

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3254 OF 2015

Kirtikumar Rasiklal Ajmera & Ors. .. Petitioners

-Versus-

Kalpana Bhupat Ajmera & Ors. .. Respondents

Mr.Firdosh Pooniwalla i/b. Ms.Tejashri Tawade and Yatin R. Shah for
petitioners

Ms.Smruti Rasal i/b. M/s.Narayanan & Narayanan for respondent No.4

Mr.D.H.Mehta for respondent No.5

Ms.Gauri Rao, AGP for respondent Nos. 6 and 8.

CORAM : R.M.SAVANT, J

DATE : 16th APRIL 2015.

PC.

1] The writ jurisdiction of this Court is invoked by the petitioner seeking the relief that no further steps be taken pursuant to the recovery application No.611/12 filed before the Deputy Registrar, K-West Ward, Mumbai as also seeking the relief that further proceedings be stayed in respect of the recovery application No.611/12 before the Deputy Registrar, K-West Ward Mumbai.

2] The said proceedings have been adopted to recover the amount due under the recovery certificate issued under section 101 of the Maharashtra

Cooperative Societies Act, which certificate is dated 27th March 2012 and is for an amount of Rs.57,47,570/-. It is in pursuit of the said recovery that it seems the recovery application No.611/12 was filed for sale of Flat No.502 in Venus Tower Coop.Society, 102, J.P.Road, Andheri (West), Mumbai.

3] The learned Counsel for the respondent No.5 Coop.Society in whose favour the recovery certificate was issued, states that the sale of the said flat No.502 has taken place and the amount fetched by the said flat in the auction has been credited to the society. As indicated above, the above petition has been filed, taking exception to the recovery application 611/12 and the case of the petitioner is that they have nothing to do with the amount due to the society and that as co-owners they claim to have 60% interest in the flat in question. Insofar as the steps taken by the recovery officer to recover the amount covered by the recovery certificate is concerned, that is, steps by way of auction of the property in question, a remedy is provided to the aggrieved party who has an interest in the property being auctioned, though having no connection with the recovery certificate issued under section 101 of the Coop.Societies Act. The said remedy is by way of application to be filed under Rule 107(13) of the Maharashtra Cooperative Societies Rules, 1961 or the subsequent Rules

thereunder, considering the stage at which the recovery proceedings are. The petitioner would be required to adopt the remedy which is made available by Rule 107 and various sub-rules thereof against the said sale.

4] The petitioners would therefore have to be relegated to the said remedy. Needless to state that the contention of the parties on merits have not been considered and it is before the recovery officer that the said contentions can be urged by the parties and it is for the recovery officer to consider the same in accordance with law.

5] The learned Counsel for the petitioner, Mr.Puniwala, states that the petitioners have filed revision application challenging the certificate issued under section 101 of the Cooperative Societies Act. If that be so, the concerned Divisional Joint Registrar may dispose of the same expeditiously.

6] With the aforesaid observations and directions, the petition is disposed of. No costs.

(R.M.SAVANT, J.)