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M/S. SHILPA SHARES AND SECURITIES AND ORS
v.
THE NATIONAL CO-OPERATIVE BANK LTD. AND ORS

MAY 2, 2007

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[S.B. SINHA AND MARKANDEY KATJU, JJ.]

Maharashtra Co-operative Societies Act, 1960/Maharashtra Co-operative Societies Rules, 1961; Rule 107:

C

Loan—Default in payment by borrower—Recovery by Auction sale of the property of borrower—85% of the purchase money not paid by the purchaser—Effect of—Held: Sale was not valid—Under the circumstances, the bank is directed that the property be again auction sold after proper advertising and complying with the procedure under R.107 of the Rules—Sale of Goods Act, 1930—Sale.

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Appellant had borrowed a loan from respondent No.1, a co-operative bank. Since the appellant was in default in payment of the loan, recovery proceedings were initiated against it by the bank under the Maharashtra Co-operative Societies Rules, 1961. In pursuance of the recovery in terms of R.107 of the Rules framed under the Act, an auction was held for sale of the appellants' properties. Under Rule 107(11)(g) of the Rules, 15% of the price of the immovable property has to be deposited by the auction purchaser at the time of the purchase and the remaining 85% of the purchase money has to be paid within 15 days from the date of such sale. Admittedly, in the present case, the aforesaid 85% of the purchase money required to be paid within 15 days from the date of such sale was not paid nor even paid thereafter. Aggrieved, the appellant challenged the sale as not valid. The petition was dismissed by the High Court. Hence the present appeal.

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Allowing the appeals, the Court

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HELD: 1.1. In the decided case of *Balram v. Ilam Singh and others*, this Court held that the obligation of the purchaser to deposit the full purchase money within time is a mandatory requirement and non-compliance of the rule renders the sale a nullity and not a mere irregularity. In view of the above, the auction sale of the appellants' property was a nullity, and there was no

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valid auction sale. [Paras 6 and 7] [1130-C, D]

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Manilal Mohanlal Shah and Ors v. Sardar Sayed Ahmed Sayed Mahmud and Anr., AIR (1954) SC 349 and *Balram v. Ilam Singh and Ors.*, [1996] 5 SCC 705, relied on.

1.2. It is directed that the said property be again auction sold after advertising it in at least two well-known newspapers having wide circulation, mentioning therein the date, time and place of the auction sale and after complying with the procedure under Rule 107 of the Maharashtra Co-operative Rules. [Para 9] [1130-E]

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CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 6760-6761 of 2004.

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From the Final Judgment and Order dated 16.01.2003 & 07.03.2003 of the High Court of Judicature at Bombay in Writ Petition No. 105 of 2003 & Review Petition No. 31 of 2003, respectively.

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Dr. Rajeev B. Masodkar and Anil Kumar Jha for the Appellants.

E.C. Agrawala, Mahesh Agrawal, Gaurav Goel, Amit Kumar Sharma, Neha Aggarwal, Varun Mathur and Mridula Ray Bharadwaj for the Respondents.

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The Judgment of the Court was delivered by

MARKANDEY KATJU, J. 1. These appeals have been filed against the impugned judgment and order dated 16.1.2003 of the Bombay High Court in writ petition No. 105/2003.

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2. Heard learned counsel for the parties and perused the record.

3. The appellant had taken a loan from respondent No. 1, which is a co-operative bank registered under the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as the 'Act'). Since the appellant was in default in payment of the loan, recovery proceedings were taken under the Maharashtra Co-operative Societies Rules, 1961 (hereinafter referred to as the 'Rules').

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4. In pursuance to the recovery, recourse was taken to the procedure for attachment and sale of the property of the appellant prescribed in Rule 107 of the Rules, framed under the Act. An auction was held for sale of the

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A appellants' properties. Under Rule 107(11)(g) of the Rules, 15% of the price of the immovable property has to be deposited by the auction purchaser at the time of the purchase, and the remaining 85% of the purchase money has to be paid within 15 days from the date of such sale. Admittedly, in the present case, the aforesaid 85% of the purchase money was not paid within 15 days from the date of the sale nor even thereafter.

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5. In *Manilal Mohanlal Shah and Ors. v. Sardar Sayed Ahmed Sayed Mahmud and Anr.*, AIR (1954) SC 349, it has been held that in such circumstances there is no sale at all if the balance purchase money is not paid within 15 days. It is not a mere irregularity. Non-payment of the said amount renders the sale proceedings a complete nullity.

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6. In *Balram v. Ilam Singh and Ors.*, [1996] 5 SCC 705, it has been held that the obligation of the purchaser to deposit the full purchase money within time is a mandatory requirement and non-compliance of the rule renders the sale a nullity and not a mere irregularity.

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7. In view of the above, we are of the opinion that the auction sale of the appellants' property was a nullity, and there was no valid auction sale.

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8. In view of the above, the appeals are allowed. The impugned judgment is set aside and it is held that there was no valid sale of the appellant's property.

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9. We, therefore, direct that the said property be again auction sold after advertising it in at least two well-known newspapers having wide circulation, mentioning therein the date, time and place of the auction sale and after complying with the procedure under Rule 107 of the Rules. No costs.

S.K.S.

Appeals allowed.