

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION STAMP NO.35864 OF 2016**

Pavankumar Ramavtar Modi

..Petitioner

Versus

Rajesh Trading Company and others

..Respondents

**Mr. Minesh Shah a/w Mr. Viraj Kandpile i/by Renu Vijay Upadhyay
for the Petitioner.**

Mr. V. C. Ghosalkar for the Respondent No.4.

Mrs. V. S. Nimbalkar, AGP for the Respondent No.8.

CORAM : R. M. SAVANT, J.

DATE : 5th JANUARY, 2017

PC.

1 The writ jurisdiction of this Court is invoked against the notice for possession dated 15.12.2016 issued by the Circle Officer, District Thane. By the said notice, the possession of the premises being Flat No.703, Tower No.1, 7th Floor, Flower Valley Complex Co-operative Housing Society Ltd., Eastern Express Highway, Thane (W) is to be taken on 07.01.2017. The Petitioner claims to be a lessee/tenant of the premises in question which arrangement according to the Petitioner was arrived at in the year 2008. However to the above Petition only a receipt for Rs.8000/- has been annexed as being paid by the Petitioner to the borrower Shri. Santoshkumar Goyal. The possession of the premises in question sought to be taken is in furtherance of the certificate obtained by the Respondent No.4 Bank under Section 101 of the Maharashtra Co-operative Societies Act. The borrower i.e. the Respondent No.1 herein had filed Writ Petition No.10868 of 2016 in this Court challenging the

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order dated 20.07.2016 passed by the District Magistrate, Thane directing the authorities to take possession of the flat in question. The said Writ Petition came to be dismissed by a Learned Single Judge of this Court by order dated 22.09.2016. The notice impugned in the present Petition is a sequitur to the order dated 20.07.2016. The Petitioner it seems has filed an application before the Recovery Officer of the Respondent No.4 Bank. The remedy if any to the Petitioner would be an application under Rule 107(19) of the Maharashtra Co-operative Societies Rules, 1961. However the Petitioner in the instant application has invoked the provisions of Section 156 r/w Section 79 of the Maharashtra Co-operative Societies Rules, 1961. The prayer clauses in the said application are not referable to Rule 107(19) of the said Rules. The application has been file sometime in October 2016. However significantly has not been pursued by the Petitioner. It seems that on the anvil of the Respondent No.4 now seeking to take possession on 07.01.2017 that the instant Petition has been moved. In my view, having regard to the facts as aforestated, no relief can be granted to the Petitioner. The Writ Petition is accordingly dismissed. However, the Petitioner is at liberty to pursue the remedy under Rule 107(19) of the Rules if so advised.

[R.M.SAVANT, J]