IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

WRIT PETITION NO. 5028 OF 2014

(Dhiraj Popatlal Shah Vs. M/s Sahebrao Deshmukh Co-op. Bank Ltd. & ors.)

Office Notes, Office Memoranda of appearances, Court's orders or directions & Registrar's orders.	Court's or Judge's orders

Mr. Ranjit Dharmadhikari i/b Mr. Kartik Tiwari Advocate for the petitioners.
Mr. Vishal C. Ghosalkar Advocate for respondents 1 & 2.

CORAM : NARESH H. PATIL AND
S.B. SHUKRE, JJ.
DATED : 03rd August 2015.

P.C. :

The petitioner prays for quashing and setting aside the Recovery Certificate and the Pre-attachment notice dated 03.5.2014. The petitioner and the partners of the firm- M/s Amber Electronics had applied for Bill Discounting Facility to the tune of Rs.75 lac. The facility was made available to the firm on an application made on 20.3.2007. An equitable mortgage-deed was executed on 27.3.2007 and the facility was made operative by the bank. There were two partners in the firm. Respondent no. 6 and respondent no. 7 – M/s KAIL Ltd. were the guarantors. The petitioner and respondent no. 4 were partners of M/s Amber Electronics.

2. On 5.5.2009 the bank issued a notice to the firm and it was alleged that they defaulted in payment. On 15.6.2009 an application under Section 101 of the Maharashtra Co-operative Societies Act, 1960 was filed. Recovery proceedings were initiated. Reply was filed by respondent no. 3 herein. The guarantors also filed reply. In the month of January, 2012, Appropriate Officer issued the certificate. In the meanwhile, M/s KAIL Ltd. filed W.P. No. 2487 of 2012. The learned Single Judge by an order dated 4.2.2013 disposed of the writ petition by passing following order-

> "In that view of the matter, I am of the considered view that there was no service upon the petitioners prior to issuance of the impugned Recovery Certificate. Therefore, it is not sustainable on the ground of non observance of principles of natural justice, at least in so far as present petitioners are concerned. In that view of the matter, the impugned Recovery Certificate is quashed and set aside qua the petitioner. Needless to say that since the Recovery Certificate is quashed on the ground of violation of principles of natural justice, the respondent would be at liberty to file fresh proceedings which should be decided in accordance with law."

3. The respondent/bank thereafter filed a fresh recovery proceedings bearing No. 1174/13 against the borrower and the guarantors. By a communication dated

28.7.2013 the Bank Officials applied for withdrawal of the said proceedings on the ground that they desire to maintain the earlier proceedings, bearing No. 1132/09 against the concerned parties.

4. The Bank thereafter proceeded to enforce the Recovery Certificate initially obtained against the borrowers. The mortgaged property, according to the bank, is Shop No. 3, Saket Shopping Centre, near Prashant Hotel, Goregaon (W), Mumbai-62.

5. Counsel for the petitioner submits that the applicants in the recovery proceedings No. 1132/09 were not given proper opportunity to participate and that they do not accept the bank statements and accounts. It was further submitted that in view of initiation of fresh recovery proceedings, it was not appropriate for the bank to withdraw the proceedings against the borrowers. The counsel submits that the delay occurred in approaching this Court was not deliberate. It is the petitioner's case that the property was never mortgaged. Therefore, the entire proceedings deserve to be quashed and set aside.

6. Counsel appearing for the bank has submitted affidavit in reply and the Roznama in the recovery proceedings No. 1132/09 is annexed to the affidavit. Counsel submits that reply was filed on behalf of the firm. After providing necessary opportunity the matter was closed for orders and the Recovery Certificate was issued.

7. It is submitted by the learned counsel that the mortgage-deed is clear which refers to the mortgaged shop owned by the petitioner herein. The learned counsel thereafter has referred to the mortgage-deed signed by the parties, the various agreements for obtaining loan which are signed by the authorised partners. The petitioner had placed on record Retirement Cum Admission Deed executed on 30.4.2009. According to the learned counsel, same does not absolve the petitioner from the consequences of the execution of the Recovery Certificate.

8. We have perused the record, considered the submissions. In accordance with the order passed by the learned Single Judge, fresh proceedings were initiated against the borrowers and the guarantors. But, fact remains that the learned Single Judge had quashed and set aside the Recovery Certificate against the present respondent no. 7- M/s KAIL Ltd. The Bank thereafter decided to withdraw initiation of fresh proceedings as the earlier proceedings were still going on against the guarantors. The Bank decided to press the earlier Recovery Certificate, which was issued in proceedings No. 1132 of 2009. The said certificate was issued in the year 2009. There is a substance in the submission of learned counsel for the bank that till 2014 the petitioner did not raise any challenge to the Recovery Certificate. Admittedly, the petitioner did not resort to the alternate

remedy available under Section 154 of the Maharashtra Co-operative Societies Act in challenging the Recovery Certificate. The Roznama shows that the firm had participated in the proceedings. They had submitted a reply. From the above, it cannot be said that the petitioner was not at all aware of the proceedings initiated by the bank in Proceedings No. 1132/09. The notice in Proceedings No. 1132/09 was served on the borrowers.

9. In this view of the matter, in exercise of extra ordinary writ jurisdiction, we are not inclined to entertain this writ petition. Writ petition is accordingly dismissed.

(S.B. SHUKRE, J.) (NARESH H. PATIL, J.)

Tanvir Ahmed
P.S.