



2024 INSC 741

**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO. 8343 OF 2024**  
**[Arising out of SLP(C) NO. 16901 OF 2024]**

**THE AHMEDNAGAR DISTRICT CENTRAL  
COOPERATIVE BANK LTD.**

**... APPELLANT**

**VERSUS**

**THE STATE OF MAHARASHTRA AND ORS.**

**...RESPONDENTS**

**J U D G M E N T**

**DIPANKAR DATTA, J.**

**THE CHALLENGE**

1. Ahmednagar District Central Cooperative Bank Limited<sup>1</sup> is in appeal, challenging the judgment and order dated 23<sup>rd</sup> November, 2017<sup>2</sup> of the High Court of Judicature at Bombay, Bench at Aurangabad<sup>3</sup> dismissing

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<sup>1</sup> appellant, hereafter

<sup>2</sup> impugned judgment, hereafter

<sup>3</sup> High Court, hereafter

its writ petition<sup>4</sup>. Under challenge in the writ petition was an auction sale pertaining to the immovable property of Mula Sahakari Soot Girni Ltd., Rahuri<sup>5</sup>. The challenge was primarily based on twin grounds: (i) that valuation of the property of the society (under liquidation) and the upset price were fixed on the lower side; and (ii) that three bidders had not participated in the auction sale. The High Court did not find substance in any of these two grounds. Incidentally, the High Court recorded that no *mala fide* could be attributed in respect of the questioned auction sale and that the auction purchaser was not a private individual but a body established under the statute, i.e., the Agricultural Produce Market Committee, Rahuri<sup>6</sup>.

### THE FACTS

2. The basic facts leading to the questioned auction sale before the High Court are not in dispute.
3. The appellant sanctioned cash credit loan of ₹95 lakh to the society. Default in liquidating the debt having occurred, the appellant lodged a dispute case<sup>7</sup> on 7<sup>th</sup> March, 2001 before the Registrar of Cooperative Societies, Maharashtra under section 91 of the Maharashtra Cooperative Societies Act, 1960<sup>8</sup> for recovery of ₹1,05,98,710/-. The dispute case stood allowed and *vide* an award dated 24<sup>th</sup> June, 2011, the appellant was held entitled to recover ₹1,05,98,710/- with interest

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<sup>4</sup> Writ Petition No. 10866 of 2016

<sup>5</sup> society, hereafter

<sup>6</sup> respondent no. 6, hereafter

<sup>7</sup> Dispute Case No.389 of 2001

<sup>8</sup> the 1960 Act, hereafter

@ 17.5% per annum with effect from 1<sup>st</sup> October, 2000 from the society.

4. In liquidation proceedings which had started in the meanwhile, initially an interim order dated 3<sup>rd</sup> April, 2002 was passed calling upon the society to submit its say/explanation within the period stipulated as to why an order of dissolution should not be made. Thereafter, a final order dated 31<sup>st</sup> August, 2005 was passed by the Additional Registrar in terms of section 102 of the 1960 Act read with certain Government notifications referred to therein directing winding up of the society. The District Collector, Ahmednagar was appointed as the Liquidator of the society and he was directed to take action under section 105 of the 1960 Act and the rules framed thereunder. The final report was directed to be filed within a year to the Directorate of Textile Industry for acceptance.
5. The appellant had attached the immovable property of the society and obtained a valuation of a Government approved valuer on 21<sup>st</sup> January, 2012. The property of the society was valued at ₹4.10 crore as on 21<sup>st</sup> January, 2012.
6. Auction sale notice dated 24<sup>th</sup> August, 2013 was issued by the appellant for sale of the property with upset price of ₹4.10 crore. The respondent no.6 expressed interest and submitted its bid together with earnest money of ₹25 lakh. The sale process, however, could not materialize since no other bid was received. This resulted in the respondent no.6 backing out from the auction process and requesting the appellant to return the earnest money of ₹25 lakh.

7. Because of the failure of the appellant to sell the property by an auction, it submitted a claim before the Liquidator by letters dated 30<sup>th</sup> June, 2015, 5<sup>th</sup> September, 2015 and 2<sup>nd</sup> March, 2016. By July, 2016, the amount recoverable by the appellant from the debtor had swelled to ₹3,95,08,840/-. However, allegedly, no response was received.
8. While the events as aforesaid were unfolding, a pending writ petition<sup>9</sup> before the High Court in respect of the liquidation process of the society and for directions to pay the employees thereof their legitimate dues had come up for consideration. On such writ petition, an order was made by the High Court on 9<sup>th</sup> June, 2015 directing the Liquidator and the Registrar of Cooperative Societies to take effective steps for sale of the property of the society within 6 (six) months. It was also observed by the High Court that the amount received from the sale of the property of the society would be distributed amongst the creditors as per law.
9. Consequent upon the order dated 9<sup>th</sup> June, 2015, fresh valuation of the property was undertaken through the Sub-Registrar, Rahuri, Dist. Ahmednagar. He valued the property to the tune of ₹87,33,200/-<sup>10</sup>. From the same paragraph, it appears that the Liquidator also "*obtained the valuation of the property from the open market, which was come to the tune of ₹2,47,48,000/-*". The Director of Handlooms and

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<sup>9</sup> Writ Petition No. 610 of 2001

<sup>10</sup> paragraph 12 of the counter affidavit before the High Court

Textile<sup>11</sup> granted permission on 1<sup>st</sup> December, 2015 to the Liquidator to proceed with the e-tender process.

10. On 12<sup>th</sup> February, 2016, the Liquidator issued e-auction notice in a daily newspaper and invited offers stipulating 14<sup>th</sup> March, 2016 as the date for holding of auction.
11. On 2<sup>nd</sup> March, 2016, the appellant informed the District Sub Registrar, Cooperative Societies, Ahmednagar specifying the liability of the society in a sum of ₹3,78,82,837/- as on 31<sup>st</sup> January, 2016 with interest @ 17.5%. A request was made by the appellant that the sale price received through e-auction be credited in its account. It is of great significance to note that the appellant even in this letter dated 2<sup>nd</sup> March, 2016 did not object to the property, put up for auction sale, being valued at ₹2,47,48,000/-, though it is presumed to have notice of the e-auction notice 12<sup>th</sup> February, 2016 by that date.
12. Although, 14<sup>th</sup> March, 2016 was the date fixed for holding of auction as per the e-auction notice dated 12<sup>th</sup> February, 2016, holding of the auction was postponed first to 7<sup>th</sup> April, 2016, secondly to 19<sup>th</sup> May, 2016 and thirdly to 25<sup>th</sup> May, 2016. It was on 25<sup>th</sup> May, 2016, finally, that auction was held and in such process the respondent no.6 emerged as the highest bidder having offered a bid of ₹2,51,48,000/. Ultimately, by following further processes, the property of the society was sold and transfer effected in favour of the respondent no.6.

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<sup>11</sup> respondent No. 2

13. Even after the auction sale was conducted on 25<sup>th</sup> May, 2016, the appellant did not immediately question the sale before the High Court. Till the writ petition was ultimately filed on 19<sup>th</sup> August, 2016, the appellant was engaged in obtaining information. Only when it derived firm and specific information that the name of the respondent no.6 had not been entered in the revenue records (7/12 extract) and that possession not taken over by the respondent no.6, the appellant invoked the writ jurisdiction of the High Court seeking *inter alia* the following relief:

- A. to declare the e-auction notice dated 12<sup>th</sup> February, 2016 as well as the auction sale in favour of the respondent no. 6 as illegal and arbitrary, and to quash the same.
- B. to sell the property of the society by mentioning upset price of ₹4.28 crore by taking further steps in that regard.

The outcome of the appellant's writ petition has been noted at the beginning of this judgment and is, thus, not repeated.

#### APPELLANT'S CONTENTIONS

14. Mr. Hansaria, learned senior counsel for the appellant, contended that the Government approved valuer appointed by the appellant having valued the property at ₹4.10 crore in 2013, the subsequent valuations of the same property by the office of the Sub-Registrar, Rahuri at ₹87,33,200/- followed by valuation obtained by the Liquidator from the open market to the tune of ₹ 2,47,48,000/- are incomprehensible

and unacceptable. According to him, in present times, price of an immovable property with passage of time is bound to increase and it was in defiance of all logic and reasons that the property of the society could be valued at ₹2,47,48,000/- and put up for auction sale. Even in 2016, the valuation of the property of the society undertaken by the appellant showed an accretion. It is in such circumstances, he contended, that the appellant has a genuine grievance of the property put up for auction sale not being appropriately valued and that, in fact, there was gross undervaluation.

15. It was next contended by Mr. Hansaria that the procedure prescribed by the 1960 Act was not substantially followed by the Liquidator while inviting offers from interested buyers so as to ensure that the best price could be fetched. Our attention was drawn to several corrigenda that were issued postponing the dates of auction from time to time. It was contended that all such corrigenda, including corrigendum 5 specifying 25<sup>th</sup> May, 2016 as the date of auction, were not published in any newspaper. Consequent thereto, there was no adequate publication of the date for holding auction and only two bidders participated whereas the requirement of law is for participation by a minimum of three bidders.
16. Mr. Hansaria further contended that the High Court erred in returning a finding that the entire process of auction sale of the property of the society culminating in purchase thereof by the respondent no. 6 did not suffer from the taint of *mala fide*. None of the several corrigenda was published in the newspapers; what the Liquidator did was to

display the notice on the website. This resulted in a large cross-section of interested buyers being kept away from the auction process. Since the respondent no. 6 was aware of the auction process right from 2013 and had expressed interest to participate pursuant to the sale notice dated 24<sup>th</sup> August, 2013, where the valuation of the property was mentioned as ₹4.10 crore, it stands to reason that the respondent no. 6 even in 2013 was willing to offer a bid nearabout ₹4 crore; or else, it would not have deposited ₹25 lakh as earnest money deposit. The officers in the relevant department of the Government of Maharashtra devised a plan to ensure that the property of the society is ultimately sold to the respondent no. 6 and that seems to be the clear reason why the procedure prescribed in the 1960 Act was given a complete go-bye. Malice in law was writ large which, according to him, the High Court failed to notice.

17. Finally, Mr. Hansaria submitted that though the property of the society was sold for a paltry amount of ₹2,51,48,000/-, the appellant has not received a single penny towards liquidation of the debt and its dues quantified, as on 23<sup>rd</sup> July, 2024, are in excess of ₹5 crore.
18. Mr. Hansaria, while relying on certain decisions of this Court (which have emphasised the need for strict compliance of the procedures for auction sale) prayed that the sale in favour of the respondent no. 6 be declared null and void and a direction be issued for fresh auction of the property of the society by open sale.



CONTENTIONS OF THE RESPONDENTS

19. Mr. Varma, learned counsel represented the State of Maharashtra and its officers being the official respondents. He contended that there was no irregularity, far less any illegality, in the process of sale undertaken pursuant to the order of the High Court dated 9<sup>th</sup> June, 2015 as well as the prior order permitting the property to be put up for auction sale.
20. It was contended by Mr. Varma that it is incorrect to suggest that only two bidders participated in the auction sale. Pursuant to the auction sale notice, 3 (three) bidders had expressed interest to participate and had made deposits towards earnest money. However, finally, two of the said three bidders turned up at the auction. In all fairness, the officers of the Government cannot be blamed if any particular buyer, despite showing an early interest, does not turn up at the auction to compete with the other interested buyers.
21. Mr. Varma concluded by submitting that the appeal is without merit and, therefore, liable to be dismissed.
22. Appearing on behalf of the respondent no.6, Mr. Deshmukh, learned counsel contended that allegations levelled by the appellant of *mala fide* having vitiated the process of auction are absolutely unfounded. None of the officers of the Government or the Chairman of the respondent no.6 were parties to the writ petition of the appellant *eo nomine*. Law is well settled that the Courts should be loath to examine allegations of *mala fide* in the absence of the persons, against whom

such an allegation has been made, being arrayed as a respondent by name. According to him, the appellant has become wiser and filed an application for impleadment belatedly to cover up the omission; hence, such application ought to be dismissed *in limine*.

23. On merits, Mr. Deshmukh submitted that the respondent no.6 is a creature of a statute and a *bona fide* purchaser of the property for value. Though the respondent no.6 was interested to purchase the property and had evoked interest even in 2013 when the appellant had initiated an auction process, the submission advanced on behalf of the appellant that the respondent no.6 was unduly favoured, is absolutely without substance. Respondent no.6 was a willing participant along with others in an open bid process and emerged successful having offered the highest bid. There has been no illegality in selection of the respondent no.6 as the highest bidder and finalising the sale in its favour. That apart, after purchase of the property in 2016, the same has been developed by the respondent no.6 by expending substantial amount of money. It would, therefore, not be fair if the auction sale is upset at this distance of time.

24. Mr. Deshmukh, thus, joined Mr. Varma in urging that the appeal must be dismissed.

#### PROCEEDINGS BEFORE THIS COURT

25. The special leave petition, out of which this appeal arises, was heard by us on 23<sup>rd</sup> July, 2024. The order passed on that date records, *inter alia*, that the impleadment application stands disposed of as not

pressed. While granting leave and reserving judgment, the State was required to submit within the period indicated in the order break-up of the amounts disbursed in favour of the creditors out of ₹2,51,48,000/- received as the price of sale. Also, the appellant was required to file details of its outstanding dues.

26. In deference to the said order dated 23<sup>rd</sup> July, 2024, the official respondents have filed an application (IA Diary No. 169446 of 2024). Through such application is brought on record a chart (Annexure R1) depicting the amounts disbursed in favour of the creditors and true copies of the bank statement (Annexure R2) of the Liquidator.
27. Perusal of the application reveals amounts disbursed towards outstanding taxes and Government dues of the society, payments to employees/labours, payment towards remuneration of the Liquidator and cost of liquidation, etc. It is stated therein that ₹2,34,80,141/- has already been paid to the creditors out of the priority list approved by the Commissioner of Textiles, Nagpur. As on 29<sup>th</sup> July, 2024, it is only an amount of ₹29,78,499/- that remains as the balance amount after all the exercises were undertaken for securing payments to various creditors indicated in such chart.
28. The appellant has also placed on record certain statements of accounts in support of its stand that a sum of ₹5,28,32,307/- is outstanding from the society towards principal, interest and other costs/charges.

ANALYSIS AND REASONS

29. Having noted the facts that triggered the writ petition before the High Court at the instance of the appellant as well as the steps taken, post the auction sale, we are tasked to decide whether the justice of the case demands grant of any relief to the appellant and, if so, to what extent.
30. It could be true that the procedural formalities ordained by the 1960 Act and the rules framed thereunder might not have been followed to the 'T', as contended by Mr. Hansaria. Nonetheless, it is the appellant which, by its negligence, seems to have allowed the auction process to progress to the extent of finalisation of sale in favour of the respondent no. 6. If indeed valuation of the property of the society suffered from any infirmity, so much so that any reasonable person could form an opinion of the property being undervalued, what has surprised us is the conduct of the appellant in invoking the jurisdiction of the writ court late. Much before the auction took place, the appellant was fairly and squarely aware of the upset price for the auction sale. The appellant, so to say, was sitting on the fence and watching which direction the auction process proceeds. The appellant was seized of the report of a Government approved valuer who valued the property of the society in excess of ₹4 crore in the year 2013. Since prices of immovable properties seldom decline with passage of time, what was expected of the appellant was to seek interference of the High Court as soon as the auction sale notice dated 12<sup>th</sup> February, 2016 was

published. In its letter dated 2<sup>nd</sup> March, 2016, the appellant did not object to the valuation. The auction sale notice dated 12<sup>th</sup> February, 2016 was duly published in the newspapers and did bear reflection of the valuation of the property put up for sale with the upset price, yet, the appellant remained in slumber. It has never been the case of the appellant that it had no notice/knowledge of such notice. We have, thus, failed to comprehend as to what prevented the appellant, if at all it was aggrieved by the undervaluation of the property as shown in the notice, to take immediate recourse to available legal remedies to stall the process. The explanation that the appellant was busy in obtaining information after the auction sale was conducted for launching an attack on the process of sale could be correct on facts but by that, precious time was lost. Law is well-settled that a writ court does not encourage petitions from indolent, tardy and lethargic litigants; the writ court comes to the aid of a litigant who approaches it with promptitude and before accrual of third-party rights. Not having approached the High Court before accrual of a right in favour of the respondent no.6, we hold that on facts and in the circumstances, it was not open to the appellant to question the auction sale process in question after finalisation of the sale in favour of the respondent no.6. That possession of the property had not been taken by the appellant or that its name was not entered in the revenue records are of no significance having regard to the discernible conduct of the appellant in allowing things to drift to its detriment. We are, thus, of the

considered opinion that matters which have settled for long ought not to be unsettled.

31. Be that as it may, it is a fact that the society (as on date the dispute case was allowed) was held liable in a sum of ₹1,05,98,710/- payable to the appellant with interest @ 17.5% per annum with effect from 1<sup>st</sup> October, 2000.
32. In this context, one cannot overlook that the respondent no.6 had expressed interest to purchase the property of the society pursuant to the sale notice dated 24<sup>th</sup> August, 2013. It clearly suggests that notwithstanding ₹4.10 crore being shown as the upset price in the advertisement, the respondent no.6 was ready and willing to compete with other interested buyers. Therefore, at least at that stage, the respondent no.6 was willing to shell out ₹4.10 crore for purchase of the property. That the bid process did not materialize for lack of adequate number of bidders fortuitously worked to the advantage of the respondent no.6. In the subsequent auction sale process, the respondent no.6 practically purchased the property for a song; and, that too, after a lapse of 3 (three) years. The appellant had placed facts and figures in its rejoinder affidavit filed before the High Court to demonstrate at what price the adjacent and neighbouring properties were disposed of by sale, post 2013. The escalation of price, demonstrated by the appellant, has not surprised us. The respondent no. 6 did not contest such facts and figures, probably because the High Court was not inclined to interfere and did not call for a sur-rejoinder. But merely because the respondent no.6 is a creature of a statute, that

would not clothe it with any immunity and to have a property transferred to it at a throw away price. After all, the appellant's status has also to be borne in mind. It is not a private bank but a Co-operative Bank, which has been brought into existence with specific objects and purposes in mind. The interest of the appellant, when its outstanding dues recoverable from the society runs into crores of rupees, cannot be brushed aside and deserves due consideration in order to keep the appellant survive in the banking sector.

**CONCLUSION**

33. For a reason different from the one assigned by the High Court, we do not propose to interfere with the sale effected in favour of the respondent no.6 by the Liquidator. To that extent, the impugned judgment of the High Court is upheld.
34. However, having regard to what we have observed above, we are also of the opinion that it would only be just and fair for us to invoke powers conferred by Article 142 of the Constitution of India. Invoking such power and with a view to do complete justice between the parties, we direct the respondent no.6 to pay to the appellant a sum of ₹1,05,98,710/- (without interest) towards full and final settlement of the dues of the appellant from the society. Let such sum be paid by the respondent no.6 to the appellant within three months from date, failing which the said sum shall carry simple interest @ 6% per annum till such time the payment is actually made.

35. As on 29<sup>th</sup> July, 2024, after clearing the dues of the creditors, an amount of ₹29,78,499/- is reportedly the balance amount. The Liquidator may disburse such amount to the other creditors, excluding the appellant, as per priority. However, if all other creditors have been paid their dues and none else remains to be paid, the said sum of ₹29,78,499/- or any part of it may be disbursed in favour of the appellant.
36. The civil appeal stands disposed of on the aforesaid terms. Parties shall bear their own costs throughout.
37. Pending applications, if any, shall also stand disposed of.

.....J.  
**(DIPANKAR DATTA)**

.....J.  
**(PRASHANT KUMAR MISHRA)**

**New Delhi.  
September 27, 2024.**