

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

WRIT PETITION NO.2448 OF 2017

M/s. Snow Chem Industries, Through their Proprietor, Mr. Suresh Motilal Kothari and another	..Petitioners
Versus	
State of Maharashtra and others	..Respondents

**Mr. Anurag Jain & Mr. Arjun Thakur i/by Global Juris Consults for
the Petitioners.**

Mr. S. D. Rayrikar, AGP for the Respondent Nos.1 & 2.

Mr. V. C. Ghosalkar for the Respondent No.3.

CORAM : R. M. SAVANT, J.

DATE : 24th FEBRUARY, 2017

PC.

1 The writ jurisdiction of this Court is invoked against the order dated 04.11.2016 passed by the Learned Chief Metropolitan Magistrate, Mumbai, by which order, the application filed by the Respondent No.3 - Bank under Rule 107(11)(vi)(a) of the Maharashtra Co-operative Societies Rules, 1961 (For short "the MCS Rules") for taking possession of the property being Flat No.702, in 'C' Wing on the 7th Floor in Om Shanti Co-operative Housing Society Ltd., Saki Vihar Road, Tunga Village, Powai, Mumbai-400 072 came to be allowed.

2 The Petitioners are the borrowers from the Respondent No.3 - Bank. The Petitioner No.2 alongwith her husband who is the proprietor

of the Petitioner No.1 executed a mortgage in favour of the Respondent No.3 – Bank. On default being committed by the Petitioners in the payment of the loan, that action was taken under the SARFAESI Act by passing an order under Section 13(4) of the said Act. Thereafter proceedings under Section 101 of the Maharashtra Co-operative Societies Act, 1960 (For short “the MCS Act”) were initiated by the Respondent No.3 – Bank for recovery of the outstanding loan amount. The proceedings culminated in the certificate dated 06.01.2014 being issued in favour of the Respondent No.3– Bank alongwith application fee totally amounting to Rs.97,99,716/-. Pursuant to the said certificate issued under Section 101 of the MCS Act, a demand notice came to be issued to the Petitioners calling upon them to pay a sum of Rs.1,03,50,283/-. The said notice was served upon the Petitioners by way of RPAD. The Petitioners did not comply with the said notice and in fact did not even reply to the said notice. A notice for attachment thereafter was issued on 25.01.2014 which was served upon the Petitioners and thereafter the attachment notice dated 25.02.2016 came to be issued as per Section 156 of the MCS Act r/w Rule 107 of the MCS Rules. It is a sequitur to the attachment notice that the Respondent No.3 – Bank filed the instant application under Rule 107(11)(vi)(a) of the MCS Rules. The Learned Chief Metropolitan Magistrate having regard to the aforesaid antecedent

facts allowed the said application by the impugned order dated 04.11.2016. It is required to be noted that as on 21.03.2016 a sum of Rs.1,14,34,585/- is due from the Petitioners.

3 The Petitioners challenged the impugned order on the ground that if possession is taken, then the Petitioners would be on the streets as the Petitioners have no place to reside. It is required to be noted that the certificate issued under Section 101 of the MCS Act is as long back as on 06.01.2014. The Petitioners did not challenge the said certificate and resultantly the proceedings are at the stage where possession of the property is now sought to be taken by the Respondent No.3 – Bank so as to recover outstanding amount from the Petitioners. In my view, there cannot be last minute intervention in the proceedings adopted by the Respondent No.3 - Bank to recover the amount which were started long back in the year 2013. In that view of the matter, no case for interference in the writ jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

4 However if the Petitioners approach the Respondent No.3 - Bank for time to vacate the premises, the Respondent No.3 – Bank may consider the same appropriately.

[R.M.SAVANT, J]