

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

WRIT PETITION (STAMP) NO.19358 OF 2015

Alvi Mohammed Zulfiqar Dilshad

.. Petitioner

Versus

**The Registrar, Co-operative Societies,
Mumbai Region, Mumbai and others**

.. Respondents

Mr. A. J. Kenjale, for the Petitioner.

Ms. M. S. Bane, “B” Panel Counsel for the Respondent Nos.1 & 2.

CORAM : R.M. SAVANT, J.

DATE : 04th AUGUST, 2015

PC.

1. The Writ Jurisdiction of this Court is invoked against the certificate dated 12.06.2015 issued by the Deputy Registrar of Co-operative Societies who is designated as Deputy Registrar for the Mumbai Division Co-operative Patsanstha Federation. The said certificate has been issued against the Petitioner in the sum of Rs.1072118/-. Against the issuance of certificate under Section 101, a remedy by way of Revision under Section 154 of the Maharashtra Co-operative Societies Act (“MCS Act” for short) is available. However, the Petitioner has approached this Court directly in its Writ Jurisdiction under Article 227 of the Constitution of India on the ground that the procedure as contemplated in Chapter VIIIA of the MCS Act has not been followed and that the recovery

certificate has also not been issued in the form that is required to be issued. In support of the said contention, reliance is placed on the judgment of a Division Bench of this Court reported in 2010(6) ALL MR. 550 in the matter of Sundeeep Polymers Pvt. Ltd. & Ors. Vs. State of Maharashtra & Ors., the judgment of a Learned Single Judge reported in 2008(1) ALL MR 111 in the matter of Kushal s/o Narayanrao Mundhe Vs. State of Maharashtra & Ors. and another judgment of a Learned Single Judge of this Court reported in 2015(3) Mh.L.J. 482 in the matter of Balasaheb Dhondiram Nikam Vs. Joint Registrar, Co-operative Societies, Kolhapur and others. In so far as the judgment of the Division Bench of this Court in *Sundeeep Polymers Pvt. Ltd. and others (supra)* is concerned, the fact situation in the said case was that no notice of the said proceedings under Section 101 were given to the borrower and that the said certificate was issued without hearing the borrower. Such is not the case in the instant matter, as admittedly the Petitioner was represented before the Deputy Registrar. The judgment of a Learned Single Judge in *Kushal s/o Narayanrao Mundhe's case (supra)*, also includes identical facts namely that the borrower was not noticed in so far as the said Section 101 proceedings are concerned. In so far as the judgment in *Balasaheb Dhondiram Nikam's case (supra)* is concerned, the Learned Single Judge in the said case has relied upon the judgment in *Sundeeep Polymers Pvt. Ltd.*

and others (supra), wherein as indicated above, the certificate was issued without notice to the borrower and without hearing him. In my view, therefore, the said judgments would not further the case of the Petitioner to approach this Court directly under Article 227 of the Constitution of India without exhausting the alternate remedy. In so far as the other contention of the Learned Counsel for the Petitioner that the said certificate is not in the form in terms of Chapter VIIIA, as it does not contain the reasons, in my view the said submission is only stated to be rejected. The certificate sets out the amounts which are due from the Petitioner and why the certificate is required to be issued. It is required to be borne in mind that the proceeding is one under Section 101 of the MCS Act. The endeavour of the Petitioner appears to be to stall the recovery on one ground or the other.

2. In my view, therefore, the exercise of Writ Jurisdiction of this Court is not warranted. The Writ Petition is accordingly dismissed. However, it would be open for the Petitioner to avail of the remedy by way of a Revision under Section 154 of the MCS Act and if any such remedy is adopted, needless to state that the same would be tried on its merits and in accordance with law uninfluenced by the observations made in the instant order.

[R.M. SAVANT, J]