P. M. ABUBAKAR

v.

STATE OF KARNATAKA AND ORS.

(Civil Appeal Nos.10894-10895 of 2016)

NOVEMBER 17, 2016

[ANIL R. DAVE AND A. M. KHANWILKAR, JJ.]

Auction:

Karnataka Cooperative Societies Act, 1959 – ss.89A, 106 – Auction sale of mortgage property – Debtor committed default in repayment of loan to Bank, recovery proceedings were initiated by the Bank – Award passed for the recovery of money – Debtor failed to pay the awarded amount in spite of repeated opportunities – Mortgaged property auctioned – Appellant was the highest bidder – Competent authority confirmed auction sale in favour of appellant – Sale certificate issued to appellant – Debtor preferred appeal before the Deputy Registrar (CS) u/s. 106 – Deputy Registrar (CS) held that sale was in accordance with Rules but it was a case of under valuation of the property and on that ground set aside the confirmation of sale on the condition that the debtor shall deposit stipulated amount with interest – Debtor again failed to comply with the order – Appellant-auction purchaser filed writ petition against the order of Deputy Registrar (CS), which was dismissed by High Court – On appeal, held: Order of confirmation of sale is ascribable to s.89A of the Act r/w. r.38 of the Rules – No remedy of appeal against that decision is provided – s.106 of the Act does not provide for an appeal against the order confirming an auction sale, passed u/s.89A r/w. r.38 – s.89A of the Act r/w. r.38 of the Rules provide for special dispensation – Order passed by the Deputy Registrar (CS) in appeal was without jurisdiction – Therefore, High Court committed error in dismissing the writ petition filed by appellant-auction purchaser – Order passed by Deputy Registrar (CS) setting aside auction sale in favour of appellant-auction purchaser and order of High Court confirming it, accordingly set aside – Karnataka Cooperative Societies Rules – r. 38.

Allowing the appeals by the auction purchaser and dismissing the appeals by the debtor, the Court held

A **HELD: 1. The debtor did not prefer application for setting aside the sale, inconformity with the remedy provided in that behalf in terms of Section 89A of the Karnataka Cooperative Societies Act, 1959 read with Rule 38 of the Karnataka Cooperative Societies Rules. That remedy could be availed by the debtor only after depositing the awarded amount together with interest thereon with the Recovery Officer, in terms of Rule 38(4)(a) of the Rules. The application as filed by the debtor was dismissed by the ARCS. Resultantly, the Competent Authority proceeded to confirm the auction sale, followed by grant of a certificate of sale and execution of a Sale Deed in the prescribed Form. The sale of the subject property thus, became final. [Para 23] [120-C-E]**

2. The debtor, however, was ill advised to prefer an appeal before the Deputy Registrar (CS) of Cooperative Societies, against the decision of the Competent Authority confirming the auction sale. For, remedy of appeal before that Authority could be availed only in terms of Section 106 of the Act, against an order passed by the Authority (Registrar) in exercise of powers ascribable to the provisions referred to therein. The order of confirmation of sale is ascribable to Section 89A of Karnataka Cooperative Societies Act, 1959 Act read with Rule 38 of Karnataka Cooperative Societies Rules. No remedy of appeal against that decision is provided. Section 106 of the Act does not provide for an appeal against the order confirming an auction sale, passed under Section 89A read with Rule 38. Section 89A of the Act read with Rule 38 of the Rules provide for a special dispensation. Thus understood, the order passed by the Deputy Registrar (CS) on the appeal preferred by the debtor, is without jurisdiction. [Para 24] [120-E-H]

3. The debtor unsuccessfully challenged the auction sale and prayed for setting aside the same by filing writ petitions. That relief has been rejected. A formal application for setting aside the sale filed by the debtor was also rejected by the ARCS. The appeal preferred by the debtor before the Deputy Registrar (CS) was against the decision of the Competent Authority confirming the auction sale. It was not maintainable under Section 106 of the Act. The Deputy Registrar (CS) had no jurisdiction. Further, once

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the auction sale is confirmed by the Competent Authority, it is not open to the Authority to exercise power under Rule 38(6), to set aside the sale. That would be against the spirit of legislative intent of giving finality to the auction sale process upon passing of an order of confirmation of sale. It is only the Authority referred to in Rule 38, who could have set aside the sale by recording reasons in writing in exercise of powers under Rule 38 of the Rules, albeit before passing an order confirming the auction sale. [Paras 29, 30, 31] [122-B-E]

4. In the present case, the debtor did not choose to file an application for setting aside the sale in terms of Rule 38(4) of the Rules at all. Instead, he preferred an appeal under Section 106 of the Act after the order of confirmation of sale was passed by ARCS in favour of the auction purchaser. Such appeal under Section 106 of the Act was not maintainable. The decision of confirmation of sale is not ascribable to any of the provisions expressly referred to in Section 106 of the Act, in respect of which remedy of appeal is provided. Further, the order passed by the Deputy Registrar in favour of the debtor to set aside the auction sale on conditions specified therein, is not ascribable even to an order passed under Rule 38(6). That discretion has to be exercised only by the Recovery Officer and more importantly before the order of confirmation of auction sale. [Para 34] [126-C-E]

5. The High Court committed manifest error in dismissing the Writ Petitions filed by the appellant - auction purchaser challenging the decision of the Deputy Registrar (CS). The High Court ought to have allowed the Writ Petition as the Deputy Registrar had no jurisdiction to entertain appeal against the order of confirmation of sale issued under Section 89A read with Rule 38 of the Rules; and also because, admittedly, the debtor failed to pay the awarded amount in spite of repeated opportunities given to him from time to time. Moreover, the debtor cannot succeed in the Writ Petition filed by the auction purchaser and the Bank against the decision of the Deputy Registrar and get higher or further relief in such proceedings. Thus, the Division Bench having finally disposed of the writ appeal ought not to have entertained the application preferred by the debtor in the guise of clarification and to pass any order thereon - which would enure

A **to the benefit of debtor who is in default, having become functus officio. [Para 36] [127-C-F]**

Annapurna v. Mallikarjun & Anr. **(2014) 6 SCC 397 : 2014 (7) SCR 299– referred to.**

B *J.Rajiv Subramaniyan & Anr. v. Pandiyas & Ors.* **(2014) 5 SCC 651: 2014 (3) SCR 1140;** *Vasu P. Shetty v. Hotel Vandana Palace & Ors.* **(2014) 5 SCC 660 : 2014 (9) SCR 38 – held inapplicable**

Case Law Reference

C **2014 (7) SCR 299**	**referred to**	**Para 34**
2014 (3) SCR 1140	**held inapplicable**	**Para 35**
2014 (9) SCR 38	**held inapplicable**	**Para 35**

D CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 10894-10895 of 2016.

From the Judgment and Order dated 08.06.2012 and 29.06.2012 of the High Court of Karnataka, at Bangalore in Writ Appeal No. 1006/2010 C/W Writ Appeal No. 2433 of 2010(CS)

WITH

E C. A. NOS. 10896-10897 of 2016 and

C. A. NOS. 10898-10899 of 2016.

R. S. Hegde, Ms. Farhat Jahan Rehmani, Shanti Prakash (For Rajeev Singh), Advs., for the Appellant.

F Haren Raval, Sr. Adv., Nataraj Ballal, Rajesh Mahale, Krutin R. Joshi, Girish Ananthamurthy (For Mrs. Vaijayanthi Girish), V. N. Raghupathy, Ms. Shomila Bakshi, Advs. for the Respondents.

The Judgment of the Court was delivered by

G **A. M. KHANWILKAR, J.** 1. Delay condoned.

2. Leave granted.

3. These cross appeals have been filed by the debtor (Keshva N. Kotian) and auction-purchaser (P.M. Abubakar). As the debtor committed default in repayment of loan to the Bank (Mahalakshmi Co-

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operative Bank Limited), recovery proceedings were initiated by the Bank. That culminated with an award passed by the Joint Registrar Co-operative Societies, Mysore dated 02.01.2004 against the debtor for recovery of Rs. 13, 65,899.70 with interest at 19% p.a. As the debtor failed to pay the amount in terms of the award, execution petition was filed. The debtor, however, filed an appeal being Appeal No. 419 of 2004 before the Karnataka Appellate Tribunal, Bangalore. On 21.06.2004, the Tribunal passed a conditional order of stay requiring the debtor to deposit 40% of the awarded amount within eight weeks, failing which the stay would stand vacated. The debtor failed to deposit that amount. Therefore, the bank after obtaining valuation report relating to the mortgage property, issued notice on 2.2.2005 in Form No. 6. In spite of notice, no payment was made by the debtor. As a result, the Bank issued notice of attachment in Form No. 7 on 25.02.2005. The notice of attachment was followed by a notice of auction issued on 3.3.2005, fixing the auction date as 11.04.2005. On 7.3.2005, the debtor's brother (Shri Anand Kotian) filed an objection to the said proceedings. According to him, the property was a joint family property. This objection was enquired into and rejected on 22.3.2005.

4. The debtor submitted letters dated 6.4.2005 and 8.4.2005 requesting to stay the auction in view of the financial difficulties faced by him and paid only Rs. 25,000/- in the execution case filed against him. The auction sale was postponed pursuant to the request made by the debtor. The execution case was then transferred to the Assistant Registrar Co-operative Societies (hereinafter referred to as 'ARCS'), as per the revised Government notification. A fresh notice was issued on 9.5.2005 for auction sale to be held on 17.6.2005, as no further payment was made by the debtor till that date.

5. The debtor's brother filed a Writ Petition before the High Court of Karnataka at Bangalore being Writ Petition No. 15737 of 2005, challenging the sale proclamation. The High Court passed an interim order on condition of payment of 25% of the awarded amount within two weeks. In view of the interim order passed by the High Court, the auction sale scheduled on 17.6.2005 stood postponed. The Writ Petition filed by debtor's brother was, however, disposed of on 29.6.2005 with an observation to consider his objection.

6. In the meantime auction sale was proposed to be held on 18.8.2005, but in view of the aforementioned High Court order the auction

A sale was postponed. The objection filed by the debtor's brother was considered on eight dates. He, however, filed a memo before ARCS on 21.12.2006 for withdrawal of his objection. The said objection was finally dismissed on 16th July, 2007.

7. On 30.4.2007, appeal preferred by the debtor challenging the B award dated 2.1.2004 was dismissed by the Karnataka Appellate Tribunal, Bangalore. That decision has not been challenged.

8. Once again a notice for auction sale of the mortgage property was issued on 18.7.2007, fixing the date of auction on 28.08.2007. The debtor filed a Writ Petition No. 13204 of 2007 (CS-DAS), challenging C the sale proclamation. The High Court by order 27.08.2007 granted interim protection to the debtor on condition of depositing 40% of the awarded amount within two weeks, failing which the protection would stand vacated. The debtor had deposited Rs.1,00,000/- on 21.8.2007. He deposited further amount of Rs. 50,000/- on 27.8.2007 and assured to pay Rs. 50,000/- on 30.8.2007. On his request the auction sale fixed D on 28.8.2007 was postponed.

9. As the debtor failed to pay the balance awarded amount as directed by the High Court, again a notice was issued on 9.10.2007 fixing the auction sale on 12.11.2007. The debtor filed memo before the High Court in Writ Petition No. 13204 of 2007 (CS-DAS), on the E basis of which the said Writ Petition was dismissed as withdrawn having become infructuous.

10. As the balance awarded amount was not forthcoming, a fresh notice for auction was issued on 30.11.2007, fixing the date of auction sale as 27.2.2008. The debtor then filed a fresh Writ Petition No. 3098 F of 2008 (CS-DAS) challenging the auction sale. The High Court vide order dated 25.2.2008 showed indulgence to him and stayed the auction sale scheduled for 27.2.2008 subject to the debtor depositing Rs. 10,00,000/- (Rs. Ten Lakhs only) within six weeks. It was made clear that if the debtor failed to pay the amount as directed, the protection as G given shall stand vacated and then it would be open to the bank to proceed with the sale of mortgage property.

11. The debtor once again failed to pay the amount as directed by the High Court vide order dated 25.2.2008. As a result, a fresh notice for auction sale was issued on 28.7.2008 fixing the date for auction H as 10.9.2008. The Respondent-Bank had obtained valuation report which

estimated the value of the mortgage property at Rs. 44,80,000/-. The debtor was served with the notice of the auction sale. That notice was also published in the local Newspaper and by proclamation and tom tom. The debtor did not file any objection to the sale. The auction sale was accordingly, held on 10.9.2008, in which the appellant - auction purchaser was the highest bidder for Rs.51,50,000/- . The debtor then filed objections before the ARCS for setting aside the sale. That objection after due enquiry was rejected by the ARCS on 14.10.2008. That order has not been challenged.

12. Besides the objection filed before ARCS, the debtor also filed a writ petition before the High Court of Karnataka at Bangalore being Writ Petition No. 12901/2008 (CS-DAS), challenging the sale in favour of the auction purchaser. The High Court once again showed indulgence to the debtor by passing conditional interim order on 7.10.2008 directing the debtor to deposit Rs.5,00,000/- within three weeks failing which the interim protection would cease to operate. The debtor deposited Rs. 5,00,000/- on 3.11.2008.

13. Significantly, the Writ Petitions filed by the debtor being Writ Petition No. 3098/2008 and Writ Petition No. 12901/2008 came to be dismissed by the High Court on 3.12.2008. By these Writ Petitions, the debtor had challenged the auction sale with a prayer to set aside the auction in favour of the auction purchaser. With the dismissal of the said Writ Petitions, the challenge to the auction sale of the subject property on 10.09.2008 became final. Indeed, the debtor filed Writ Appeal No. 1914/2009 against the rejection of his writ petitions. That was disposed of on the basis of statement made by the debtor that writ appeal filed by him before the Karnataka Appellate Tribunal against the award dated 2.1.2004 was pending. That statement was incorrect as the said appeal (Appeal No. 419/2004) was already dismissed on 30.4.2007. Because of the said misleading statement made by the debtor, the High Court vide order dated 15.1.2009, whilst disposing the writ appeal observed that it would be in the fitness of things for the Tribunal to take up the appeal on merits expeditiously preferably within six weeks. It also observed that the objections filed by the debtor against the auction sale be considered in accordance with law.

14. The Sales Officer on 17.2.2009, after due consideration of the matter recommended confirmation of the sale in favour of the auction purchaser. On the basis of the said recommendation, ARCS passed a

A detailed order on 2.3.2009, confirming the sale in favour of the auction purchaser. Thereafter, Sale Deed in Form No. 10 was executed in favour of the auction purchaser on 5.3.2009; and sale certificate was also issued in his favour.

15. The debtor, however, chose to file appeal before the Deputy B Registrar of Co-operative Societies, Udupi District (DRCS) against the order of confirmation of sale dated 02.03.2009, being appeal No. 07/08-09. The DRCS entertained the said appeal and by his order dated 18.7.2009 held that the sale was in accordance with the Rules but it was a case of under valuation of the property. On that ground, the confirmation of sale was set aside on condition that the debtor shall deposit Rs. C 59,46,965/- with interest at 6% p.a. from 13.2.2009 till payment. The operative order passed by Deputy Registrar Co-operative Societies reads thus:

"ORDER

D *The confirmation order passed by the Asst. Registrar Co-operative Societies also Recovery Officer's Court in case No. AR38/case/83/Executive/82/08-09 dated 02-03-2009 is hereby set-aside.*

The Petitioner should remit the below mentioned amount E *within four weeks from the date of this order-*

1) Auction amount	*Rs.*	*51,50,000-00*
2) Registration charges		*4,84,465-00*
3) Solatium account		*2,57,500-00*
F *4) Khatha expenses*		*25,000-00*
5) Court expenses		*20,000-00*
6) Other expenses		*10,000-00*
Total	*Rs.*	*59,46,965-00*

G

He has to remit at 6% from 13-02-2009 until depositing the money at Mahalakshmi Co-operative Bank (Ltd), Udupi. Under the said head the court charges and other charges shall born by the said bank and Respondent No. (4) equally H *(i.e. the person who purchased the property in auction). After*

remitting the balance amount, the bank shall transfer the same to the respondent No. (4) within 3 days. A

This order pronounced in the open court today i.e. on 18-07-2009.

Sd/-
Deputy Registrar of Co-op. Societies B
Udupi District, Udupi."

Even this order has not been challenged by the debtor and was allowed to attain finality. At the same time, the debtor did not deposit the amount as directed in the said order.

16. The auction purchaser and the bank being aggrieved by the C order passed by the DRCS, preferred Writ Petition No.23690/2009 and 23196/2009 (CS-DAS) respectively. These writ petitions were heard by the learned Single Judge. He opined that considering the wide difference between the high value of the property and the awarded amount, there was no necessity to sell the entire property. In that, the property consisted D of a building and also vacant property. The learned Single Judge was of the opinion that the reason recorded by the Appellate Authority (DRCS) was just and proper and did not warrant any interference in exercise of writ jurisdiction. As a result, the writ petitions filed by the auction purchaser and the Bank were dismissed by a common judgment dated 11.01.2010. E

17. The auction purchaser and the Bank preferred separate Writ appeals, being W.A. No. 1006/2010 (CS-DAS) and W.A. No. 2433/ 2010 (CS-DAS) respectively. The Division Bench of the High Court vide its common judgment dated 24.8.2011 disposed of both the appeals. The Division Bench noted that the Appropriate Authority concerned was F competent to set aside the sale even if there was no application for setting aside the sale or factually such application has already been rejected. It noted that from the orders of DRCS and the learned Single Judge, it was evident that the debtor did not fulfill his obligation in spite of repeated opportunity given to him to pay the awarded amount. Even G after noting this fact, the Division Bench opined that as the property in question was under valued at the time of auction sale, no fault could be found with the discretion exercised to set aside the sale under proviso to Sub rule 6(a) of Rule 38. On that finding, the Division Bench rejected the plea of the debtor and the Bank that without a pre deposit of the awarded amount as required under Rule 38 and that too within the time H

A prescribed under the said Rule, the Appropriate Authority could not have set aside the sale. The Division Bench then adverted to the memo of calculation filed by the debtor and proceeded to pass order, which in its opinion was just and proper so as to adjust equities between the parties. The relevant extract of the impugned judgment, reads thus:

B *"11. A memo of calculation filed by the advocate for Respondent No.5 on 11.8.2011 indicating the different amounts deposited by the appellant is as under:*

Memo of Calculation

(a) Amount deposited by the
C *Appellant on 10.09.2008:-Rs. 7,72,500/- interest @ 8% for 2 years 11 months Rs. 1,80,250/- (A)*

(b) Amount deposited by the
D *Appellant on 25.10.2008:-Rs.43,77,500/- Interest 8% for 2 years 10 months Rs. 9,92,233/- (B)*

(c) Stamp duty for registration
E *paid on 06.03.2009:- Rs. 4,84,465/- interest @ 8% for 2 years 6 months Rs. 96,893/- (C)*

(A)+(B)+(C)=Rs.12,69,376/- (D)

F *(i) Amount in deposit with A.R.C.S. from 25.10.08:-Rs. 20,82,616/- interest @ 4% for 2 yrs 10 months Rs. 2,36,030/- (E)*

G *(ii) Amount deposited by the Respondent No.5 on 06/02/2010:- Rs. 41,69,200/- interest @ 4% for 1 yrs 6 months Rs. 2,50,152/- (F)*

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(iii) Amount in F.D. On orders of this Hon'ble Court:- *Rs. 62,51,816/- interest @ 8% for 3 months*
Rs. 1,25,036/- (G)
(E)+(F)+(G)=Rs. 6,11,218/- (H)

12. He has calculated the interest deposited by the appellant - purchaser for different periods as stated above. He has also shown the amount in deposit with the ARCS after deducting the amount that has to be paid to the appellant - bank.

13. The appellant - bank has also filed a calculation memo indicating the actual claim amount, the date of receipt of claim amount, number of days from the auction date till the amount received on 13.3.2009, rate of interest and the actual amount of interest payable apart from the expenses incurred by them after 10.9.2008 for various litigations. This amount totally comes to Rs. 3,05,149/- as indicated below:

1.	*Date of Receipt of Claim amount 13-3-2009*	
2.	*Claim amount*	*Rs. 30,67,384.00*
3.	*Number of days from auction date 10-9-2008 to amount received date 13-3-2009*	*160 days*
4.	*Rate of interest*	*17%*
5.	*Interest receivable for 160 days*	*Rs. 2,28,583.00*
6.	*Court expenses spent after 10-9-2008 for various disputed*	*Rs. 76,566.00*
	Total	*Rs. 3,05,149.00*

14. So far as the auction purchaser is concerned, we note that he has made the following payments:

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1.	*10.9.2008*	:	*Rs. 7,72,500/-*
2.	*25.10.2008*	:	*Rs. 43,77,500/-*
3.	*Stamp duty for registration Paid on 6.3.2009*	:	*Rs. 4,84,465/-*

B *15. As per the orders of the DRCS, he has to receive Rs. 59,46,965/- including solatium with interest at 6% per annum from 13.2.209. Till date so far as auction purchaser is concerned not even a single pie is paid back to him. In case, the auction purchaser were to have the confirmation of sale in his favour, this calculation would not be of any relevance.*

C *The fact remains the concerned authority has exercised the discretion and there is prima facie material to indicate there was under-valuation of the property as well. But this does not mean the auction purchaser who has parted with different amount by selling his own property should be put to financial loss apart from hardship. So far as the bank is concerned,*

D *the amount was lying with the Recovery Officer and only on 13.3.2009 they got the claim amount. However, this claim amount includes interest only upto the date of auction and not the subsequent interest payable. If the respondent - borrower intends to retain his property for the reasons best*

E *known to him, either for emotional attachment or other reason, he has to compensate the purchaser for causing the loss to him. The amount of Rs. 59,46,965/- includes solatium of Rs. 2,57,500/-, but it does not spell out the interest he would have got on this amount or the profit he could have got on the property which he sold in order to pay the auction*

F *price.*

16. In order to meet the ends of justice, it would be just and proper to order payment of interest at 12% per annum for the date of deposit made by him on different amounts indicated above. He shall also be paid a solatium of Rs.

G *2,57,500/- apart from the interest at 12% per annum on all the amounts he has spent till the date of payment. So far as the bank is concerned, interest has to be paid for 160 days and Court expenses of Rs. 76,566/-. The amount was laying with the Recovery Officer for quite some time and it cannot be the entire fault of the respondent - borrower. Therefore*

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the bank shall get interest at 6% per annum on Rs. 30,67,384/- for 160 days apart from the Court expenses of Rs. 76,566/- spent by them.

17. with these observations, the appeals are disposed of directing the 5th respondent to pay the amount as indicated above within a period of four weeks from the date of receipt of copy of this order, failing which the order of confirmation of sale shall stand."

18. In spite of the aforementioned order, the debtor did not pay the amount as directed by the High Court. The matter, accordingly, proceeded before the Assistant Registrar of Co-operative Societies (ARCS), who issued a detailed communication to the debtor on 21.12.2011. The ARCS considered the plea taken by the debtor that he was entitled for certain adjustments and was not required to pay any further amount. The ARCS did not accept the said stand taken by the debtor and was of the opinion that the amount as directed by the Division Bench has not been paid. The ARCS in his communication dated 21.12.2011 has noted that a sum of Rs. 80,64,916/- was payable by the debtor out of which he had remitted only a sum of Rs. 41,69,200/- on 6.2.2010 and Rs. 20,19,925/- on 22.9.2011 totaling Rs. 61,89,125/-. There was still shortfall of Rs. 18,75,791.40 payable by the debtor. The communication of the ARCS dated 21.12.2011 was challenged by the debtor, by way of Writ Petition No. 48814/2011(CS-DAS) filed on 29.12.2011 before the High Court of Karnataka at Bangalore.

19. When the said Writ Petition No. 48814/2011 (CS-DAS) was pending, the debtor filed an application being IA No. 1/2012 in disposed of writ appeal No. 1006/2010 (CS-DAS) and writ appeal No. 2433/2010 (CS-DAS), for clarification of the order dated 24.8.2011. On 8.6.2012, the Division Bench passed the following order on the said IA No. 1/2012, which reads thus:

"ORDER ON I.A. No. 1/2012

Heard the learned counsel for the applicant, who is 5th respondent in W.A. No. 2433/2010 (CS) on I.A. No. 1/2012 filed seeking clarification of judgment dated 24.8.2011.

It is seen that by judgment dated 24.8.2011 this Court allowed W.A. Nos. 1006/2010 c/w 2433/2010 with certain directions. As could be seen, in paragraph 16 of the judgment the intent

A *of this Court is very clear, that is, the auction purchaser appellant in W.A. No. 1006/2010 should get back his money with solatium, interest damages, etc. as specified therein and the same was required to be paid by 3rd respondent. No mode for payment was specified in the said judgment.*

B *However, it is seen that ARCS, 3rd respondent in the appeals has taken his own time in trying to interpret the said order by his order which was initially passed on 21.11.2011 and thereafter corrected as 21.12.2011 to say that entire amount should have been deposited by the 5th respondent to comply with the judgment of this Court which we are not agreeable.*

C *With the available money, the 3rd respondent –ARCS should have first cleared off the amount to the auction purchaser with interest, solatium, damages and whatever he is entitled to from out of the amount that was available with 3rd respondent. Thereafter, 3rd respondent should have cleared*

D *the money due to the bank, appellant in W.A. 2433/2010 alongwith interest at the rate specified therein. If any is found in excess he should have given it to 5th respondent.*

In any event, if he had any doubt with regard to the above said aspect he should have approached this Court through

E *the Learned Government Advocate by filing an application seeking clarification. Instead, he has taken the responsibility of trying to interpret the same in the manner known to him and also contrary to the intent of this Court. In any event, this Court feel there is no justification to keep this litigation pending forever. Therefore, to put quietus to this litigation it*

F *is hereby directed that 3rd respondent ARCS shall immediately disburse the entire amount that is required to be paid to the auction purchaser and also to the bank within one week from today. The excess of amount that remains after disbursing the amount shall be retained by him until further*

G *orders of this Court.*

Further, after receiving the amount the bank and the auction purchaser shall file memo of calculation to seek additional interest from the date of the judgment till actual date of receipt of money for which they are entitled to.

H *Whether the confusion is at the end of 5th respondent or at*

the instance of 3rd respondent-ARCS should not be the reason to deprive the fruits of the judgment to the auction purchaser and the bank. Therefore, they are called upon to receive the entire amount pursuant to the judgment of this Court and thereafter file memo to this Court regarding the extent of interest they are entitled to for the different period, which will be considered by this Court at the next date of hearing.

Call this matter on 29.6.2012".

The Division Bench thereafter passed the following order on 29.6.2012, which reads thus:

"These two writ appeals were disposed of by common judgment on 24.8.2011 wherein certain directions were given for re-payment of the amount deposited by the auction purchaser and also the amount due to the Bank. Though sufficient amount was available with the 3rd respondent-ARCS, he tried to interpret the order of this Court differently and caused some delay in making payment to the parties. Though strictly there is no mistake on the part of the 5th respondent-original owner in making available the requisite fund in terms of the order for refund of money due to the auction purchaser and to clear the dues to the Bank, it is because of ARCS trying to interpret the order of this Court differently, confusion has arisen in disbursement of the amount due to the auction purchaser and the Bank for which the auction purchaser and the Bank should not be made to suffer.

Insofar as the money that they were required to receive on or before 24.9.2011 which they have not received, they are entitled to interest for the difference period i.e., from 24.9.2011 till they receive the said amount. In that behalf, the ARCS is required to pay the interest for the difference period from out of the excess amount which is available with him. If the said amount is short of interest to be paid for the different period, he is directed to call upon the owner to deposit the said amount within ten days therefrom or if the amount is sufficient, to pay the interest from out of the amount available and to return the remaining amount to the original owner of the property.

With this observation, the clarification sought to the judgment dated 24.8.2011 is clarified.

It is made clear that the ARCS shall see that the clarificatory order dated 8.6.20112 and the order passed today regarding interest for the difference period should be implemented within ten days from the date of receipt of a copy of this order"

The Division Bench directed the ARCS to act upon to the clarificatory order dated 8.6.2012 and 29.6.2012 respectively and to implement the same within 10 days.

20. The writ petition filed by the debtor (against the communication dated 21.12.2011 of the ARCS) was allowed by the learned Single Judge vide order dated 7.9.2012, which reads thus:

"ORDER

An extent of 32 cents in Sy.No. 260/7 of Kodavoor village in Udupi Taluk belonging to the petitioner was brought to sale to recover the outstanding amount due to respondent No. 4 financial institution. The said property was put to auction on 10.9.2008 for Rs. 51,50,000/-. The 3rd respondent was the successful bidder and he deposited the amount also. On appeal, the Deputy Registrar of Co-operative Societies set aside the order dated 2.3.2009 by which the auction sale was confirmed and directed the petitioner to deposit Rs. 59,46,965/- within four weeks. The 3rd respondent-auction purchaser as well as the 4th respondent Bank were before this Court questioning the said order. This Court dismissed the writ petitions, against which W.A. Nos. 1006 and 2433/2010 were filed. This Court disposed of the writ appeals with certain directions in as much as the petitioner was directed to deposit Rs. 61,89,125/- which is interest component on the auction amount deposited by the 3rd respondent.

2. It appears, the 3rd respondent-Assistant Registrar of co-operative Societies was of the view that the petitioner was required to deposit Rs. 80,64,916/- and there was short-fall of Rs. 18,75,791/-. Hence, an application was filed by the petitioner seeking clarification and this Court on two

occasions clarified the position and was of the view that the amount deposited by the petitioner was just and proper. Notwithstanding the clarification, made, the impugned order at Annexure-A is passed calling upon the petitioner to deposit the short-fall on calculation.

3. When the matter is taken-up, Mr. S.R. Hegde Hudlamane, learned counsel for the 3rd respondent auction purchaser submits that as against the clarificatory order, the auction purchaser has filed Special Leave Petition, which is yet to come-up before the Apex Court.

4. In the circumstances, I am of the view that no useful purpose will be served by keeping this writ petition pending in as much as the decision to be rendered by the Apex Court in the Special Leave Petition filed by respondent No. 3 would regulate the present proceedings. Till such time, the matter is required to be kept pending by the 2nd respondent. Hence the following order:-

The petition is allowed. The impugned order is set aside. The proceedings are remanded to 2nd respondent, who shall keep pending adjudication. The proceedings shall be regulated by the decision to be rendered by the Apex Court".

21. In the present appeals filed by the appellant - auction purchaser before this Court, he has challenged the judgment rendered in writ appeal dated 24.8.2011 as well as both the orders passed on clarification application dated 8.6.2012 and 29.6.2012 respectively. The debtor, on the other hand, has filed appeal against the judgment of the Division Bench dated 24.8.2011 in Writ Appeal No. 1006/2010.

22. We have heard the learned counsel for the parties at length. From the indisputable facts mentioned in the preceding paragraphs, it is evident that the Award passed by the Competent Authority on 02.01.2004 became final after the dismissal of appeal (Appeal No. 419/2004) by the Karnataka Appellate Tribunal, Bangalore on 30.04.2007. The debtor did not pay the awarded amount in spite of repeated opportunity given to him on every occasion. Thus, for effectuating the Award and for recovery of the outstanding dues from the debtor, his mortgage property was required to be auctioned. That auction sale was finally held on 10th August 2008. The appellant - auction purchaser turned

A out to be the highest bidder. The debtor unsuccessfully attempted to apply for setting aside the auction sale. He also challenged the sale by way of Writ Petition No. 12901/2008. Even the Writ Petition was dismissed on 3rd December 2008. In the said writ petition, the debtor had also prayed for setting aside the sale. That prayer was also rejected. Indeed, the debtor resorted to remedy of writ appeal being Writ Appeal
B No. 1914/2009. That was disposed of by recording an incorrect statement of the debtor that his appeal against the Award was still pending. As a matter of fact, the appeal preferred by the debtor before the Karnataka Appellate Tribunal being Appeal No.419/2004, was already dismissed on 30th April, 2007. As a result of which, the Award passed against him
C had become final.

23. Be that as it may, it is common ground that the debtor did not prefer application for setting aside the sale, inconformity with the remedy provided in that behalf in terms of Section 89A of the Karnataka Cooperative Societies Act, 1959 read with Rule 38 of the Karnataka
D Cooperative Societies Rules. That remedy could be availed by the debtor only after depositing the awarded amount together with interest thereon with the Recovery Officer, in terms of Rule 38(4)(a) of the Rules. The application as filed by the debtor was dismissed by the ARCS on 14.10.2008. Resultantly, the Competent Authority proceeded to confirm the auction sale on 02.03.2009, followed by grant of a certificate of sale
E and execution of a Sale Deed in the prescribed Form. The sale of the subject property thus, became final.

24. The debtor, however, was ill advised to prefer an appeal before the Deputy Registrar (CS) of Cooperative Societies, against the decision of the Competent Authority confirming the auction sale. For,
F remedy of appeal before that Authority could be availed only in terms of Section 106 of the Act, against an order passed by the Authority (Registrar) in exercise of powers ascribable to the provisions referred to therein. The order of confirmation of sale is ascribable to Section 89A of the Act read with Rule 38 of the Rules. No remedy of appeal
G against that decision is provided. Section 106 of the Act does not provide for an appeal against the order confirming an auction sale, passed under Section 89A read with Rule 38. Section 89A of the Act read with Rule 38 of the Rules provide for a special dispensation. Thus understood, the order passed by the Deputy Registrar (CS) on the appeal preferred by the debtor being Appeal No.7/2008-2009, is without jurisdiction. The
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learned Single Judge as well as the Division Bench has completely glossed over this crucial aspect. A

25. The order passed by the Deputy Registrar (CS) dated 18th July 2009, assuming that it is ascribable to Rule 38(6)(a) as held by the High Court, the fact remains that the debtor failed to comply with the said order requiring him to pay an amount of Rs.59,46,965/- along with interest thereon within the specified time. On account of non-compliance of that direction, the relief granted by the Deputy Registrar (CS) in terms of order dated 18th July 2009 of setting aside the auction sale became ineffective. Admittedly, the debtor deposited a sum of Rs.41,69,200/- on 6th February 2010 and Rs.20,19,925/- on 22nd September 2011. That was not in compliance with the order dated 18th July 2009. B C

26. The fact that Writ Petitions were filed by the auction purchaser and the Bank against the order of Deputy Registrar (CS) dated 18th July 2009, that could not extricate the debtor from complying with the order of Deputy Registrar (CS) which he allowed to attain finality. As a matter of fact, the said order was passed on an appeal preferred by the debtor himself and thus he was bound by the same. D

27. The debtor cannot be heard to claim benefit of the proceedings in the form of Writ Petitions followed by Writ Appeals filed by the auction purchaser and the Bank. For, it is noticed that the Division Bench in its order dated 24th August 2011 determined the liability of the debtor to pay Rs.59,46,965/- along with solatium and interest thereon. At least in terms of that decision, the debtor ought to have paid the entire amount. However, there was still a shortfall of Rs.18,75,791.40. The debtor, instead, represented before the ARCS that he was not liable to pay any further amount in excess of the amount already deposited by him until 22nd September 2011 totalling Rs.61,89,125/-. In our view, in the facts of the present case, it is only upon deposit of the entire awarded amount, the request of the debtor to absolve him of his liability could be entertained. E F

28. The argument pursued on behalf of the debtor that there was calculation error in determination of his liability to the extent of Rs.59,46,965/- including the interest accrued thereon as directed; and not giving adjustment of the deposits already made prior to the order passed by the Division Bench on 24th August 2011 as was manifest from the no dues certificate given by the Deputy Commissioner, Commercial Tax vide letter dated 20th September 2010, cannot be countenanced. In the first place, the communication dated September 2010 was tendered G H

A across the Bar for the first time before this Court during the argument. It was not made part of the record before the High Court nor was pressed into service before the High Court. Moreover, the said communication is in respect of the effect of exemption of 90% of the interest under Tax Settlement Scheme. Thirdly, the matter on hand arises out of the order
B passed by the Deputy Registrar (CS) setting aside the sale confirmed in favour of the auction purchaser.

29. As aforesaid, the debtor unsuccessfully challenged the auction sale and prayed for setting aside the same by filing writ petitions. That relief has been rejected. In that, a formal application for setting aside the
C sale filed by the debtor was rejected by the ARCS on 14.10.2008. The appeal preferred by the debtor before the Deputy Registrar (CS) was against the decision of the Competent Authority confirming the auction sale on 02.03.2009. That it was not maintainable under Section 106 of the Act. The Deputy Registrar (CS) had no jurisdiction.

D 30. Further, once the auction sale is confirmed by the Competent Authority, it is not open to the Authority to exercise power under Rule 38(6), to set aside the sale. That would be against the spirit of legislative intent of giving finality to the auction sale process upon passing of an order of confirmation of sale.

E 31. It is only the Authority referred to in Rule 38, who could have set aside the sale by recording reasons in writing in exercise of powers under Rule 38 of the Rules, albeit before passing an order confirming the auction sale. Rule 38 reads thus:

> ***"38. Attachment and sale of immoveable property.-*** *(1) Immoveable property shall not be sold in execution of a*
F *decree unless such property has been previously attached:*
>
> *Provided that where the decree has been obtained on the basis of a mortgage of such property it shall not be necessary to attach it.*
>
> *(2) xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx*
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> *(3) xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx*
>
> *(4) (a) Where immoveable property has been sold, any person either owning such property or holding an interest therein by virtue of a title acquired before such sale may apply to*
H *have the sale set aside on his depositing with the Recovery*

Officer.-

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

(ii) for payment to the decree-holder 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 decree-holder.

(b) If such deposit and application are made within 30 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 Recovery Officer shall be accepted:

[Provided further that where the purchaser is the Government, the sale be set aside if the person owning the property or any person interested, therein,-

(i) Makes the application within sixty days from the date of sale along with,-

(a) A sum equal to five per cent of the purchase money for payment to Government; and

(b) Fifty per cent of the amount due under the decree for payment to the decree holder; and

(ii) Pay the balance within thirty days thereafter i.e., within ninety days from the date of sale.]

(c) If a person applies under sub-rule (5) to set aside the sale of an immoveable property, he shall not be entitled to make an application under this sub-rule.

(5) (a) At any time within 30 days from the date of the sale of

A *an immoveable property, the decree-holder 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:*

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

C *[Provided further where the purchaser is Government the sale will be confirmed,-*

(a) After the expiration of sixty days where no application to have sale set aside is made under sub-rule (4); or

D *(b) After the expiration of ninety days where an application to set aside under sub-rule (4) is made but the balance of the amount due under the decree is not deposited within ninety days from the date of sale.]*

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

(6) (a) On the expiration of thirty days from the date of sale, if no application to have the sale set aside, either under sub-rule (4) or sub-rule (5) is made or if such application has been made and is rejected, the said Recovery Officer
F *shall make an order confirming the sale:*

Provided that if he shall have reason to think 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
G *rejected, he may, after recording his reasons in writing, set aside the sale;*

(b) Whenever the sale of any immoveable property is not confirmed or is set aside, the deposit or the purchase money, as the case may be, shall be returned to the
H *purchaser.*

(7) On the confirmation of a sale under this rule, 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, and it shall be conclusive evidence of the fact of the sale to such purchaser.

(8) the land purchased by Government in satisfaction of any decree prior to commencement of the Karnataka Co-operative Societies (V amendment) Rules 1977 shall be reconveyed to the person who own the property or held an interest therein by virtue of a title acquired before the sale if he makes application for such receonveyance and deposits with the recovery officer with in a period of ninety days from the date of coming into force of these rules, -

(a) five per cent of the purchase money as solatium;

(b) purchase money at the interest of eight and a half per cent per annum from the date of sale up to the date of deposit."

32. The order passed by the learned Single Judge dated 7th December 2012 to set aside the communication of the Assistant Registrar (CS) dated 21st December 2011 cannot extricate the debtor from the consequences of auction sale having become final on issuance of sale certificate and execution of the agreement in favour of the auction purchaser. Similarly, the fact that the debtor deposited certain amounts after the decision of the Division Bench cannot come to his aid. For, he ought to have deposited the awarded amount along with interest accrued thereon and that must be accepted by the auction purchaser as satisfaction of the order of the Division Bench of the High Court. Admittedly, the debtor had failed to pay the entire awarded amount. Significantly, the auction purchaser did not acquiesce of the order of the Deputy Registrar or that of the High Court, but has challenged the same in the present appeals.

33. We are also of the considered opinion that the writ appeal having been disposed of, in the guise of clarification, the Division Bench could not have passed any order at the instance of the debtor who had failed to challenge the decision of the Deputy Registrar. The writ appeals were filed by the auction purchaser and the Bank assailing the wrongful

A rejection of their Writ Petitions by the learned Single Judge. As the decision of the Deputy Registrar deserves to be set aside, the debtor cannot succeed on the basis of some observations made in the impugned judgments of the Division Bench or for that matter by the learned Single Judge and including some infirmity in the letter of the Assistant Registrar (CS) dated 21st December 2011.

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34. That takes us to the decision of this Court in the case of ***Annapurna vs. Mallikarjun & Anr.***[1] That decision is in respect of provisions of Order 21 Rule 89 of C.P.C. The question decided in this case is whether the time limit prescribed in Article 127 of the Limitation Act, 1963 would come into play even in respect of an application to set aside sale in terms of Order 21 Rule 89 of the Code of Civil Procedure. In the present case, the debtor did not choose to file an application for setting aside the sale in terms of Rule 38(4) of the Rules at all. Instead, he preferred an appeal under Section 106 of the Act before the Assistant Registrar after the order of confirmation of sale was passed by ARCS in favour of the auction purchaser. Such appeal under Section 106 of the Act was not maintainable. The decision of confirmation of sale is not ascribable to any of the provisions expressly referred to in Section 106 of the Act, in respect of which remedy of appeal is provided. Further, the order passed by the Deputy Registrar dated 18th July 2009 in favour of the debtor to set aside the auction sale on conditions specified therein, in our view, is not ascribable even to an order passed under Rule 38(6). That discretion has to be exercised only by the Recovery Officer and more importantly before the order of confirmation of auction sale.

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35. The counsel for the debtor, however, placed reliance on two decisions of this Court in ***J.Rajiv Subramaniyan & Anr. Vs. Pandiyas & Ors.***[2] ***and Vasu P.Shetty vs. Hotel Vandana Palace & Ors.***[3] Emphasis was placed on paragraphs 18 and 29 of the decision in Subramaniyan's case (supra). Firstly, that decision is in respect of proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. Further, the decision is on the facts of that case. In this case, the grievance regarding under valuation of the property could have been raised by the debtor by way of a formal application to be filed for setting aside the sale, as per the statutory provisions (Rule 38). That contention is not relevant to answer the matters

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[1] (2014) 6 SCC 397

[2] (2014) 5 SCC 651

H [3] (2014)5 SCC 660

in issue, in the present case. Reliance was then placed on the dictum in paragraphs 23 and 25 in the case of Shetty (supra) to contend that inaction or intentional conduct of the debtor does not extricate the Bank from following mandatory conditions including proper valuation of the property. We fail to understand as to how this decision will come to the aid of the debtor who has failed to pursue statutory remedy for setting aside the sale as per Rule 38; and moreso after the sale has already been confirmed in favour of the auction purchaser. Notably, even after the confirmation of sale, the Deputy Registrar showed indulgence to the debtor to deposit Rs.59,46,965/- with interest only at 6% from 13th February 2009 till the date of payment. The debtor, however, remitted the amount firstly on 6th February 2010 a sum of Rs.41,69,200/- and thereafter on 22nd September 2011 Rs.20,19,925/-. It was not in conformity with the order passed by the Deputy Registrar dated 18th July 2009.

36. Taking any view of the matter, therefore, we must hold that the High Court committed manifest error in dismissing the Writ Petitions filed by the appellant - auction purchaser challenging the decision of the Deputy Registrar (CS) dated 18th July 2009. The High Court ought to have allowed the Writ Petition as the Deputy Registrar had no jurisdiction to entertain appeal against the order of confirmation of sale issued under Section 89A read with Rule 38 of the Rules; and also because, admittedly, the debtor failed to pay the awarded amount in spite of repeated opportunities given to him from time to time. Moreover, the debtor cannot succeed in the Writ Petition filed by the auction purchaser and the Bank against the decision of the Deputy Registrar and get higher or further relief in such proceedings. Thus, the Division Bench having finally disposed of the writ appeal ought not to have entertained the application preferred by the debtor in the guise of clarification and to pass any order thereon - which would enure to the benefit of debtor who is in default, having become functus officio.

37. Accordingly, we allow the appeals preferred by the auction purchaser (P.M.Abubakar) being Civil Appeals arising out of SLP(Civil) Nos. 30130-30131/2012 and SLP(Civil) Nos. 33314-33315/2012 in the above terms. The order passed by the Deputy Registrar (dated 18.7.2009); and of the High Court (dated 11.01.2010; 24.8.2011, 8.6.2012 and 29.6.2012) confirming the order of the Deputy Registrar of setting aside the sale of the subject mortgage property in favour of the auction purchaser, are hereby set aside. The Civil Appeals arising out of

A SLP(Civil) Nos. 25613-25614/2013 filed by the debtor (Keshava N. Kotian) are dismissed with observation that the Appropriate Authority shall proceed to disburse the amount already deposited by the debtor and including the amount of sale proceeds, in accordance with law forthwith. No order as to costs.

B Ankit Gyan Appeals disposed of.