

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION St.NO. 32670 OF 2016**

Dr. (Mrs.) Snehal Dipak Hadawale

..Petitioner

Vs.

The Mahanagar Co-operative Bank Ltd. & Anr

..Respondents

Dr. D. R.Talankar a/w Mr. S. C. Mangle for the Petitioner

Mr. P. A. Sarwankar i/b Sarwankar & co. for the Respondent No.1

CORAM : R. M. SAVANT, J.

DATE : 2nd DECEMBER, 2016

P.C.

1 The Writ Jurisdiction of this Court is invoked against the order dated 21-11-2016 passed by the Learned President of Maharashtra State Co-operative Appellate Court, Mumbai, by which order the application Exhibit 11 filed by the Petitioner came to be dismissed.

2 The Petitioner herein is the wife of one of the guarantors i.e. Mr. Deepak Hadawale who is the guarantor for the loan taken by the Respondent No.2 i.e. Raman Hospital. The Dispute filed by the Respondent No.1 against the Respondent No.2 being Dispute CC/III/20/2003 came to be decreed in the sum of Rs.62,32,940 with 18.5% interest from 1-12-2002 till realisation. The principal borrower i.e. the Respondent No.2 herein and the guarantor i.e. the Respondent No.5 herein who is the husband of the Petitioner had filed Appeal

in the Co-operative Appellate Court against the said Award of the Co-operative Court dated 27-6-2016. After the Award was passed by the Co-operative Court, the Special Recovery Officer has moved in the matter and attached the office premises of the Petitioner wherein she was carrying her consultancy as Dermatologist and thereafter has taken possession of the said office premises on 26-10-2016.

3 In the Appeal No.59 of 2016 filed by the Respondent No.5 i.e. the husband of the Petitioner, the Petitioner filed the instant application Exhibit 11 for her impleadment in the said Appeal. The ground made out by the Petitioner was that the premises which have been attached by the Special Recovery Officer of the Respondent No.2 pursuant to the said award are owned by her and that she has nothing to do with the loan transaction between the Respondent No.1 and the Respondent No.2. It is also her case that the attachment is without giving her notice.

4 Suffice it would be to state that the said application Exhibit 11 filed by the Petitioner has been rejected by the Appellate Court by the impugned order dated 21-11-2016. The principal ground on which it has been rejected is that the Petitioner was not a party to the dispute and also not a member of the Respondent No.1 Bank. The Learned President has also adverted to the manner in which the transfer of the flat has taken place from

the husband of the Petitioner i.e. the Respondent No.5 to her. As indicated above it is the said order dated 21-11-2016 which is taken exception to by way of the above Petition.

5 It appears that against the attachment which has been effected under Section 156 of the Maharashtra Co-operative Societies Act, the Petitioner has filed an application before the Special Recovery Officer for lifting of the attachment on the self same ground as the grounds on which the application Exhibit 11 was founded. The said application is as yet pending. Since the application before the Special Recovery Officer is an appropriate remedy for a party whose property has been attached, it is not necessary for this court to interfere with the order passed by the Co-operative Appellate Court rejecting the application Exhibit 11 filed by the Petitioner. The fate of the attachment would be contingent upon the decision that would be rendered by the Special Recovery Officer against which decision the Petitioner would obviously have a remedy.

6 In my view therefore the ends of justice would meet if the following directions are issued:

(i) The attachment of the office premises would continue, however, the Petitioner would be handed back the possession of the said premises pending

consideration of her application before the Special Recovery Officer. The same to be done latest by 3-12-2016 by 5.00 p.m. The application filed by the Petitioner to be decided expeditiously by the Special Recovery Officer.

(ii) The attachment and the further steps that are required to be taken for recovery of the dues, by the sale etc. of the office premises under attachment are concerned, would be contingent upon the decision of the Special Recovery Officer.

(iii) The Petitioner to file an undertaking before this Court that she will not create any third party rights or deal with the property in whatsoever manner pending consideration of her application before the Special Recovery Officer.

(iv) The aforesaid directions are only restricted to the office premises of the Petitioner. It would be open for the Respondent No.1 bank to proceed against the Respondent No.2 for recovery of its dues and the instant order would not be an impediment for doing so.

7 The Petition is allowed to the aforesaid extent and is disposed of.

8 The parties to act upon an ordinary copy of this order duly authenticated by the Court shirstedar / Associate.

[R.M.SAVANT, J]