

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.3915 OF 2014

- | | | |
|--|---|----------------|
| 1. Shri. Kurukali Gramin Bigar Sheti |) | |
| Sahakari Patsanstha Maryadit, |) | |
| Kurukali, Taluka Karveer, District Kolhapur. |) | |
| 2. Special Recovery Officer, |) | |
| Shri. Kurukali Gramin Bigar Sheti |) | |
| Sahakari Patsanstha Maryadit, |) | |
| Kurukali, Taluka Karveer, District Kolhapur. |) | .. Petitioners |

Versus

- | | | |
|------------------------------------|---|----------------|
| 1. Divisional Joint Registrar, |) | |
| Co-operative Societies, Kolhapur |) | |
| Division, Kolhapur. |) | |
| 2. Shri. Shivaji Rajaram Patil |) | |
| Adult, Occu:-Agriculture |) | |
| 3. Sou. Sharda Tanaji Patil, |) | |
| Adult, Occu:-Agriculture |) | |
| 4. Sou. Shalabai Shivaji Patil |) | |
| Adult, Occu:-Agriculture |) | |
| Nos.2 to 4 residing at Kurukali, |) | |
| Taluka Karveer, District Kolhapur. |) | .. Respondents |

Shri. Chetan G. Patil, for the Petitioners.

Shri. S. D. Rayrikar, AGP for the Respondent No.1.

Shri. Abhijit M. Adagule, for the Respondent No.2 to 4.

**CORAM : R.M. SAVANT, J.
DATE : 27th APRIL, 2015**

ORAL JUDGMENT

1. Rule, with the consent of the Learned Counsel for the parties made returnable forthwith and heard.

2. The Writ Jurisdiction of this Court is invoked against the order dated 05.10.2012 passed by the Divisional Joint Registrar, Co-operative Societies, by which order the Revision Application No.348 filed by the Respondents came to be allowed and direction came to be issued that having regard to Section 44A of the Maharashtra Co-operative Societies Act, the Petitioner cannot recover double the amount of the loan that was taken by the Respondent Nos.2 to 4.

3. It is not necessary to burden this order with unnecessary details. Suffice it to state that the Respondent Nos.2 to 4 are the borrowers from the Petitioner Co-operative Society which is a Credit Society. The Respondents had borrowed a sum of Rs.5,000/- from the Petitioner society. In view of the default committed by the Respondent Nos.2 to 4 proceedings under Section 101 of the Maharashtra Co-operative Societies Act came to be initiated. The said proceedings culminated in a certificate dated 18.04.2012 being issued in the sum of Rs.63,565/-. In view of the non-compliance of the said certificate, the Petitioner initiated steps for recovery of the amount covered by the certificate pursuant to which a

seizure notice dated 21.06.2013 issued under Section 156 r/w 107(5)(A) came to be issued. It is upon the seizure notice being issued that the Respondent Nos.2 to 4 filed the instant Revision Application. It is pertinent to note that the Respondents did not challenge the recovery certificate dated 18.04.2012 but chose to challenge the seizure notice which is a derivative action flowing out of the issuance of the said recovery certificate. The Petitioner objected to the maintainability of the Revision Application filed by the Respondent Nos.2 to 4 for non-compliance of Section 154(2A) of the said Act in the matter of making the pre-deposit of 50% of the recoverable dues by the Respondent Nos.2 to 4. However, the Divisional Joint Registrar has not taken into consideration the said objection raised on behalf of the Petitioner and on the ground that in terms of Section 44A, the Petitioner is not entitled to recover double the amount of the loan extended allowed the Revision Application and issued the direction based on Section 44A. As indicated above, the Respondent Nos.2 to 4 did not challenge the certificate issued under Section 101 which is dated 18.04.2012, but chose to challenge the derivative action i.e. the seizure notice. The reason was obvious that the Respondent Nos.2 to 4 it seems did not wish to make the pre-deposit as contemplated by Section 154(2A). In my view, the Revision Application filed by the Respondent Nos.2 to 4 was not maintainable in view of the non-

compliance of Section 154(2A) which objection was specifically raised by the Petitioner, but was overlooked by the Divisional Joint Registrar. The impugned order dated 05.10.2012 would therefore have to be quashed and set aside and accordingly quashed and set aside and the matter is required to be relegated back to the Divisional Joint Registrar for a de-novo consideration of the Revision Application. The Divisional Joint Registrar would take up the Revision Application for hearing, only if the Respondents comply with Section 154(2A) of the said Act. If the Respondent Nos.2 to 4 have paid any amount pursuant to the impugned order, the credit for the same would have to be given whilst calculating the amount to be deposited under Section 154(2A). The balance amount if any to be deposited within six weeks from date i.e. on or before 08.06.2015, if the amount is not deposited the benefit of this order would not enure to the Respondent Nos.2 to 4 and resultantly, the Petition would be deemed to be dismissed as also the Revision Application. Needless to state that if amount is deposited, the Divisional Joint Registrar would proceed to consider the Revision Application on merits. The contentions of the parties are kept open for being urged before the Divisional Joint Registrar. The Petition is allowed to the aforesaid extent. Rule is accordingly made absolute with parties to bear their respective costs.

[R.M. SAVANT, J]