

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 4873 OF 2017

Dinesh Trimbakrao Telalwar

..PETITIONER

VERSUS

State of Maharashtra and Others

..RESPONDENTS

....

Mr. D.J. Choudhary, Advocate for petitioner.

Mr. M.B. Bharaswadkar, A.G.P. for respondent – State.

Mr. M.M. Patil, Advocate for Respondent No.5.

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**CORAM : M.S. SANKLECHA, J.
DATED : 18th APRIL, 2017**

ORDER :

1. Mr. Choudhary, learned Counsel for the petitioner in support of the petition filed under Section 226 and 227 of the Constitution of India takes exception at Respondent Nos. 3 and 4 – banks proceeding to initiate recovery of sums allegedly due from the petitioner by auctioning the same without having disposed of the petitioner's objections to the notice dated 08th March, 2017.

2. Mr. Chaudhary, learned Counsel placed reliance on Rule 107(9) of the Maharashtra Co-operative Societies Rules, 1961 (hereinafter referred to as 'Rules') which provides procedure for attachment and sale of property

under the Maharashtra Co-operative Societies Act. When any objection is made to the proposed attachment of a property then the special recovery officer is obliged to investigate into the objection and pass an order disposing of the objection before proceeding further under the Act. The petitioner has by its letters dated 15th and 17th March, 2017 filed objections to the notice dated 08th March, 2017. However, the same have not yet been disposed of and recovery proceedings by auctioning the petitioner's property has commenced.

3. Mr. Patil, learned Counsel for the bank on instructions states that the proposed auction of the suit property which was scheduled on 24th April, 2017 would not be held. Mr. Patil hands over the copy of written communication dated 17th April, 2017 received by him from the Special Recovery Officer – Respondent No.5 intimating him that proposed auction of the petitioner's property on 24th April, 2017 will not take place. It follows that till such time as the petitioner's objections dated 15th and 17th March, 2017 are not disposed of, no auction of the petitioner's property would be scheduled.

4. Mr. Chaudhary, learned Counsel on instructions states that till such time as Special Recovery Officer passes an order disposing of the

petitioner's objection to the notice dated 08th March, 2017 and for a period of two weeks thereafter, it will not transfer and/or alienate or create any third party rights in respect of subject property which is subjected to or attachment.

5. In view of the above statement made by Mr. Chaudhary, symbolic attachment stands vacated. Needless to state, parties will act in accordance with law. It is made clear that various other contentions available to the parties have not been considered and enquiry was restricted only to the Special Recovery Officer disposing of the notice dated 08th March, 2017 only after considering the objection filed by the petitioners on 15th March, 2017 and 17th March, 2017.

6. The petition is disposed of in above terms. No order as to costs.

(M.S. SANKLECHA, J.)

SSD