

CASE NO.:
Appeal (civil) 6760-6761 of 2004

PETITIONER:
M/s. Shilpa Shares and Securities and others

RESPONDENT:
The National Co-operative Bank Ltd. and others

DATE OF JUDGMENT: 02/05/2007

BENCH:
S. B. Sinha & Markandey Katju

JUDGMENT:
J U D G M E N T

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.
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').
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 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.
4. In Manilal Mohanlal Shah and others vs. Sardar Sayed Ahmed Sayed Mahmad and another 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.
5. In Balram vs. Ilam Singh and others 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.
6. 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.
7. 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.
8. 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.

JUDIS