

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION St. NO. 9095 OF 2016**

Vinod Pralhad Babar

..Petitioner

Vs.

**Durga Co-operative Credit
Society Ltd Mumbai & Ors**

..Respondents

Mr. K. S. Patil for the Petitioner

Mr. S. S. Kurade for the Respondent Nos.1 and 2

Mrs. V. S. Nimbalkar AGP for the Respondent No.3

CORAM : R. M. SAVANT, J.

DATE : 16th JANUARY, 2017

P.C.

1 The Writ Jurisdiction of this court is invoked against the order dated 18-1-2016 passed by the Special Recovery and Sales Officer of the Respondent No.1. Bank attaching the salary of the Petitioner to the extent of Rs.10,000/- per month. The said order has been passed under Rule 107(6) of the Maharashtra Co-operative Societies Rules 1961. The said attachment is pursuant to the certificate issued under Section 101 of the Maharashtra Co-operative Societies Act 1960 in favour of the Respondent No.1 herein and against the father of the Petitioner which certificate is dated 2-8-2014 and is in the sum of Rs.31,73,080/-.

2 It is an undisputed position that the recovery is sought to be made against the Petitioner as he was the alleged guarantor of the loan taken by his father. The Petitioner's father whilst he was alive has questioned the

transaction and filed a complaint before the Learned Metropolitan Magistrate, 32nd Court, Bandra Mumbai. The Metropolitan Magistrate by order dated 20-9-2013 directed the Nirmal Nagar Police Station to carry out investigation under Section 156 (3) of the Cr. P.C. It seems that the father of the Petitioner has expired after filing of the said complaint. Though complaint was filed in the year 2013, the Petitioner is not aware as regards the outcome of the investigation or the status of the investigation. At this point of time, it cannot be said that the investigation is still on going.

3 Be that as it may, the Petitioner as the alleged guarantor as also having regard to the fact that the recovery is sought to be made from his salary, could have challenged the said certificate issued under Section 101 dated 2-8-2014 or could have approached the Recovery Officer under Sub Rule (19) of Rule 107, against the attachment of the salary to the extent it has been attached. However, without taking the said recourse, the Petitioner has directly approached this Court by way of the above Petition. Hence no relief can be granted to the Petitioner in the above Petition. The Petitioner if so advised may take recourse either under Section 154 of the Maharashtra Co-operative Societies Act or Rule 107(19) of the Rules. If any such proceedings are filed, needless to state that they would be tried on their own merits and in accordance with law.

4 With the aforesaid observations, the Writ Petition is dismissed.

[R.M.SAVANT, J]