Kolhapur viz.

and executed a registered Mortgage Deed dated 9/11/2001 in favour of the Petitioner/Society. The borrowers thereafter, committed defaults in repayment of installments. The Petitioner/Society issued demand notices to the borrowers from time to time. They failed to make payments accordingly.

3 Consequently, the Petitioner/Society duly applied on 02/11/2006, by filing Recovery Certificate Application No. 795/2006 for a recovery certificate u/s. 101

of Maharashtra Cooperative Societies Act, 1960 (for short, "M.C.S. Act, 1960") for an amount of Rs. 11,16,000/- as principle and Rs. 4,65,739/- towards interest as on 31/3/2006 and expenses of Rs. 225/- towards Notice fee and thus, total amount of Rs. 15,72,964/- claimed by way of Recovery Certificate against the borrowers and others, before Asst. Registrar, Jaysingpur. The Borrowers appeared on 11/12/2006 and accepted the liability of loan dues and agreed to make payment of entire dues within one month by requesting Respondent No. 7- Assistant Registrar. However, the Borrowers have not made any payment of the loan dues as agreed.

4 The Asst. Registrar/Respondent No. 7, after hearing the parties, by Order dated 22/1/2007 issued a Recovery Certificate u/s. 101 against the borrowers and others, for a recovery of principle sum of Rs. 11,16,000/- and interest thereon as applied for the expenses. Thereafter, through a Special Recovery Officer, Petitioner No. 2 issued a demand notice to the borrowers on 13/2/2007, for payment of amount under the Recovery Certificate granted against them dated 22/1/2007, the borrowers failed to make payment and consequently recovery proceeding was initiated against the borrowers and others, under the MCS Act.

5 The mortgaged properties also came to be attached after issuing notice on 30/4/2007. Petitioner No. 2 decided to recover the amount under Recovery Certificate by auction/sale of those properties. The borrowers did not raise any objection for the attachment. As per the procedure under the law, an application to the concerned authority was made to the Dist. Deputy Registrar, Kolhapur, (Respondent No. 6), for sanction of the upset price for auction sale of mortgaged properties. The Dist Deputy Registrar, Kolhapur by its Letter dated 7/8/2007 sanctioned the upset price at Rs. 22,55,852/- in respect of 4 lands out of 5 lands mortgaged put to auction sale as follows.

Thereafter, the Petitioners decided to auction sale only 3 properties out of above-said 4 properties, except land Gat No. 138 as in the land the borrowers family was residing in a R.C.C. constructed residential house. Thus, excluding the price of the land the upset price fixed by D.D.R., Kolhapur is Rs. 19,06,252/-.

6 The Petitioners issued auction sale proclamation dated 19/09/2007 including under the provisions of Rule-107(11) of Maharashtra Cooperative Societies Rules (MCS Rules) and published the same on the Notice board of the Society. In the auction sale as per the public notice held on 25/10/2007, in all 6 bidders participated. Respondent No. 5 purchased the properties auctioned for sum of Rs. 20,05,000/-.

7 On 25/10/2007, the borrowers were served with a notice under Rule-107(13) immediately after the auction sale and given an opportunity, including the notice, to repay the outstanding dues with expenses of auction failing which the auction sale could be confirmed. The borrowers have not made any grievance by raising objections and not paid the outstanding dues, within 30 days, after the receipt of

notice and never availed the opportunity given.

8 On 16/5/2008 the Asst. Registrar approved the sale in favour of Auction Purchaser and issued a sale certificate in respect of lands purchased. On 29/7/2008 Notice for possession of purchased properties issued to the borrowers. On 4/8/2008 by recording kabjepatti panchanama the possession of those properties handed over to Auction purchaser when the borrowers were personally present but refused to sign the kabjepatti. On 20/8/2008 the borrowers for the first time deposited amount of Rs.2,60,000/-with the Society. On 22/9/2008, the Sale deed was executed in favor of the Auction Purchaser and registered. On 7/11/2008, in the record of rights, name of Auction purchaser entered and the borrowers names were deleted. On 8/10/2008, the Loan A/c. of the borrowers were closed by crediting the amount of dues against them. The remaining balance amount of Rs. 93,000/-transferred to the Loan A/c. of the borrowers with Vasagade Vikas Seva Sanstha Ltd., Vasagade, in respect of crop loan on the lands obtained by the borrowers.

9 The borrowers, filed Writ Petition No. 3228/2009 in this Court challenging the Auction Sale dated 25/10/2007. By Order dated 20/3/2009 on the statement of the borrowers, this Court directed the borrowers to deposit a sum of Rs.20,00,000/-within a week from the date of the Order in the High Court and issued notices to the other Respondents and the Petitioner Society. The borrowers deposited the cheque before this Court of the sum of Rs. 20,00,000/-. The cheque when presented for payment by the Registry of this Court the same returned back without payment with remark that funds not arranged. Thereafter, the Writ Petition was came to be disposed of since, the borrowers sought leave to withdraw and to avail the remedies available under the Act/Rules and accordingly Order dated 29/4/2009 was passed.

10 The disposed off Writ Petition again appeared before the Court. By Order dated 9/9/2009 permitted the borrowers to deposit the amount by a demand draft within two weeks before the Divisional Joint Registrar, Kolhapur where the Revision Application had filed by the borrowers was pending.

11 The borrowers then filed Revision Application No. 203/2009 before the Divisional Joint Registrar, Kolhapur, against the Sale Certificate, dated 16/5/2008 issued in favour of Auction purchaser. The borrowers, the Revision Applicants, made a grievance about the inadequacy of price for which the lands were sold in public auction.

12 On 6/1/2010, the Divisional Joint Registrar, Kolhapur, after hearing both sides and based on the evidence on record, by its Judgment and Order dated 6/1/2010, rejected the Revision Application. The borrowers filed a Writ Petition bearing No. 5435/2010 challenging order dated 6/1/2010 passed by the Divisional Joint Registrar, Kolhapur, in Revision Application bearing No. 203/2009. The Petition was subsequently withdrawn by the borrowers, while seeking permission to challenge the recovery certificate issued u/s 101 of the M.C.S. Act.

13 The borrowers filed another Revision Application bearing No. 398/2010 before the Joint Registrar Co-operative Society, Kolhapur Division, Kolhapur challenging the recovery certificate granted in favor of the Petitioners. There was a delay of more than 3 and 1/2 years. A separate delay condonation application was preferred by the borrowers. On 20/1/2011, the delay condonation application filed by the borrowers was rejected by the Joint Registrar, Co-operative Society, Kolhapur Division, Kolhapur, (Respondent No. 8) vide order dated 20/1/2011.

14 The borrowers then challenged Order dated 20/1/2011 in the High Court by filing 4th Writ Petition bearing No. 2137/2011. The Writ Petition was allowed by the Hon"ble High Court vide an Order dated 8/7/2011 and the borrowers were directed to deposit a sum of Rs 7.5 lacs with the Petitioner Society herein within a period of fifteen days from the passing of the order.

15 The Petitioners filed their reply and certain other documents along with their reply to oppose the Revision Application on merits. The Revisional Authority by Judgment and Order dated 25/10/2011, allowed the Revision Application and set aside the recovery Certificate. The Petitioners challenged Judgment and Order dated 25/10/2011 passed in Revision Application No. 398/2010 by filing Writ Petition No. 3090/2012 in this On 17/07/2012, this Court issued Notices to the Respondents. The learned Advocate for the Borrowers sought a permission to withdraw the Revision Application No. 398/2010 with liberty to file Revision Application afresh by impleading auction purchaser and other necessary parties. This Court by Order dated 17/07/2012 pleased to dispose off the Writ Petition and permitted to withdraw Revision Application with liberty to file fresh revision application.

16 The borrowers filed fresh Revision Application No. 449/2012, on 31/07/2012, before the Divisional Joint Registrar, Kolhapur. They have enlarged the scope of earlier Revision and added prayers in addition to the challenge of Recovery Certificate dated 22/1/2007 and also made prayer challenging the auction sale dated 25/10/2007 in favour of Respondent No. 5, and the Sale Certificate dated 16/5/2008 and Sale Deed dated 5/9/2008 executed in favour of auction purchaser. The Petitioners have filed detailed reply opposing the averments made in the said Revision Application and all the prayers pointed out that; the Revision Applicants were permitted to file fresh Revision Application by the High Court by Order dated 17/07/2012 only by impleading the auction purchaser as party Respondents; and not permitted to file the such Application afresh challenging the auction proceeding and sale as the challenge to the auction proceeding and sale had been already decided and rejected. The Petitioners also contended that, the challenge to the Recovery Certificate cannot be entertained at this stage since the properties have been transferred; and in any case, on technical grounds raised in the Revision Application the Recovery Certificate cannot be set aside.

17 The Divisional Joint Registrar, by impugned Judgment and Order dated 22/11/2012 passed in Revision Application No. 449/2012, allowed the same in

toto thereby set aside the Recovery Certificate dated 22/1/2007 and Auction Sale dated 25/10/2007 and Sale Certificate dated 16/5/2008, by holding that, the amount of recoverable dues was not shown clearly and not in figures and the interest are written in Certificate as ""as per Rule"" which is not correct and the auction sale held on 25/10/2007 not as per Rule-107(11)(e).

18 On 12.12.2012, hence, these Writ Petitions under Articles-226 and 227 of the Constitution of India, challenging the impugned Judgment and Order dated 22/11/2012 passed by the Divisional Joint Registrar, Co-operative Societies, Kolhapur Division, Kolhapur in Revision Application No. 449/2012 one by the society and the other by the auction purchaser. Those facts required to be noted as foundation for the operative part of the judgment on the following reasons :

a) In view of above admitted position of facts and the judgments and orders, the Authority, while allowing the Revision, failed to provide the reasons on the "doctrine of limitation", "Doctrine of res-judicata", "Doctrine of estoppel". All these elements are overlooked, that resulted into setting aside even the basic certificate, auction/sale, confirmation, proceeding, including handing over of the possession of the property. This order definitely has direct impact on the sale deed executed based upon it, but no specific order passed to set aside the sale deed.

b) The resulted sale deed, is not even touched. That remained intact. This resulted into complications on question of facts and the law. The impugned order so passed is unexecutable.

c) The Revisional Authority, even failed to take note of the decision/orders between the parties based upon the earlier Petitions/litigations filed by the Respondents against the Petitioners. No specific reasons are provided while dealing with the rival contentions raised by the parties, insofar as the earlier litigations which has attained finality. No reasons revolving around any misrepresentation and/or fraud, is made out. The provisions of Rule 101 read with Rule 107, have been misused and misinterpreted specifically, in view of the above facts and circumstances of the case.

d) The issue with regard to the withdrawal of earlier litigations and its effect as prescribed, in Sarguja Transport Service Vs. State Transport Appellate Tribunal, M.P., Gwalior and Others, AIR 1987 SC 88 : (1986) JT 808 : (1986) 2 SCALE 757 : (1987) 1 SCC 5 : (1987) 1 SCR 200 : (1987) 1 UJ 28 and a Division Bench Judgment of this Court Ambaji Narsing Mali Vs. The State of Maharashtra, (2014) 6 MhLj 325 , ought to have taken care of before passing the impugned order.

e) The Judgments cited by the learned counsel appearing for Respondent Nos. 1 and 2 are distinguishable on the facts and circumstances of the case itself. The peculiarity of this case, therefore, cannot be overlooked, though the law so declared needs no further discussion. In Valji Khimji and Company Vs. Official Liquidator of Hindustan Nitro Product (Gujarat) Ltd. and Others, (2008) 4 BC 536 : (2008) 145 CompCas 36 : (2008) 4 CompLJ 201 : (2008) 2 CTLJ 130 :

(2008) 8 JT 610 : (2008) 11 SCALE 287 : (2008) 9 SCC 299 : (2008) 2 UJ 1107 has reiterated that where no case of fraud or collusion is made out there was justification to set aside the confirmation of the sale. In Manilal Mohanlal Shah and Others Vs. Sardar Sayed Ahmed Sayed Mahamad and Another, AIR 1954 SC 349 : (1955) 1 SCR 108 sale was set aside for non-payment of price as required by rule. In this case the material was otherwise. The requisite payments were deposited. The possession was handed over accordingly. There is no case of non-payment of price money in time by the purchaser and/or of no notice or irregularity at relevant time, as even thing was confirmed by the order of the Court. [ Niranjana D. Woody Vs. The South Indian Co-operative Bank Ltd. and Others, (2006) 6 ALLMR 144 : (2006) 5 BomCR 587 , Jagdish Radhakisan Kayasth Vs. Ramesh N. Wagh and Others, AIR 2001 Bom 152 : (2001) 3 BomCR 276 : (2001) 4 BOMLR 741 : (2001) 2 MhLj 417 Usmansab Hatel Sahab Vs. R.L. Meharwade and Others, AIR 1999 SC 96 : (1998) 4 JT 303 : (1998) 3 SCC 271 : (1998) AIRSCW 3447 : (1998) 9 Supreme 23 , and Balram Vs. Ilam Singh and others, (1996) 6 AD 540 : AIR 1996 SC 2781 : (1996) 7 JT 423 : (1996) 6 SCALE 133 : (1996) 5 SCC 705 : (1996) 5 SCR 104 Supp : (1996) 2 UJ 591 ].

f) The effect of registered sale deed, once the recovery certificate at the relevant time as had attained finality, and so also in view of other proceedings, the Revisional Authority, without disturbing the sale deed passed the order which, in my view, is impossible. The order/action initiated by the Petitioners void and/or bad in law, the consequential sale deed, needs to be dealt with accordingly by passing appropriate order. The reasons are missing, so also the operative part with regard to the sale deed based upon the certificate and the auction sale proceeding initiated. The order, therefore, is bad in law and unsustainable.

g) However, for the above reasons itself and as the Competent Authority failed to give reasons before passing and/or setting aside the earlier orders/certificate it is necessary to have detailed reasons in every aspects so recorded above. Therefore, in the interest of justice, I am inclined to remand the matter for reconsideration and to be decided as early as possible and preferably within particular time. The parties to co-operate.

h) This Court by orders dated 6 March 2013 and 5 August 2013, has granted interim protection and also given directions to both the Parties not to create any third party rights or interest in the property in question, and the same remains intact till this date. The possession of the property is with the Petitioners. The learned counsel appearing for Respondent Nos. 1 and 2 is opposing the said situation. Therefore, taking over all view of the matter, it is desirable that the parties to maintain status quo as of 6 March 2013, till the decision of the Revisional Authority and four weeks thereafter, if the adverse order is communicated to the Petitioners.

19 Therefore, the following order:-

**ORDER**

- a) Both the Writ Petitions are allowed.
- b) Impugned order dated 22 November 2012 passed by the Divisional Joint Registrar, Co-operative Societies, Kolhapur Division, Kolhapur is quashed and set aside.
- c) Revision Application No. 449 of 2012 is restored to the file of the Authority.
- d) The Authority to reconsider the same, as early as possible, preferably within four months from today.
- e) It is directed that the parties to maintain status quo as of 6 March 2013, passed in Writ Petition No. 323 of 2013 till the decision of the Revisional Authority and four weeks thereafter, if the adverse order is communicated to the Petitioners.
- e) The parties to co-operate.
- g) Rule made absolute accordingly.
- f) All points are kept open.