IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2441 OF 2015

Sanjay Suresh Agarwal .. Petitioner
Versus
State of Maharashtra and others .. Respondents

Shri. Jagdish Kumar S. Hegade, for the Petitioner.
Shri. Surel S. Shah, for the Respondent No.2.
Ms. Gauri Rao, AGP for the Respondent No.1.

CORAM : R.M. SAVANT, J.
DATE : 17th APRIL, 2015

P.C.

1. The Writ Jurisdiction of this Court is invoked against the order dated 05.06.2014 passed by the Divisional Joint Registrar, Co-operative Societies, Mumbai Division, Mumbai, by which order the Revision Application No.111 of 2014 filed by the Petitioner has been dismissed. The said Revision Application was filed against the derivative action taken by the Respondent No.2 Bank pursuant to recovery certificate issued under Section 101 of the Maharashtra Co-operative Societies Act for recovery of the dues from the Respondent Nos.4 to 6 who are the borrowers. The recovery certificate is for the amount of Rs.28,39,666/-. It appears that prior to the instant Revision Application being filed, the

Petitioner had earlier also filed a Revision Application against the said recovery certificate dated 17.11.2012. The said Revision Application was rejected on the ground that the Petitioner has not complied with Section 154(2A) of the Maharashtra Co-operative Societies Act in the matter of making the pre-deposit i.e. depositing 50% of the amount due under the certificate. As indicated above, it is pursuant to the said recovery certificate that the proceedings relating to recovery of the amount by sale of the property by auction was taken by the Respondent No.2 Bank. In the said auction proceedings, the flat which was given in security by the petitioner was sold and the said transaction has been completed and the highest bidder i.e. Respondent No.8 has been put in possession in the year 2013. It is thereafter that the instant Revision Application No.111 of 2014 came to be filed by the Petitioner taking exception to the sale which was conducted by the Respondent No.2 Bank. The said Revision Application has also been filed on the same ground namely that the pre-deposit being not made by the Petitioner, the Revision Application could not be entertained.

2. It is the contention of the Learned Counsel for the Petitioner that the Petitioner herein is neither the borrower nor the guarantor. The Petitioner sought to place reliance on a document which is in the nature of a loan scrutiny note dated 08.11.2010 which is prior to the loan

transaction being entered into. In the said note the names of the borrowers are appearing, who are Anita Choudhari, Sunil Choudhari and Kiran Choudhari and the guarantors are Afroz Shaikh and Vishal Goenka. The record discloses that the Petitioner has executed a consent letter of surety on 08.10.2010, the loan agreement on 13.11.2010 which loan agreement has been signed by all the borrowers as also the Petitioner as also the Deed of Equity Mortgage has been executed by the Petitioner in respect of the flat in question in favour of the Respondent No.2 Bank. The said documents have been sought to be explained away by the Petitioner by averments made in the paragraph (f) of the page 7 of the above Writ Petition by stating that sometime on 23.03.2011 the Petitioner was called at the Branch Office with pre-planned and with fraudulent intention to take his signatures on the relevant papers 3/4 antisocial/dubious persons were present and the officers of the Bank got executed from the Petitioner his signature on the guarantor's form, loan agreement, promissory note etc. Significantly, though serious allegations of the nature as above have been made, the Petitioner has not lodged any complaint with the Police or has not even made any grievance against the officers of the Bank to the higher authorities of the Bank. The afore-stated facts therefore casts a serious doubt as regards the said case of the Petitioner. The fact that so many documents have been executed by the Petitioner cannot be lost sight of as also the fact that the said documents were relating to a loan transaction between the Respondent Nos.4 to 8 and the Respondent No.2 Bank. Hence, prima-facie it is very difficult to accept the case of the Petitioner that he has nothing to do with the loan transaction. The instant observations have been made by this Court in view of the fact that the Petitioner had urged the said contentions that he has no connection with the transaction to seek a waiver from the pre-deposit. No such case is therefore made out. However, it is clarified that the said observations need not be held to be conclusive and the case of the Petitioner on merits is obviously open for inquiry in appropriate proceedings. In view of the afore-stated fact as also in view of the fact that the Petitioner has not complied with the provisions of Section 154(2A), the order passed by the Divisional Joint Registrar rejecting the Revision Application does not suffer from any error for this Court to interdict in its Writ Jurisdiction. The Writ Petition is accordingly dismissed.

[R.M. SAVANT, J]