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

WRIT PETITION NO. 8657 OF 2017

1. Premlaksha R. Padubidri

Adult, Indian inhabitant, 12, Arinda Co-
Operative Housing Society Limited,
Section 10, Vashi, Navi Mumbai 400 073.

...Petitioner

Versus

1. The State of Maharashtra

Represented by the Chief Secretary,
Mantralaya, Mumbai 400 032.

2. The Jankalyan Sahakari Bank Ltd.

140, Sindhi Society, Vivek Darshan, Opp.
Bhakti Bhavan Chember, Mumbai 400
071.

3. The Assistant Registrar

Bhartiya Krida Mandir Bldg., 4th Floor,
Wadala, Mumbai 400 031.

**4. The Special Recovery and Sales
Officer /**

The Authorised Officer, Jankalyan
Sahakari Bank Ltd., 140, Sindhi Society,
Vivek Darshan, Opp. Bhakti Bhavan,
Chembur, Mumbai 400 071.

5. The District Magistrate, Thane

6. The Tahasildar, Thane.

7. Mandal Adhikari, Belapur,

Near Ramtanu Mata Mandir, Turbe Village,
Navi Mumbai.

8. The Senior Inspector of Police

Vashi Police Station, Navi Mumbai.

...Respondents

Mr. Mathew Nedumpara, i/b Rohini M. Amin, Adv. for the
Petitioner.

Mr. Bhupesh V. Samant, AGP for Respondents Nos. 1 and 2.

**CORAM: B.R. GAVAI AND
RIYAZ I. CHAGLA, JJ.**
DATED: 1st August 2017.

J U D G M E N T :- (Per Riyaz I. Chagla J.)

1. The Petitioner by the present Petition has challenged the constitutional validity of Section 101 and Section 154 (2a) of the Maharashtra Co-Operative Societies Act, 1960 (**“hereinafter referred to as the Act”**). The Petitioner has also challenged the constitutionality of Rule 107 (11) (D-1) of the Act by notification dated 30th August 2014 issued by Respondent No.2. The Petitioner has also sought a declaration from this Court declaring the order dated 16th July 2016 passed by the District Magistrate, Thane for taking physical possession of the subject property and the notice dated 29th June 2017 issued by Respondent No.7 in execution of the impugned order dated 16th July 2016 as null and void.

2. The Petitioner is a borrower from Respondent No.2 bank. The Petitioner's loan account had become NPA and Respondent No.2 bank had sought recovery proceedings under the Act. The Respondent No.2 bank had obtained recovery certificate under Section 101 of the Act. The subject property of the Petitioner was attached on 21st November 2016. The revision application filed by the wife of the Petitioner Mrs. Sandra Padibidri was dismissed by the Divisional Joint Registrar under Section 154 of the Act on 25th May 2015. The Respondent No.2 bank filed application before the District Magistrate, Thane for getting possession of the subject property. The District Magistrate, Thane allowed the application and ordered the Tahasildar, Thane to take physical possession of the subject property and handover the same to the Respondent No.2 bank. The Petitioner has filed a Suit being Regular Civil Suit No. 414 of 2016 before the Civil Court, Belapur which is pending. The Petitioner filed the present Writ Petition before this Court.

3. Shri Nedumbara, learned counsel for the Petitioner has contended that the provisions of the Act viz. Section 101 and

154 (2a) are unconstitutional. Shri Nedumbara has also submitted that Rule 107(11) (D-1) which provides for possession and sale of the subject property by the Recovery Officer by delivering a possession notice as prescribed under the Rule for securing compliance and for the District Magistrate to take appropriate steps, is unconstitutional. Shri Nedumbara has argued on the unconstitutionality of the said provisions and the said Rules without going into validity of the order passed by the District Magistrate and / or attachment of the subject property.

4. Shri Samant, learned AGP appearing for Respondents Nos. 1 and 2 has contended that the Petitioner has shown no interest in complying with the order of the District Magistrate, Thane dated 16th August 2016 and has preferred a Suit before the Civil Court, Belapur on 24th October 2016 and which Suit is pending. Shri Samant has also submitted that the constitutionality of the said provisions of the Act had been raised previously before this Court in the case of ***Mohan Kewalram Tejwani Vs. Special Recovery Officer & Sales***

Officer, Jankalyan Sahakari bank Ltd. & Ors.¹ This Court which had upheld the constitutionality of the said provision by relying upon previous judgment of this Court and that of the Apex Court. Shri Samant has submitted that in view of the constitutionality of the said provisions having been upheld in the said order / judgment dated 8th March 2013, wherein the very same counsel Shri Nedumbara had appeared for the Petitioner, it is not open to raise the same challenge in these proceedings. Shri Samant has submitted that the order of the District Magistrate was passed way back on 16th July 2016 and the Petitioner had also filed a Suit before the Civil Court, Belapur in respect of the subject matter which is pending. Shri Samant has also submitted that notice had been issued on 29th June 2017 for execution of the said order of the District Magistrate and it is only then that the Petitioner has filed the present Petition. Shri Samant has further contended that the Petitioner is not interested in settling the dues of the Respondent No.2 bank and that the present Petition be dismissed.

1 Writ Petition (L) No. 2001 of 2012 with Writ Petition (L) No. 2772 of 2012 decided on 8th March 2013.

5. We are of the considered view that the constitutionality of the said provisions which are challenged in the present Petition had already been challenged in an earlier Petition, wherein counsel Shri Nedumbara, himself, had appeared and the Division Bench of this Court on 8th March 2013 had upheld the constitutional validity of the said provisions. We do not consider it appropriate for Shri Nedumbara to once again bring up the constitutionality of the said provisions. We are also of the view that there is no infirmity in the order passed by the District Magistrate, Thane on 16th July 2016 and the notice dated 29th June 2017 for execution of the impugned order. We are also of the considered view that the Petitioner has availed of alternate remedy by filing Suit before the Civil Court, Belapur, which is pending.

6. We accordingly dismiss this Petition. There shall be no order as to costs.

(RIYAZ I. CHAGLA J.)

(B.R. GAVAI J.)