

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

WRIT PETITION STAMP NO.7301 OF 2017

Shri. Akshay Ganpat Dhumal and others ..Petitioners
Versus

Jijamata Mahila Sahakari Bank Ltd.
A Co-operative Bank and others ..Respondents

Mr. S. S. Panchpor i/by SNP Legal for the Petitioners.

Mr. M. A. Utgikar for the Respondent No.1.

Mr. S. D. Rayrikar, AGP for the Respondent Nos.3 & 4.

CORAM : R. M. SAVANT, J.

DATE : 15th MARCH, 2017

PC.

1 The possession notice dated 30.01.2017 issued by the Collector, Pune is taken exception to by way of the above Petition. The Petitioners herein are the heirs of one Sukhdev Dhumal and Ganpat Dhumal. It seems that the said Sukhdev Dhumal and Ganpat Dhumal were carrying on their family business and had taken financial assistance by way of two loans in the sum of Rs.75,00,000/- and Rs.67,00,000/- from the Respondent No.1-Bank. It seems that the said borrowers had committed a default in the repayment of the said loans resulting in the Respondent No.1-Bank initiating proceedings under Section 101 of the Maharashtra Co-operative Societies Act, 1960 (For short "the MCS Act"). The said proceedings culminated in the certificate dated 25.09.2013

issued against the said borrowers. Out of the said borrowers Ganpat Dhumal has expired in the year 2010 and Sukhdev Dhumal has expired in the year 2012. As indicated above, the Petitioners are their heirs. As a security for the said loans taken by the said Sukhdev Dhumal and Ganpat Dhumal they had executed a mortgage in respect of their ancestral property being Gram Panchayat property No.771/1 Gat No.1067 and the construction of ground plus three storeys therein. The present outstanding in so far as the said two loan accounts is in the region of Rs.1,57,00,000/-. The Special Recovery Officer of the Respondent No.1-Bank has therefore approached the Collector under Rule 107 of the Maharashtra Co-operative Societies Rules, 1961 (For short “the MCS Rules”), and more especially clause (d-1)(vi) thereof for taking possession of the mortgaged property. The Collector, Pune has accordingly issued the impugned notice of possession intimating to the Petitioners that possession of the said property would be taken today i.e. on 15.03.2017 at 11.00 a.m. which would be in terms of the notice dated 02.03.2017 issued by the Tahsildar, Shirur, Pune. The Petitioners have therefore moved on an urgent basis.

2 It was the submission of the Learned Counsel for the Petitioners that the said notice dated 30.01.2017 issued by the Collector, Pune is without following the mandate of the said Rule 107(d-1) of the

MCS Rules. According to the Learned Counsel the Special Recovery Officer has to satisfy the Collector, Pune that the property in fact was attached and the Collector, Pune has to take into consideration the said aspect before issuing the said notice for possession. In my view, the said submission cannot be countenanced in view of the fact that the attachment is of a mortgaged property and therefore the said rule would have to be interpreted in the said context. The above Petition is a last ditch attempt by the Petitioners to stall the recovery of the said amount of Rs.1,57,00,000/- which is outstanding against the Petitioners. Significantly, the certificate under Section 101 of the MCS Act has not been challenged by the Petitioners. The said certificate has been issued after following the gamut of process laid down, prior to adjudication of the application filed by the Respondent No.1-Bank under the said provision. The Petitioners having not challenged the said certificate are now seeking to challenge the notice of possession which can be said to be consequential to the issuance of the certificate under Section 101 of the MCS Act. Hence there is no merit in the above Petition. The same to accordingly stands dismissed.

3 However the Petitioners claim that the property of which the possession is sought is their residential house, the Respondent No.1-Bank may grant them reasonable time to vacate the same if the Petitioners are

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residing therein. If the Petitioners are not residing in the said property then the Authorities are free to proceed in accordance with law.

[R.M.SAVANT, J]