

2. These six appeals are directed against common judgment and order dated 26.03.2018 passed by the High Court of Judicature at Bombay¹ whereby four writ petitions i.e., W.P. No. 1543 of 2009; W.P. No. 6544 of 2009; W.P. No. 393 of 2010; and W.P. No. 1779 of 2010 were disposed of.

Facts

3. A plot of land bearing No. 21, admeasuring 810 Sq. mtr., pertaining to Survey No. 14, Village Chembur, Tehsil Kurla, Bombay Suburban District² was subjected to auction sale to recover dues of Mahanagar Co-operative Bank³ payable by a partnership firm i.e., M/s. Borse Brothers⁴. The firm had availed cash credit facility of Rs. 10,00,000/- from the Bank. As it failed to repay the amount, proceedings were initiated by the Bank under Section 91 of Maharashtra Co-operative Societies Act, 1960⁵. In the said proceedings, on 04.04.1994 the Co-operative Court passed an *ex parte* award of

¹ High Court.

² Hereinafter described as property in dispute.

³ Hereinafter described as the Bank.

⁴ Hereinafter referred to as the firm.

⁵ Hereinafter referred to as the 1960 Act.

Rs.24,19,904.92 plus interest @ 17.5% per annum against the firm, which was represented through its partners including Panditrao Borse. Pursuant to the award, on 04.07.1996 the Co-operative Court issued a recovery certificate under Section 98 of the 1960 Act. Thereafter, a notice of demand of Rs.52,27,800 was served upon the firm and its partners. On 16.04.2004, the Special Recovery and Sale Officer⁶ took possession of the disputed property. However, legal representatives of Panditrao Borse i.e., one of the partners, who died in between, moved an application before the Co-operative Court for setting aside the *ex parte* award and for stay of execution. This application was rejected by the Co-operative Court on 06.09.2004. On 24.12.2004, notice inviting bids for the property in dispute was published in the local newspapers. On 29.01.2005, SRO found bid of M/s. Adhishakti Developers at Rs.1,51,00,000 highest and the same was accepted. On the same day, M/s. Adhishakti Developers deposited Rs. 52,85,000 and balance of Rs. 98,15,000 was deposited on 17.03.2005,

⁶ Hereinafter referred to as SRO

which the Bank accepted. On 18.03.2005, SRO issued order for confirmation of sale and handed physical possession to M/s. Adhishakti Developers. Thereafter, on 21.03.2005, sale certificate was issued, followed by execution of registered conveyance deed dated 13.06.2005 in favour of M/s. Adhishakti Developers.

4. The heirs/ legal representatives of Panditrao Borse filed a writ petition before the High Court, which was dismissed on the ground of availability of alternative remedy under Rule 107 of Maharashtra Co-operative Societies Rules, 1961⁷. However, instead of availing that remedy, the legal representatives of Panditrao Borse filed a Revision Application No. 326 of 2008 under Section 154 of 1960 Act before Divisional Joint Registrar, Co-operative Societies, Mumbai⁸.

5. In between, acting on the conveyance deed, the appellant i.e., M/s Adishakti Developers (i.e., the appellant in the appeal title) moved an application for correction / mutation of the revenue records. However,

⁷ Hereinafter referred to as 1961 Rules

⁸ Hereinafter referred to as Joint Registrar

the Collector, *vide* order dated 09.03.2006, rejected the application. This order was challenged by the appellant by filing an appeal which came to be dismissed *vide* order dated 01.12.2008. Aggrieved therewith, the appellant filed Writ Petition No. 1543 of 2009, and the Bank filed Writ Petition No. 6544 of 2009.

6. In the meantime, *vide* order dated 20.03.2009, the Joint Registrar condoned the delay in filing of revision by heirs and legal representatives of Panditrao Borse against the auction sale and, later *vide* order dated 29.12.2009, the Joint Registrar set aside the auction including its confirmation and consequential sale dated 18.03.2005 while exercising power under Section 154 of the 1960 Act, read with Rule 107 of the 1961 Rules.

7. Aggrieved by the order of condonation of delay and allowing of revision, Writ Petition No. 393 of 2010 was filed by Adishakti Developers and Writ Petition No.1779 of 2010 was filed by the Bank. All the aforesaid four writ petitions were tagged and decided by the impugned order.

8. Writ Petition Nos. 393 of 2010 and 1779 of 2010 were taken as leading petitions because they questioned the order cancelling the auction sale. As far as other two petitions were concerned, their fate depended on whether the auction sale is affirmed or cancelled. In that sequence we shall narrate the facts and the issues which arise for our consideration.

9. Condonation of delay in filing revision against the auction sale was sought, *inter alia*, on the ground that the legal representatives of Panditrao Borse became aware of confirmation of sale / conveyance when proceeding for mutation in the revenue records was undertaken before the Collector. The Bank as well as the auction purchaser contested the delay condonation application as well as the revision by claiming that there is no sufficient explanation for the delay of four years and title had already vested in the purchaser. The Joint Registrar accepted the explanation offered and condoned the delay. Further, the auction sale was cancelled on the ground that the entire auction amount was not deposited

within 15 days from the date of sale which violated Rule 107 (11) (h) of 1961 Rules. Joint Registrar found that the property in dispute was auctioned on 29.01.2005 for Rs. 1,51,00,000; on the same day only Rs. 50,96,000; was deposited; and thereafter, Rs.25,00,000 was paid by cheque dated 05.03.2005, Rs.23,15,000 was paid by cheque dated 07.03.2005, and Rs.50,00,000 was paid by cheque dated 17.03.2005. Joint Registrar held that as per law the entire amount had to be deposited within 15 days from the date of auction but, in the case on hand, the entire amount was deposited not before 17.03.2005 i.e., much after 15 days. According to the Joint Registrar deposit of entire amount within the period of 15 days was a mandatory condition and, therefore, the auction as well as its confirmation and consequential conveyance was rendered void.

10. Impugning the order of Joint Registrar, before the High Court, it was urged:

- (i) Ordinarily, violation of a mandatory auction condition/ rule renders the auction sale a nullity,

but if the party, for whose benefit the condition /rule is there, waives the same, auction need not be set aside for infraction/ violation of that condition. As stipulation for deposit of entire auction amount within a period of 15 days is for the benefit of the creditor (i.e. the Bank) and once the Bank raised no objection and accepted the deposit, there was no justifiable reason to set aside the auction sale on that ground.

(ii) Legal representatives of Panditrao Borse had knowledge of sale in October 2005 when notice *qua* mutation was served on them yet no revision was filed and therefore, on the ground of delay alone, the revision ought to have been dismissed.

High Court's Reasoning

11. High Court rejected the first submission holding that condition to deposit within 15 days is mandatory and a violation thereof would render sale a nullity. In support of its view, it relied on decisions of this Court in ***Manilal Mohanlal Shah and others vs. Sardar Sayed***

Ahmed Sayed Mahmad and another⁹; Sardara Singh (Dead) By L.Rs. and another vs. Sardara Singh (Dead) and others¹⁰; Rao Mahmood Ahmad Khan Through L.R. vs. Ranbir Singh and others¹¹; Gangabai Gopaldas Mohata vs. Fulchandand others¹²; and Shilpa Shares & Securities and others vs. National Co-operative Bank Ltd. and others¹³. High Court found that it is an admitted position that only 15% of the auction amount was paid on the date of auction and balance was not paid within 15 days; rather, paid in four installments, spanning over next three months. Therefore, it held, the sale was a nullity.

12. On the issue of waiver, High Court held that there was no waiver on part of the owner (including the borrower or legal heirs of one of the partners of the borrower) of its right to challenge the auction on the ground of non-deposit of auction price within the stipulated period therefore, even if the Bank had accepted

⁹ AIR 1954 SC 349; (1954) 1 SCC 724

¹⁰ (1990) 4 SCC 90

¹¹ 1995 Supp. (4) SCC 275

¹² (1997) 10 SCC 387

¹³ (2007) 12 SCC 165

the money beyond the stipulated period, there could be a valid challenge to the auction sale on that ground. High Court also pointed out that there was no material on record to show that legal representatives of the borrower had knowledge of auction purchaser not depositing the entire auction price within the stipulated period. Hence, there was no occasion to raise the plea of waiver.

13. On question of delay, High Court held that auction sale came to the notice of legal representatives of the judgment-debtor only when application was submitted for mutation in revenue records and, therefore, it was not a case of any deliberate or intentional delay. Hence, interference with the order of condonation of delay was not called for.

14. Besides above, High Court noticed the offer made by the legal representatives of Panditrao Borse to pay off entire outstanding amount to show their bona fides and, in consequence, dismissed the writ petition(s) impugning the order of Joint Registrar. However, while accepting the offer of the legal representatives, it directed them to

deposit a sum of Rs. 79,44,042 with the Bank within a period of 12 weeks from the date of the order and, in turn, directed the Bank to refund a sum of Rs. 1,51,00,000 to the appellant (M/s. Adhishakti Developers) with such interest as may have accrued from time to time on the surplus amount of Rs.71,55,958 held by the Bank. Additionally, M/s. Adhishakti Developers was given liberty to adopt such steps as may be permissible in law for recovering damages, if any, suffered by them because of cancellation of auction sale. As a result, High Court dismissed the other two petitions, namely, Writ Petition Nos. 1543 of 2009 and 6544 of 2009.

15. We have heard learned counsel for M/s Adishakti Developers; learned counsel for the legal representatives of Panditrao Borse; learned counsel representing the Bank; and learned counsel representing the State of Maharashtra and have perused the records including written submissions filed by parties.

**Submissions on behalf of M/s. Adishakti Developers
(Auction Purchaser)**

16. Submissions on behalf of M/s. Adishakti Developers (Auction Purchaser) are as follows:

(i) Revision under Section 154 of 1960 Act before Joint Registrar was not maintainable because the legal representatives of Panditrao Borse had earlier filed writ petition challenging the auction, which was dismissed by the High Court *vide* order dated 26.09.2005 by observing that remedy lay under Rule 107 of 1961 Rules. Instead of taking recourse to the remedy available under 1961 Rules, a revision was filed, that too, with a delay of about 04 years. Such delay ought not to have been condoned. Moreover, under Section 154, revision lies where any decision or order is passed by a Subordinate Officer against which no appeal lies. Certificate of confirmation of auction sale is based on an order of a Subordinate Officer therefore, remedy was available under Rule 107 of 1961 Rules and to avail it, the owner of the property had to deposit the amount as prescribed

under Rule 107(13) of 1961 Rules. Hence, revision should not have been entertained.

(ii) Even if there is violation of the procedure prescribed by Rule 107 (11) (g) (h) of 1961 Rules, borrower may waive the violation thereof by its conduct as it is for the benefit of the creditor and, therefore, in absence of any objection by the creditor, the auction sale is not rendered void. In this regard reliance was placed on decision of this Court in ***General Manager, Sri Siddheshwara Co-operative Bank Ltd. And another vs. Ikbal and Ors.***¹⁴

(iii) While considering application for mutation, the revenue authority cannot go into the validity of auction sale. Such an enquiry at the end of the Revenue Authority is impermissible. Therefore, they ought to have mutated the revenue records in terms of the conveyance/certificate of sale.

Submissions on behalf of legal representatives of the partner of M/s. Borse Brothers

¹⁴¹⁴ (2013) 10 SCC 83

17. Submissions on behalf of the legal representatives of the partner of M/s. Borse Brothers are as follows:

(i) Compliance of Rule 107(11) (g) (h) of 1961 Rules is mandatory. Any violation thereof, renders the auction void.

(ii) Remedy under Rule 107 (13) of 1961 Rules does not dilute statutory revisional powers under Section 154 of 1960 Act.

(iii) This Court in **Shilpa Shares (supra)** held compliance of provisions of Rule 107(11)(g) is mandatory and any infraction thereof renders auction sale a nullity. In such circumstances, validity of the auction sale can be questioned even in a collateral proceeding.

(iv) The decision of this Court in **Siddheshwara Co-operative Bank Ltd. (supra)** relied by auction purchaser on the issue of waiver is not applicable on facts of the case as those proceedings emanated under the provisions of Securitisation and Reconstruction of Financial Assets and

Enforcement of Security Interest Act, 2002¹⁵ and Security Interest (Enforcement) Rules, 2002¹⁶. The decision therein was in the context of those provisions including Rule 9(4) of 2002 Rules.

(v) Once auction sale is void, it can be ignored. Therefore, refusal to mutate the revenue records on basis thereof was justified.

(vi) Property in dispute was sold by the Government to Panditrao Borse. Though Panditrao Borse was a partner in the Firm i.e., M/s Borse Brothers, but the Firm was not its owner. Panditrao Borse died on 17.04.2001 and his legal representatives were not served with notice of auction proceeding. Therefore, auction was in clear violation of the principles of natural justice.

(vii) There appears collusion between auction purchaser and the Bank which is evident from the following facts:

¹⁵¹⁵ SARFAESI Act

¹⁶¹⁶ 2002 Rules

(a) Auction was conducted on 29.01.2005 and 34% of the amount was deposited not at the time of auction, as required under Rule 107(11) (g), but four days before the auction i.e. 25.01.2009 which indicates that auction purchaser was sure about auction going in its favour.

(b) Chairman of the Bank, namely, Gulab Rao Shelke, who was an Advocate, had represented the auction purchaser in a proceeding. This issue was specifically raised in the revision application, and a complaint was made to the Bar Council of Maharashtra which initiated disciplinary proceeding against him.

(viii) Credit facility taken by the Firm from the Bank was secured by hypothecation of two trucks and fixed deposit receipt, yet instead of proceeding against those assets, the land was put to auction.

(ix) Public notice of auction instead of being published in two daily newspapers was published in one newspaper only.

(x) The property in dispute was allotted to Panditrao Borse by the Government and one of the conditions of allotment proscribed mortgage without prior consent of the Government. There exists no material on record to show that any such consent was obtained therefore, there was no valid mortgage and as such the property could not have been subjected to auction. Moreover, there is no challenge to Collector's finding in mutation proceedings that mortgage of land was illegal.

Based on the aforesaid submissions, on behalf of legal representatives of Panditrao Borse, it was prayed that the appeals be dismissed and the order passed by the High Court be affirmed.

Submissions on behalf of State of Maharashtra

18. On behalf of the State, it was submitted that the District Collector held that the property in dispute was purchased by Panditrao Borse in a public auction; condition no.2 of that auction sale was that the property shall not be sold or mortgaged without prior permission of the Government. No prior permission was taken to mortgage the said property. Even the Bank, though aware of the conditions, took no permission for accepting the mortgage. In these circumstances, State was justified in denying mutation in favour of M/s. Adishakti Developers.

Submissions on behalf of Bank

19. On behalf of the Bank, it was submitted:

(i) Bank sanctioned and disbursed loan of Rs. 10,00,000/- by way of cash credit facility on equitable mortgage of the property in dispute made by Panditrao Borse i.e., predecessor-in-interest of respondents 3 to 5.

(ii) On 07.08.1992, Panditrao Borse defaulted in paying the loan as a result the Bank raised dispute under Section 91 of 1960 Act.

(iii) On 20.01.1993, the Co-operative Court passed an order of attachment and, on 04.04.1994, an award was passed in favour of the Bank directing Panditrao Borse to pay Rs. 24,19,905 with 17.5% interest starting from 01.09.1993 till realization. And, for effecting recovery, certificate was issued on 04.07.1996.

(iv) On 24.01.2000, a demand notice under Section 156 of 1960 Act read with Rule 107 of Rs. 52,27,800 with 17.5% interest was issued.

(v) On 06.04.2004, SRO took possession of plot and published a public notice thereof.

(vi) On 24.05.2004, Panditrao Borse died. On his death, respondents 3 to 5 (i.e., legal representatives of Panditrao Borse) applied to set aside the *ex parte* award dated 04.04.1994, which

was rejected by Co-operative Court on 06.09.2004.

(vii) On 30.09.2004, valuation of plot was carried out and possession was taken on 30.10.2004.

(viii) On 24.12.2004, public notice for auction sale of the property in dispute was published in daily newspaper "Sakal".

(ix) On 29.01.2005, bids were opened and M/s. Adishakti Developers being the highest bidder was declared successful.

(x) On the same day, the bidder deposited Rs. 52,85,000 i.e. 35% of bid amount, which was more than 15%, as required by the Rule.

(xi) The legal representatives of Panditrao Borse were throughout aware of the amount due as also about the steps taken by the Bank.

(xii) On 18.03.2005, SRO confirmed the sale and physical possession was handed over to the bidder along with possession receipt.

(xiii) Ultimately, on 21.03.2005 certificate of confirmation was issued in favour of the bidder.

(xiv) On 13.05.2005, SRO issued letters to the legal representatives of Panditrao Borse about the auction sale, and on 13.06.2005 registered sale was executed in favour of the bidder.

(xv) Between the date of auction and issuance of certificate of sale, the legal representatives of Panditrao Borse could have applied, within 30 days, under Rule 107(13) of 1961 Rules to set aside the sale, but they took no such step. On the contrary, they filed Writ Petition No. 5401 of 2005 which was dismissed with liberty to avail remedy under Rule 107 of 1961 Rules. However, they did not avail the statutory remedy, as a result, the sale certificate dated 21.03.2005 attained finality in terms of writ court's order dated 26.09.2005.

(xvi) Revision under Section 154 of 1960 Act was filed with an inordinate delay of 1236 days and it was not even against an order, rather against the

certificate of sale confirmation, therefore, it was not even maintainable. More so, when deposit under Section 154 (2A) of 1960 Act was not made. Otherwise also, the revision was nothing but forum shopping. Besides that, the delay in filing the revision was condoned without recording reasons. Moreover, the revision should not have been entertained in light of the order of the High Court dated 26.09.2005 passed in Writ Petition No. 5401 of 2005.

Based on the aforesaid submissions, it was prayed that the order of the High Court as well as the one passed in revision be set aside. Besides, it was submitted that the High Court could not have given more time to the Borrower to settle the dues as already sufficient time had been provided to the borrower to make good the loan amount.

Issues

20. On consideration of the rival submissions, in our view, following issues arise for our consideration:

(i) Whether the legal representatives of Panditrao Borse could challenge the validity of the equitable mortgage of the property in dispute made by Panditrao Borse in favour of the Bank when the award of the Co-operative Court has attained finality?

(ii) Whether the revision preferred by the legal representatives of Panditrao Borse under Section 154 of 1960 Act was maintainable and could have been entertained when the High Court, *vide* order dated 26.09.2005, gave them liberty to raise objections under Rule 107 (13) of 1961 Rules?

(iii) Whether on failure to deposit the balance sale consideration within the period stipulated under Rule 107 (11) (h) of 1961 Rules, the auction sale was rendered void?

(iv) Whether the requirement of deposit of purchase money within the period stipulated in Rule 107 (11) (h) of 1961 Rules is for the benefit

of the creditor and can therefore be waived? If so, whether it was waived by the creditor bank?

(v) Whether for violation of condition attached to the allotment of the property in dispute, the auction sale was rendered void? If not, whether the same is a curable defect, and therefore, on that ground, the auction proceeding cannot be nullified?

(vi) Whether, upon finding the auction sale void, the final order passed by the High Court is justified? If not, what would have been the appropriate order?

Issue No.1:

21. Records reveal that Case No. CC/III/1044 of 1993 was filed before the Co-operative Court by the Bank against M/s. Borse Brothers through its partners including Panditrao Borse. On 04.04.1994, an *ex parte* award was passed against Borse Brothers including its

partners and one Sri Bhagwan Rambhau Thorat in the following terms:

“Opponent No. 1 to 3 are jointly and severally liable to pay and to pay Rs. 24,19,905.02 with interest at 17.5% on Rs. 24,19,905.92 from 01.09.1993 till realization of the amount...

Attachment before judgment order and ad-interim injunction order dated 22.10.1993 is hereby continued till full realization of the claim amount.”

22. Misc. Application No. 44 of 2004 was filed by legal representatives of Panditrao Borse for setting aside the ex parte award, inter alia, stating (a) that Panditrao Borse expired on 17.04.2001 leaving behind the applicants, namely, Smt. Usha Panditrao Borse; Shri Vivek Panditrao Borse; and Smt. Vaishali Udaysingh Gaikwad as Panditrao Borse’s legal heirs; and (b) that the applicants came to know about the award only when SRO had pasted the award on the property on 16.04.2004. The aforesaid application was rejected by the Co-operative Court on 06.09.2004, *inter-alia*, on the ground that the award was passed on 04.04.1994 during lifetime of the predecessor-in-interest of the applicants yet he did not challenge the award. Besides, the certificate for execution

of the award had been issued and the same became executable as a decree of Civil Court. Therefore, such a belated application was liable to be rejected. Admittedly, the order rejecting the prayer to set aside the award has attained finality. In such circumstances, the validity of the award is not open to challenge.

23. What is important is that the amount payable under the decree is jointly and severally recoverable from three persons including Panditrao Borse. In such circumstances, Panditrao Borse was a judgment-debtor and his property including the property in dispute was liable to be attached and sold for realization of the decretal amount. Therefore, the objection that because there could be no mortgage of the property in dispute without prior permission of the State Government and the property could not have been sold, in our view, is of no relevance as the property was of the judgment debtor and as such amenable to auction for realization of the decretal amount from the judgment-debtor. This is so because Section 98 of the 1960 Act provides that a

certificate signed by the Official Assignee or the Registrar or the Co-operative Court or a liquidator shall be deemed to be a decree of a Civil Court and shall be executed in the same manner as a decree of such Court, or be executed according to law and under the Rules for the time being in force for the recovery of arrears of land revenue. In such circumstances, the award passed by the Co-operative Court operated as a money decree which could have been executed by attachment and sale of the property of the judgment-debtor and as the predecessor-in-interest of respondents 3 to 5 was the judgment-debtor, the property in dispute being property of the judgment debtor was liable to be subjected to an auction sale for realizing the amount payable under the award. Issue No.1 is decided accordingly.

Issue No.2

24. Section 154 of 1960 Act, as it stood at the relevant time, provided as follows:

“154 Revisionary Powers of State Government and Registrar:

(1) The State Government or the Registrar, *suo-motu* or on an application, may call for and examine the record of any inquiry or proceedings of any matter, other than those referred to in sub-section (9) of section 149, where any decision or order has been passed by any subordinate officer, and no appeal lies against such decision or order, for the purpose of satisfying themselves as to the legality or propriety of any such decision or order, and as to the regularity of such proceedings. If in any case, it appears to the State Government, or the Registrar, that any decision or order so called for should be modified, annulled or reversed, the State Government or the Registrar, as the case may be, may, after giving the person affected thereby an opportunity of being heard, pass such orders thereon as to it or him may seem just.

(2) Under this section, the revision shall lie to the State Government if the decision or order is passed by the Registrar, the Additional Registrar or a Joint Registrar, and to the Registrar if passed by any other officer.

(2-A) No application for revision shall be entertained against the recovery certificate issued by the Registrar under section 101 or Certificate issued by the Liquidator under Section 105 unless the applicant deposits with the concerned society, fifty percent, amount of the total amount of recoverable dues:

Provided that, in case of such revision where revisional authority has granted a stay to the recovery of dues, the authority shall, as far as may be practicable, dispose of such revision application as expeditiously as possible but not later than six months from the date of the first order.

(3) No application for revision shall be entertained, if made after two months of the

date of communication of the decision or order. The revisional authority may entertain any such application made after such period, if the applicant satisfies it that he had sufficient cause for not making the application within such period.

(3-A) The revisional authority, in order to prevent the ends of justice being defeated, may pass such interim orders including order of stay against the impugned order, pending the decision and final hearing of the Revision Application:

Provided that, if any interim order has been passed by the revisional authority without hearing the other side, the revisional authority shall decide such application within a period of three months and pass the necessary order on merits after giving an opportunity of being heard and for the reasons to be recorded in writing.

(4) The State Government may, by order, direct that the powers conferred on it by this section shall, in such circumstances and under such conditions if any, as may be specified in the direction, be exercised also by an officer of the rank of Secretary to Government.”

25. A plain reading of Section 154 would make it clear that the power of revision vests in (a) the State Government and (b) the Registrar. The power is to call for and examine the record of any inquiry or proceedings of any matter, other than those referred to in sub-section (9) of section 149, where any decision or order has been passed by any subordinate officer, and no appeal lies

against such decision or order. In case the decision or order is passed by the Registrar, the Additional Registrar or a Joint Registrar, revision shall lie to the State Government and if it is passed by any other Officer, to the Registrar. The power so vested is to satisfy itself as to the legality or propriety of any such decision or order, and as to the regularity of such proceedings and, if it appears to the State Government or the Registrar, as the case may be, that any decision or order so called for should be modified, annulled or reversed, to pass such order as it may seem just. Sub-section (2-A) inserted by way of amendment¹⁷ provides that no revision application shall be entertained against recovery certificate issued by the Registrar under Section 101 or Certificate issued by the Liquidator under Section 105 unless the applicant deposits with the concerned society, 50% amount of the total amount of recoverable dues.

26. Sub-section (3) of Section 154 provides that no application for revision shall be entertained if made after two months of the date of communication of the decision

¹⁷¹⁷ Maharashtra Act No.41 of 2000.

or order. However, the revisional authority is empowered to entertain any such application made after such period, if the applicant satisfies the revisional authority that he had sufficient cause for not making the application within such period.

27. The argument on behalf of the auction purchaser is that the revision was not maintainable because the sale confirmation certificate issued is not an order as contemplated in Section 154 of the 1960 Act. In support of its submission, the learned counsel for the auction purchaser has relied on a decision of the Bombay High Court in ***RamChandra Sitaram Mulik vs. Janata Nagari Sahakari Patsanstha Ltd.***¹⁸

28. Additionally, it was submitted on behalf of auction purchaser that once the respondents 3 to 5 (i.e. legal representatives of Panditrao Borse) were relegated to remedy under Rule 107, their revision could not have been entertained, particularly in absence of any deposit made by them. In support of the aforesaid submission,

¹⁸¹⁸ 2018 (2) Mah LJ 245 : 2018 SCC OnLine Bom 484

reliance was placed on a decision of the Bombay High Court in **Smt. Pratibha vs. State of Maharashtra & others** against which Special Leave to Appeal (C) No. 29256 of 2015 filed before this Court was summarily dismissed *vide* order dated 26.10.2015. They also relied on a decision of this Court in **Deenadayal Nagari Sahakari Bank Limited and another vs. Munjaji and others**¹⁹.

29. We have accorded due consideration to the submissions and have perused the decisions cited.

30. In **RamChandra Sitaram Mulik (supra)**, a petition under Article 227 of the Constitution of India was filed before the High Court against an order passed by the Joint Registrar dismissing a revision filed under Section 154 of the 1960 Act. In that case, on 04.05.2010, the property was auctioned by SRO pursuant to a recovery certificate issued under the Act. On 30.08.2010, sale was confirmed and made absolute in terms of Rule 107 (14) of 1961 Rules and, thereafter, a registered sale-

¹⁹ (2022) 7 SCC 594

deed was also executed in favour of the auction purchaser. Revision was filed in the year 2012 impugning the order dated 30.08.2010. The revision was dismissed *inter alia* on the ground that the sale confirmation certificate issued by the Deputy Registrar is not an order amenable to a revision under Section 154 of 1960 Act. In that context, the High Court held that sale of property could have been challenged in terms contemplated under Rule 107 and that the revision was not maintainable because sale confirmation certificate issued by the Deputy Registrar was not an order against which a revision would lie.

31. In *Deenadayal Nagari Sahakari Bank Limited (supra)*, a writ petition was filed before the High Court impugning an order of the Joint Registrar dismissing a revision under Section 154 of the 1960 Act against auction proceeding and a sale certificate. As the borrower had not availed its remedy under Rule 107 of the 1961 Rules, the High Court held that the revision under Section 154 was not maintainable; yet it set aside the

auction sale and cancelled the sale certificate on the ground that auction sale/ sale was in breach of Rules 107 (11) (e), (f) (g) and (h) of 1961 Rules. This Court set aside the order passed by the High Court, *inter alia*, on the ground that once the High Court found revision not maintainable under Section 154, it ought not to have entered the merits particularly when the borrower had not applied to the Recovery Officer to set aside the sale on the grounds of material irregularity, mistake or fraud in publishing or conducting it. In that context, it was held that once the borrower had failed to apply to the recovery officer to set aside the auction sale on the grounds of material irregularity, mistake or fraud in publishing or conducting the auction sale within a period of 30 days from the date of sale of immovable property, it was not open for him to challenge the sale on the ground of material irregularity. Interestingly, in that case, this Court specifically observed that there was no breach of Rules 107 (11) (g) and (h) of the 1961 Rules and, therefore, the decision of this Court in ***Shilpa Shares &***

Securities (supra) was not applicable to the facts. In our view, therefore, where there is infraction of Rule 107 (11) (g) and (h) of 1961 Rules, the decision in **Deenadayal Nagari Sahakari Bank Limited (supra)** would not be an authority *qua* maintainability of revision under Section 154 of the 1960 Act.

32. In the case on hand, *vide* order dated 18.03.2005, SRO confirmed the sale in favour of M/s. Adishakti Developers. The order confirming the sale recites (a) that pursuant to award dated 04.04.1994, SRO took possession of the property; (b) that notice inviting tenders was published in daily newspaper on 02.11.2004; (c) that as no bids were received, a fresh notice was published on 24.12.2004, upon which, six bids were received; (d) those bids were opened in the presence of the bidders on 29.01.2005; (e) thereafter, amongst those bidders present, open bidding process was carried out and M/s. Adishakti Developers, who was already the highest bidder, increased its bid value to Rs.1,51,00,000 from Rs. 1,32,01,000; (f) consequently, M/s Adishakti Developers'

bid, being the highest, was accepted. The confirmation order also recites the mode and manner of payment of the total consideration of Rs. 1,51,00,000. Details of which are extracted below:

“...The purchaser paid the total consideration amount of 1,51,00,000 (Rupees One Crore Fifty-One Lac only) as follows:

Cheque Date	Cheque/DD No.	Cheque Amount
25.01.2005	621768	1321000
25.01.2005	464153	1775000
25.01.2005	464154	2000000
29.01.2005	464155	189000
05.03.2005	618250	2500000
07.03.2005	73582	2315000
17.03.2005	618388	5000000
Total		15100000

After extracting the details of payment, SRO observed that he did not receive any application from any interested party or parties within 30 days from the date of sale or even till date for setting aside the sale. In consequence, he passed the confirmation order in the following terms:

ORDER

M/s. Adishakti Developers are declared as highest bidder for the sale of property of Shivrushti Plot No. 21, Survey No. 14 (Part) C.T.C. No. 114, Chembur Village, Taluka Kurla, Mumbai-400024 Total area 810 sq. mt. belonging to 1 Shri Vinayakrao Shankarrao Borse and 1. Smt. Usha Panditrao Borse 2. Shri Vivek Panditrao Borse 3. Smt. Vaishali Udaysingrao Gaikwad heirs and legal representatives of Late Shri Panditrao Borse within the limit of Municipal Ward bearing No. "L" Ward, Kurla, Nehru Nagar, Kurla €, Mumbai 400071 within the registration District and Sub-District of Mumbai City and Kurla Suburban and the sale.....confirmed under Section 156 of Rule 107(14)(v) of Maharashtra Co-operative Societies Rule.

Mumbai

Dated: 18.03.2005

Sd/-

R.Y. Kulkarni

Special Recovery Sale Officer
(Grade I) Co-Op. Department Under
Section 156 Rule 107 MCS Act
The Mahanagar Co-Op. Bank Ltd.
Lalbaug, Mumbai 400012."

33. Pursuant to the sale confirmation order, possession was handed over to M/s. Adishakti Developers on 18.03.2005.

34. Aggrieved by the sale confirmation order and delivery of possession, the legal representatives of Panditrao Borse filed Writ Petition No. 5401 of 2005 before the High Court which was disposed of *vide* order dated 26.09.2005 reproduced below:

“It is the case of the Petitioners that though there was an award against her late husband, the property which is sought to be attached is exclusively belonging to her pursuant to order of the State Government dated 8.4.2002. Earlier, it is pointed out that the order of taking possession was passed on 10.3.2005 and the possession in fact was taken back on 21.3.2005. The order of attachment is of 16.4.2004 which is after the property was allotted to the Petitioner herein. It is Petitioner’s further case that on 23.4.2004 the Petitioner was put in possession.

Rule 107 of the M.C.S. Rules, provides a complete procedure of the person aggrieved to file objections. Once that be the case, this will not be a fit case for this court to exercise extra ordinary jurisdiction. Petitioner has remedy at law. Hence, petition rejected.”

35. Sub-rules (13) and (14) of Rule 107 of 1961 Rules

are as follows:

“(13) (i) Where immovable property has been sold by the Sale Officer, any person either owning such property or holding any interest therein by virtue of a title acquired before such sale may apply to have the sale set aside on his depositing with the Recovery Officer:-

(a) for payment to the purchaser a sum equal to 5 per cent of the purchase money; and

(b) for payment to the applicant, the amount of arrears specified in the proclamation of sale as that for the recovery of which the sale was order together with interest thereon and the expenses of attachment, if any, and sale and other costs due in respect of such amount, less amount which may since the date of such proclamation have been received by the applicant.

(ii) If such deposit and application are made within thirty days from the date of sale, the Recovery Officer shall pass an order setting aside the sale and shall repay to the purchaser, the purchase money so

far as it has been deposited, together with the 5 per cent deposited by the applicant:

Provided that if more persons than one have made deposit and application under this sub-rule, the application of the first depositor to the officer authorised to set aside the sale, shall be accepted.

(iii) If a person applies under sub-rule (14) to set aside the sale of immovable property, he shall not be entitled to make an application under this sub-rule.

(14) (i) At any time within thirty days from the date of the sale of immovable property, the applicant or any person 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 it:

Provided that no sale shall be set aside on the ground of irregularity or fraud unless the Recovery Officer is satisfied that the applicant has sustained substantial injury by reason of such irregularity, mistake or fraud.

(ii) If the application be allowed, the Recovery Officer shall set aside the sale and may direct a fresh one.

(iii) On the expiration of thirty days from the date of sale, if no application to have the sale set aside is made or if such application has been made and rejected, the Recovery Officer shall make an order confirming the sale:

Provided that if he shall have reason to believe that the sale ought to be set aside notwithstanding that no such application has been made or on grounds other than those alleged in any application which has been made and rejected, he may, after recording his reasons in writing, set aside the sale.

(iv) Whenever the sale of any immovable property is not so confirmed or is set aside, the deposit or the purchase money, as the case may be, shall be returned to the purchaser.

(v) After the confirmation of any such sale, the Recovery Officer shall grant a certificate of sale bearing his seal and signature to the purchaser, and such certificate shall state the property sold and the name of the purchaser.”

36. Sub-rule (13) of Rule 107 enables any person either owning such property or holding any interest therein by virtue of a title acquired before the auction sale to have the sale set aside on his depositing with the Recovery Officer:

- (a) for payment to the purchaser a sum equal to 5% of the purchase money; and
- (b) for payment to the applicant, the amount of arrears specified in the proclamation of sale as that for the recovery of which the sale was ordered together with interest thereon and the expenses of attachment, if any, and sale and other costs due in respect of such amount, less amount which may since the date of such proclamation have been received by the applicant.

Clause (iii) of sub-rule (13) of Rule 107 of 1961 Rules makes it clear that that if a person applies under sub-

rule (14) to set aside the sale of movable property, he shall not be entitled to make an application under this sub-rule.

37. A plain reading of sub-rule (13) of Rule 107 of 1961 Rules makes it clear that an application therein can be maintained within 30 days from the date of sale and subject to deposit as contemplated therein. Admittedly, in the case on hand, neither such application was submitted, nor such deposit was made.

38. In so far as sub-rule (14) of Rule 107 of 1961 Rules is concerned, it confers a right on the applicant or any person entitled to a share in a rateable distribution of the assets, or whose interests are affected by the sale, to apply to the Recovery Officer, within 30 days from the date of the sale of immovable property, to set aside the sale on the ground of material irregularity or mistake or fraud in publishing or conducting it. Admittedly, no such application was filed.

39. The High Court had dismissed the writ petition against confirmation of sale on the ground that there is

alternative remedy available. No doubt, the High Court cited Rule 107 as an alternative remedy, but it did not rule out remedy, if any, available under Section 154 of the 1960 Act. The legal representatives of the defaulter chose to file a revision under Section 154 which confers wide powers on the State Government or the Registrar to call for and examine the record of any inquiry or proceeding of any matter, other than those referred to in sub-section (9) of section 149, where any decision or order has been passed, and against which no appeal lies, for the purpose of satisfying itself as to the legality or propriety of any such decision or order, and as to the regularity of such proceeding. Importantly, revisional powers conferred by the Statute are not subject to any Rules made under the Statute. Further, remedies available under sub-rules (13) and (14) of Rule 107 are not in the nature of an appeal to set aside any decision or order rather it is an application to set aside sale on grounds specified therein. In our view, therefore, the revisional power conferred by Section 154 is extremely

wide which would include examining the legality and propriety of a proceeding *qua* confirmation of sale. Moreover, such power, in our view, cannot be limited by the Rules framed under the Statute. Thus, in our view, merely because the applicant had not taken recourse to the remedy available under sub-rules (13) and (14) of Rule 107 of 1961 Rules, the State Government or the Registrar were not denuded of their power to call for the records of any enquiry or proceeding of any matter, where any decision or order has been passed by a subordinate officer, to satisfy themselves as to the legality or propriety of any such decision or order, and as to the regularity of such proceeding. Another contention against the maintainability of revision is non-deposit of the decretal amount, which, in our view, is misconceived as that would be required under sub-section (2A) of Section 154 when revision is against the recovery certificate. Here, the revision was against the confirmation of sale. Therefore, if the sale confirmation is void, being in teeth of the provisions of extant 1961 Rules, a revision to annul the

same would not require a pre-deposit as contemplated in sub-section (2A) of Section 154 of the 1960 Act. For the aforesaid reasons, we are of the view that the revision preferred by the legal representatives of the borrower was maintainable under Section 154 of the 1960 Act.

40. At this stage, we shall consider another submission made before us, which is, that Special Recovery Sale Officer (SRO), Court I, who passed the confirmation order, being not an officer subordinate to the Registrar, revision would lie not to the Registrar but to the State Government.

41. To address the above issue, we shall take note of certain provisions of the 1960 Act and 1961 Rules. Section 2 (24) of 1960 Act defines “**Registrar**” as a person appointed to be the Registrar of Co-operative Societies under this Act. Section 3 of 1960 Act provides that State Government may appoint a person to be the Registrar of Co-operative Societies for the State; and may appoint one or more persons to assist such Registrar with such designations and in such local areas or throughout

the State, as it may specify in that behalf, and may, by general or special order, confer on any such person or persons all or any of the powers of the Registrar under this Act. The person or persons so appointed to assist the Registrar and on whom any powers of the Registrar are conferred shall work under the general guidance, superintendence and control of the Registrar. They shall be subordinate to the Registrar, and subordination of such persons amongst themselves shall be such as may be determined by the State Government.

42. Section 156 deals with the Registrar's power to recover certain sums by attachment and sale of property. Sub-section (1) of section 156 provides that the Registrar or any officer subordinate to him and empowered by him in this behalf or an officer of such society, as may be notified by the State Government, who is empowered by the Registrar in this behalf, subject to such rules as may be made by the State Government, but without prejudice to any other mode of recovery provided by or under this Act, recover (a) any amount due under decree or order of

a Civil Court, obtained by a society; (b) any amount due under a decision, award or order of the Registrar, Co-operative Court or Liquidator or Co-operative Appellate Court; (c) any sum awarded by way of costs under this Act; (d) any sum ordered to be paid under this Act, as a contribution to the assets of the Society; (e) any amount due under a certificate granted by the Registrar, under sub-section (1) or (2) of section 101 or under sub-section (1) of section 137; or section 154B-29 together with interest, if any, due on such amount or sum and the costs of process according to the scales of fees laid down by the Registrar, from time to time, by the attachment and sale or by sale without attachment of the property of the person against whom such decree, decision, award or order has been obtained or passed.

43. Section 165 of the 1960 Act confers power on the State Government to make rules for the conduct and regulation of the business of such society or class of societies, and for carrying out the purposes of this Act. Sub-section (2) of section 165, *inter alia*, provides that

without prejudice to the generality of the foregoing power, such rules may, (lx) *prescribe the procedure to be followed for attachment and sale of property, for the realization of any security given by a person in the course of execution of proceedings; and (lxviii) prescribe, in case of sale of immovable property under Chapter XI -- (a) the procedure for proclamation and conduct of the sale and the conditions on which an attempt of sale may be abandoned; (b) xxx (not relevant) (c) the procedure for the receipt of deposit and disposal of the proceeds of sale; (d) the procedure for a resale, if, an attempted sale is abandoned or the purchase money is not deposited within the prescribed time and the penalty to be levied against the purchaser who fails so to deposit the purchase money.*

44. Rule 107 provides for the procedure of attachment and sale of property under Section 156. Clause (iii) of sub-rule (14) of Rule 107 of 1961 Rules provides that on the expiration of 30 days of sale, if no application to have the sale set aside is made or if such application has been made and rejected, the Recovery

Officer shall make an order confirming the sale. The Recovery Officer is defined in Rule 2(h) of 1961 Rules as follows:

“recovery officer” means any person empowered to exercise, in any district, the powers of the Registrar under Section 156”.

Upon consideration of the aforesaid provisions, in our view, the Recovery Officer is an Officer who exercises the power of the Registrar to effect recovery under Section 156 of the 1960 Act. As per Section 156 he may or may not be an officer subordinate to the Registrar. As this point was not discussed by the High Court, we do not wish to address the aforesaid issue and decide whether he was an officer subordinate to the Registrar. Moreover, if we conclude that sale confirmation was void rendering the sale a nullity, nothing much turns on the said issue.

Issue Nos. 3 & 4

45. As issues 3 and 4 are interrelated we shall deal with them together. While deciding issue no.2 (supra), we have taken note of Clause (lxviii) of sub-section (2) of Section 165 of the 1960 Act empowering framing of rules,

inter alia, prescribing the procedure for a resale, if, an attempted sale is abandoned, or the purchase money is not deposited within the prescribed time. We shall now consider the Rules framed in that behalf.

46. Rule 107 (11) (g) (h) (i) (j) and (k) of 1961 Rules provides as under:

- (i) Rule 107 (11) (g) provides that a sum of money equal to 15 per cent of the price of the immovable property shall be deposited by the purchaser in the hands of the Sale Officer (*with effect from 30.08.2014, it is 'Recovery Officer'*) at the time of the purchase, and in default of such deposit, the property shall forthwith be re-sold; provided that where the applicant is the purchaser and is entitled to set off the purchase money under clause (k), the sale officer shall dispense with the requirements of this clause.
- (ii) Rule 107(11) (h) provides that the remainder of the purchase money and the amount required for the general stamp for the sale certificate shall be

paid within fifteen days (*with effect from 30.08.2014, it is 30 days*) from the date of sale: provided that the time for payment of the cost of the stamp may, for good and sufficient reasons, be extended at the discretion of the Recovery Officer up to thirty days (*with effect from 30.08.2014, it is forty five days*) from the date of sale: provided further that in calculating the amounts to be paid under this clause, the purchaser shall have the advantage of any set off to which he may be entitled under clause (k).

- (iii) Rule 107(11) (i) provides that in default of payment within the period mentioned in the last preceding clause, the deposit may, if the Recovery Officer thinks fit, after defraying the expenses of the sale, be forfeited to the State Government and the defaulting purchaser shall forfeit all claims to the property or to any part of the sum for which it may subsequently be sold.

- (iv) Rule 107 (11) (j) provides that every resale of immovable property in default of payment of the amounts mentioned in clause (h) within the period allowed for such payment shall be made after the issue of a fresh proclamation in the manner and for the period herein before prescribed for the sale.
- (v) Rule 107 (11) (k) provides that where an applicant purchases the property, the purchase money and the amount due on the decree shall be set off against one another, and the Recovery Officer shall enter up satisfaction of the decree in whole or in part accordingly.

47. A conjoint reading of clauses (g) to (k) of sub-rule (11) of Rule 107 of 1961 Rules make it clear that if 15 per cent of the price of the immovable property is not deposited at the time of the purchase, the property shall forthwith be re-sold. If the said amount of 15 per cent is deposited, in terms of the provisions of Clause (h), the remainder of the purchase money and the amount

required for the general stamp for the sale certificate is to be paid within fifteen days (*w.f. 30.08.2014, it is 30 days*) from the date of sale. The first proviso to clause (h) gives discretion to the Recovery Officer to extend the time for payment of the cost of the stamp, for good and sufficient reasons, up to 30 days from the date of sale. However, no such discretion is vested in the Recovery Officer to extend the time for making payment of remainder of the purchase money. Rather, clause (i) provides for consequences of non-payment. Clause (i) of sub-rule (11) of Rule 107 states that if the payment is not made within the period mentioned in the preceding clause, the deposit may be forfeited to the State Government and the defaulting purchaser shall forfeit all claims to the property or to any part of the sum for which it may subsequently be sold. Clause (j) further clarifies that every resale of immovable property in default of payment of the amounts mentioned in clause (h) within the period allowed for such payment, shall be made after the issue of a fresh proclamation in the manner and for the period

herein before prescribed for the sale. In our view, therefore, there is no discretion vested in the Recovery Officer to extend the period for deposit of remainder of the purchase money. Not only that, if the remainder of the purchase money is not deposited, the amount already deposited may be forfeited. Additionally, it is provided, the property would have to be re-sold and for which a fresh proclamation shall be necessary.

48. The aforesaid provisions were considered and interpreted by this Court in ***Shilpa Shares & Securities (supra)***. In the context of Rule 107 (11)(g)(h) of 1961 Rules, this Court held that if full purchase money is not deposited within the prescribed period, the sale is a nullity and not a mere irregularity. While holding so, this Court placed reliance on earlier decisions in ***Manilal Mohanlal Shah and others vs. Sardar Sayed Ahmed Sayed Mahmud and another***²⁰ and ***Balram v. Ilam Singh and others***²¹.

²⁰ AIR 1954 SC 349, (1954) 1 SCC 724

²¹ 1996 (5) SCC 705

49. By relying on ***Shilpa Shares & Securities (supra)***, on behalf of the legal representatives of the judgment-debtor, it has been argued that even if the revisional decision is bad for want of jurisdiction, as is alleged, the auction sale being void, a nullity, could be discarded even in a collateral challenge to it, and therefore, the view taken by the High Court as regards auction sale being void is not liable to be interfered with.

50. *Per contra*, on behalf of the auction purchaser submission is that the auction purchaser had deposited more than 15% on the date of auction sale and later, he deposited the entire amount within the period allowed by the Recovery Officer. Further, the amount required to be deposited was for the benefit of the Bank. Thus, once neither the borrower nor the Bank raised any objection in respect of subsequent deposits, the right to raise such an objection would be deemed waived. Thus, it cannot be a ground to hold the sale void. In support of the above submission, learned counsel for the auction purchaser

placed reliance on a decision of this Court in **Sri Siddheshwara Co-operative Bank Ltd. (supra)**.

51. In **Sri Siddheshwara Co-operative Bank Ltd (supra)**, the borrower committed default in repayment of a Housing Loan. Despite several reminders, when the borrower failed to make payment of the loan amount, the Bank issued a demand notice under Section 13(2) of the SARFAESI Act, 2002 on 30.06.2005. On failure to pay, on 18.12.2005 the Bank published a notice to auction the secured assets. The auction purchaser made deposit of Rs.90,000 towards earnest money on 18.12.2005 itself and on 11.01.2006 public auction was conducted. The bid of the auction purchaser of Rs. 8,50,000 was accepted, being the highest bid. The auction purchaser thereafter paid Rs. 1,45,000 towards 25% of the sale consideration. However, the auction purchaser did not make payment of remaining 75% within 15 days of the confirmation of sale in his favour. Rather, he paid the balance sale price in installments spread over a period extending up to 13.11.2006. On 16.11.2006, the Bank

issued the sale certificate in favour of the auction purchaser. As sale proceeds fell short of the total outstanding amount against the borrower, the Bank moved the Joint Registrar of Co-operative Societies for recovery of the outstanding amount. In those proceedings, an *ex parte* award for a sum of Rs. 2,37,038 was passed. The Bank applied for execution of the award somewhere in 2011. At that stage, the borrower challenged the sale certificate through writ petition(s). The Single Judge Bench as well as Division Bench of the High Court quashed the sale certificate and the demand notice, inter alia, on the ground that mandatory requirement of Rule 9 was not followed. The matter came to this Court. The issue which arose for consideration there was as to what would be the consequence of an infraction of Rule 9(4) of the Security Interest (Enforcement) Rules, 2002²²² i.e., whether it would vitiate the auction.

52. Rule 9(4) of the Enforcement Rules provides that the balance amount of purchase price payable shall be

²²² Hereinafter referred to as Enforcement Rules.

paid by the purchaser on or before the fifteenth day of confirmation of sale of the immovable property or such extended period as may be agreed upon in writing between the parties. Rule 9 (5) thereof provided that if the balance amount of purchase price is not paid as required under sub rule (4), then the deposit shall be forfeited and the property shall be resold and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may subsequently be sold.

53. Interpreting the said provisions, in **Sri Siddheshwara Co-operative Bank Ltd (supra)**, this Court held that the period of fifteen days in Rule 9(4) is not that *sacrosanct*, and it is extendable if there is a written agreement between the parties for such extension. The Court went on to observe that Enforcement Rules do not prescribe any form for such agreement except that it must be in writing. Consequently, it held:

“14. ... The use of term ‘written agreement’ means a mutual understanding or an arrangement about

relative rights and duties by the parties. For the purposes of Rule 9(4), the expression “written agreement” means nothing more than a manifestation of mutual assent in writing. The word ‘parties’ for the purposes of Rule 9(4) we think must mean the secured creditor, borrower and auction purchaser”.

The Court thereafter went on to hold: -

“19. There is no doubt that Rule 9(1) is mandatory but this provision is definitely for the benefit of the borrower. Similarly, Rule 9(3) and Rule 9(4) are for the benefit of the secured creditor (or in any case for the benefit of the borrower). It is settled position in law that even if a provision is mandatory, it can always be waived by a party (or parties) for whose benefit such provision has been made. The provision in Rule 9(1) being for the benefit of the borrower and the provisions contained in Rule 9(3) and Rule 9(4) being for the benefit of the secured creditor (or for that matter for the benefit of the borrower), the secured creditor and the borrower can lawfully waive their right. These provisions neither expressly nor contextually indicate otherwise. Obviously, the question whether there is waiver or not depends on facts of each case and no hard and fast rule can be laid down in this regard.”

54. In our view, the aforesaid judgment is of no help to the auction purchaser because in the case on hand the judgment-debtor(s), including the legal heirs, by their conduct, or otherwise, had not given up their right to challenge the validity of the auction. Besides, there is no provision *pari materia* Rule 9(4) of Enforcement Rules in

Rule 107 of 1961 Rules, enabling extension of time to deposit the balance amount.

55. Further, the decision of this Court in ***Shilpa Shares & Securities (supra)*** still holds the field. In such circumstances, the view taken by the High Court that confirmation of the auction sale was void as the remainder payment was not made within the period prescribed by the 1961 Rules cannot be faulted. Moreover, provisions of the nature as incorporated in Rule 107(11)(h) are not only for the benefit of the creditor but they serve a public purpose to maintain the sanctity of public auctions else non-serious bidders would participate to manipulate the price to be discovered in a public auction, which may, ultimately, delay the whole process. For the aforesaid reasons, we are of the considered view that clauses (g) and (h) of sub-rule (11) of Rule 107 of 1961 Rules are mandatory and serve a larger purpose not limited to the interest of the creditor. We further hold that there is nothing on record to indicate that the benefit of the said provision has been waived by

the borrower including his heirs. In view of the discussion above, we do not find any fault in the order passed by the High Court holding the sale confirmation as null and void.

Issue No.5

56. As we have already held that the sale confirmation was bad in law and a nullity, the question whether the property in question was liable to be sold is rendered academic, and therefore, we do not propose to address the same. The same is, therefore, kept open for consideration at an appropriate stage in an appropriate proceeding.

Issue No.6

57. Now, the question that arises for our consideration is as to what would have been the appropriate order of the High Court on finding the auction sale void i.e., being in violation of the provisions of Rule 107 (11) (g) & (h) of 1961 Rules. The operative portion of High Court's order reads thus:

“(i) Writ Petition Nos.393 of 2010 and 1779 of 2010 are dismissed;

(ii) Respondent Nos. 4 to 6 in Writ Petition No. 393 of 2010 (who are Respondent Nos. 4 to 6 even in the companion petition) shall deposit a sum of Rs. 79,44,042 with Mahanagar Co-operative Bank Limited (Respondent No.2 in these petitions) within a period of 12 weeks from today;

(iii) Mahanagar Co-operative bank limited shall refund a sum of Rs. 1.51 crores to M/s. Adishakti Developers with such interest as may have accrued from time to time on the surplus amount of Rs. 71,55,958 held by them so far;

(iv) M/s. Adishakti will have liberty to adopt such steps as may be permissible to them in law for recovering damages, if any, suffered by them as a result of cancellation of the auction sale on an application made four years after such auction sale;

(v) Writ Petition No. 1543 of 2009 and Appellate Side Writ Petition No. 6544 2009 are dismissed;

(vi) No order as to costs.”

58. It is not in dispute that the auction purchaser i.e., M/s. Adhishakti Developers had deposited in total a sum of Rs. 1,51,00,000 in terms permitted by the Recovery Officer. In such circumstances, the auction purchaser cannot be penalized for the fault of the Recovery Officer. Likewise, the Bank cannot be penalized by letting them forgo the interest which has accrued, and which

continues to accrue under the award. Further, Rule 107 (11) (j) provides for a resale of the property on default in payment of the amount(s) within the period specified in clause (h) and such sale is to be made after issuing a fresh proclamation. Consequently, taking a conspectus of the facts and law, we are of the view that ends of justice would be served if the order of the High Court is modified and substituted by the following order:

ORDER

The auction sale held on 29.01.2005 is set aside. Consequently, the confirmation of sale, dated 18.03.2005, is declared null and void. The subject property shall be put to a fresh auction in terms of Rule 107(11) (j) of 1961 Rules for realization of the amount payable under the award. The Bank shall refund the amount deposited by M/s Adishakti Developers along with interest at the rate of 6% per annum from the date of deposit till the date of repayment. The writ petitions before the High Court shall stand disposed of in the aforesaid terms. However, it is clarified that subject to

the right of M/s Adishakti Developers to get a refund under this order, this order shall be without prejudice to the right of the Bank (decree /award holder) and the judgment debtor(s) including their legal representatives to arrive at a settlement/ compromise regarding the dues payable under the award and file such compromise/ settlement before the recovery officer for discharge of the recovery proceedings.

59. These appeal(s) are disposed of in the above terms.
60. All pending applications, if any, shall also stand disposed of.
61. There shall be no order as to costs.

.....
.....J.
(Pamidighantam Sri Narasimha)

.....J.
(Manoj

Misra)

New Delhi;
February 25, 2026