

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

WRIT PETITION NO.5694 OF 2008

Liaquat Ali Khan s/o Shabbir Ali Khan
Age 50 years, Occu. Service
R/o Jahagirdar Wada, Makai gate road,
Ghati, Aurangabad

.. Petitioner

Versus

1. The State of Maharashtra,
Through its Co-operative and
Textile Department, Mantralaya,
Mumbai 32
2. The Divisional Joint Registrar,
Co-operative Societies, Aurangabad
3. The Assistant Registrar,
Co-operative Societies on Deputation
to Maharashtra State Co-operative
Finance Society Ltd., Earth Complex,
Adalat road, Aurangabad
4. The Special Recovery Officer,
Maharashtra State Co-operative
Housing Finance Society,
Earth Complex, Adalat road,
Aurangabad
5. Maharashtra State Co-operative
Finance Society Ltd.,
Earth Complex, Adalat road,
Aurangabad.
6. The Chairman,
Huma Flat Owners Housing
Co-operative Society,
Aurangabad

.. Respondents

Mr N.R. Solunke, Advocate for petitioner
Mr D.R. Korde, A.G.P. for respondent Nos.1 to 3

CORAM : N.W. SAMBRE, J.

DATE : 13th April 2015

PER COURT

1. The petitioner has suffered recovery proceedings under Section 101 of the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as "the Act" for the sake of brevity) pursuant to an order passed on 5th June 2008 by respondent No.3 – Assistant Registrar, Co-operative Societies, Aurangabad whereby the petitioner was called upon to repay the amount of Rs.4,61,810/-.

2. Mr Solunke, learned Counsel for the petitioner has raised a ground of denial of hearing by the competent authority while issuing the recovery certificate. Mr Solunke would urge that the recovery certificate dated 5th June 2008 though mentioned about issuance of notice, neither notice of hearing nor any opportunity of hearing was given to the present petitioner pursuant to the provisions of Section 101 of the Act and Rule 86 of the Maharashtra Co-operative Societies Rules, 1961. In support of his contention, he has invited attention of this Court to the Registered Post Acknowledgement Due produced along with the affidavit-in-reply filed by the Registrar. He would urge that the said acknowledgement does not bear the signature of the petitioner. In addition to above, he would urge that the suit flat though stood in the name of his wife, he had never opted for the loan in question and there is fraud played on him by the respondent-society. In support of his contention, he has invited attention of this Court to a statement made at page 5 of the petition that he is not

member of the respondents No.5 and 6 – Housing Society and Finance Society.

3. Learned Assistant Government Pleader has sought to support the order passed by respondent No.3 – Assistant Registrar. He has invited attention of this Court to the notice issued to the petitioner and the true copy of the acknowledgement issued by the postal department depicting service of notice on the present petitioner. In addition to above, he has also placed reliance upon the declaration executed while obtaining the loan by the petitioner, being member of the respondent No.6, on 20th August 1994, so also the possession letter for Flat No.3 of the same date.

4. When confronted, the petitioner through his Advocate has admitted before this Court the signatures made by him on those documents.

5. In addition to above, the learned Assistant Government Pleader would urge that the present petitioner is residing in the same flat against which the loan was obtained and so as to substantiate his contention, he has invited attention of this Court towards the address mentioned in the cause title and also in the possession letter at record page 48. He would urge that the petitioner is trying to make incorrect statement so as to deny his liability.

6. Having analysed the submissions made by learned Counsel for the petitioner, it is required to be noted that the acknowledgement issued by the postal department in the matter of service of notice

issued to the petitioner, is placed on record. If the submissions made by learned Counsel for the petitioner are tested in the light of provisions of General Clauses Act, the moment service of notice is effected and the acknowledgement is issued, the burden shifts on the petitioner to demonstrate that the notice was not served on him. Except baseless statement made in the petition, no iota of evidence is brought on record so as to substantiate the above contention.

7. The above referred statement of the petitioner is also falsified in view of the conduct tested during the course of hearing of the petition. The petitioner, through his lawyer was confronted about the signatures made by him on the various documents executed in support of claim for loan, the petitioner has admitted his signatures on the documents, viz. undertaking, possession letter etc. It is also required to be noted that since 2008, the petitioner has not a single pai against the recovery certificate issued to him.

8. Section 154-A of the Act provides for an alternate remedy against the order of issuance of recovery certificate. The petitioner has chosen to bypass the said remedy so as to avoid his monetary liability, as the said Section mandates deposit of 50% of the amount as ordered in the recovery certificate.

9. In the light of what has been observed herein above, it appears that the petitioner has approached before this Court with uncleaned hands. It is also noted that the petitioner has sought to press into service incorrect factual statements.

10. In the light of above, there is no substance in the present petition. Writ Petition fails, stands dismissed.

(N.W. SAMBRE, J.)

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