

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION St. NO. 22829 OF 2017**

Dinesh Chimanlal Joshi

..Petitioner

Vs.

**The Recovery Officer, Co-operative
Department, Mumbai & Ors**

..Respondents

Ms Barsha Parulekar i/b Mr. N. M. Sangle for the Petitioner

Mr. H. R. Pawar for the Respondent Nos.1 and 2

Mrs. R. A. Salunkhe AGP for the Respondent Nos.3 and 4

**CORAM :R. M. SAVANT, &
SARANG V KOTWAL, JJ
DATE : 11th OCTOBER, 2017**

PC.

1 The Learned Counsel for the Petitioner on instructions of the Petitioner who is personally present in Court seeks withdrawal of the above Petition. However, prior to permitting the said withdrawal, certain facts would have to be noted. Three recovery certificates issued under Section 101 of the Maharashtra Co-operative Societies Act being annexed as Exhibit A(colly) to the above Petition are the subject matter of the above Petition. The aggregate amount due from the Petitioner under the said three certificates is an amount of Rs.1,73,06,398/- at the time of the filing of the above Petition. On the said day, the Petitioner handed over a cheque of Rs.15 lacs to the Respondent No.2 Bank which cheque was accepted. The Petitioner also filed an undertaking in this Court bearing the said date i.e. 10-8-2017 by which undertaking, the Petitioner undertook to pay the outstanding loan of Rs.1,73,06,398/- within a

period of two months from the said date i.e. 10-8-2017. The said period of two months has therefore come to an end yesterday i.e. 10-10-2017.

2 The above Petition was therefore listed today to ascertain as to whether the amount has been paid by the Petitioner. As indicated above the Learned Counsel for the Petitioner seeks withdrawal of the above Petition. We are informed by the Learned Counsel for the Respondent No.2 Bank that the cheque for Rs.15 lacs which was given by the Petitioner to the Respondent No.2 Bank was dishonoured. However, on being informed of the same the Petitioner paid the said amount by RTGS. The Petitioner has thereafter paid an amount of Rs.2 lacs to the Respondent No.2 Bank. Hence the Petitioner has only paid the amount of Rs.17 lacs and has not paid the balance outstanding though an undertaking has been given by him. The withdrawal of the above Petition is therefore sought for obvious reasons. The Petitioner has by giving the said undertaking can be said to have bought time up to this date by not paying the said balance outstanding amount. The same is sought to be attributed by the Learned Counsel for the Petitioner on the ground that the Petitioner could not make arrangements for the said amount. The Petitioner ought to have realised the same whilst giving the undertaking on 10-8-2017. Once a solemn undertaking was given by the Petitioner, it was expected of the Petitioner that he would abide by the said undertaking. The withdrawal of the above Petition is therefore with an intention to get over the said self solemn

undertaking which the Petitioner has given to this Court. This court obviously in its writ jurisdiction cannot countenance such a conduct on the part of the Petitioner. Hence though the Petition is allowed to be withdrawn, the Petitioner is directed to pay an amount of Rs.1,00,000/- as costs to the Respondent No.2 Bank within 4 weeks from date. The said costs would take care of the loss caused to the Bank by way of interest on the outstanding amount which otherwise the Petitioner had undertaken to pay. If the said costs are not paid, the same would be recovered by the concerned Collector as arrears of land revenue. The Writ Petition is accordingly allowed to be withdrawn and dismissed as such.

[SARANG V KOTWAL, J]

[R.M.SAVANT, J]