

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 237 OF 2017

M/s. Shehnai Banquets & Anr..	]	Petitioners
Vs.		
The Special Recovery and Sale Officer	]	
Attached to Maratha Sahkari Bank Ltd.	]	
and others.	]	Respondents

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Mr. Jamshed Ansari, for petitioners.

Mr. K.S. Dewal i/b Mr. J.M. Joshi, for respondents No.1 and 2.

Mr. Kunal Bhanage, A.G.P for respondents No.3 and 4.

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CORAM : R.G. KETKAR, J.

DATE : 26th JULY, 2017.

P.C.

Heard Mr. Ansari, learned Counsel for petitioners, Mr. Dewal learned Counsel for respondents No. 1 and 2 and Mr. Bhanage, learned A.G.P, for respondents No.3 and 4 at length.

2. By this Petition under Article 226 of the Constitution of India, petitioners have challenged the;

[1] purported demand notice dated 5th April, 2016.

[2] purported demand notice dated 4th May, 2016.

[3] possession notice dated 20th June, 2016.

[4] judgment and order dated 5th August, 2016 passed by respondent No.3, the Divisional Joint Registrar, Co-

operative Societies, Mumbai Division in Revision
Application No. 357 of 2016.

3. It is a case of the petitioners that respondent No.2-Maratha Sahakari Bank Ltd.[for short 'Bank'] claims to have issued demand notices dated 5th April, 2016 and 4th May, 2016 u/s 156 of the Maharashtra Co-operative Societies Act, 1960 [for short 'Act'] r/w Rule-107 of the Maharashtra Co-operative Societies Rules, 1961 [for short 'Rules'] calling upon petitioners to repay the amount mentioned in the notice being Rs. 4,03,05,911/-. Rs. 3,93,22,640/- and Rs. 3,22,93,945/- aggregating to Rs. 11,19,22,496,00. Mr. Ansari submitted that petitioners have not been served with the said notices. He has invited my attention to the reply filed by respondent No.2/Bank in Revision Application No. 357 of 2016. He submitted that though in the reply, respondent No.2/Bank asserted that notices dated 5th April, 2016 and 4th May, 2016 were tried to be served by hand delivery to the petitioners, they refused to accept the same. Officers of respondent No.2-Bank, therefore, tried to affix notices on the part of the property, however, petitioners opposed the Bank Officer. He submitted that contentions raised in the reply are not substantiated by respondent No.2-Bank by producing any material before the Divisional Joint Registrar.

4. Mr. Ansari further submitted that respondent No.3-the Divisional Joint Registrar did not record any finding as regards service of demand notice on the petitioners. He submitted that as there is non compliance of Section 156 of the Act r/w Rule-107 of

Rules, demand notices dated 5th April, 2016 and 4th May, 2016 and possession notice dated 20th June, 2016 deserve to be set aside. He, therefore, submitted that Petition requires consideration.

5. On the other hand, Mr. Dewal supported the impugned demand notices and possession notice dated 20th June, 2016 as also impugned order. He submitted that basically demand notices were issued after respondent No.2-Bank obtained Recovery Certificate. The petitioners have not challenged Recovery Certificate. Action of respondent No.2 is consequential based upon Recovery Certificate obtained by respondent No.2-Bank. He has taken me though the reply filed by the respondent No.2-Bank before the Divisional Joint Registrar and submitted that Divisional Joint Registrar has dealt with service of demand notices dated 5th April, 2016 and 4th May, 2016 by observing that petitioners did not accept the same. He submitted that the Divisional Joint Registrar has recorded a finding of fact and, therefore, no case is made out for invocation of powers under Article 226 of the Constitution of India.

6. I have considered the rival submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record. It is not in dispute that second respondent/Bank has obtained Recovery Certificate against the petitioners for non payment of legal dues. It is not in dispute that the petitioners have not challenged the Recovery Certificate. In other words, the petitioners have accepted validity of the Recovery Certificate obtained by respondent No.2. The petitioners have come with the case that demand notices dated 5th April, 2016 and 4th

May, 2016 were not served on them and thus there is non compliance of Section 156 r/w Rule-107 of the Rules. A perusal of the reply filed by respondent No.2 before the Divisional Joint Registrar shows that in paragraph 9, respondent No.2 specifically averred that notices dated 5th April, 2016 and 4th May, 2016 were tried to be served by hand delivery to the petitioners. As it was not accepted by them, Officer of respondent No.2 tried to affix notices on the part of the property. That was also opposed by the petitioners.

7. In so far as present controversy is concerned, Rule-107 (5) (a), 107 (11) (d-1) (ii) is relevant which reads thus:

107. [Procedure for attachment and sale of property under Section 156]:

(5) In the seizure [and] sale of moveable property, the following rules shall be observed:-

(a) The [Recovery Officer] shall, after giving previous notice to the applicant, proceed to the village [town or city] where the defaulter resides or the property to be distrained is situated and serve a demand notice upon the defaulter if he is present. If the amount due together with the expenses be not at once paid, the [Recovery Officer] shall make the distress and shall immediately deliver to the defaulter a list of inventory of the property distrained and an intimation of place and day and hour at which the distrained property will be brought to sale if the amounts due are not previously discharged. If the defaulter is absent, the [Recovery Officer] shall serve the demand notice on some adult male member of his family, or on his authorised agent, or when such service cannot be effected, shall affix a copy of the demand notice on some conspicuous part of his residence. He shall then proceed to make the distress and shall fix the list of the property attached on the usual place of

residence of the defaulter endorsing thereon the place where the property may be lodged or kept and an intimation of the place, day and hour of sale”.

11[(d-1) (i)...

(ii) For sale of attached immovable property, the Recovery officer shall take or cause to be taken possession, by delivering a possession notice prepared as nearly as possible in Form “Z” to these rules, to the judgment debtor and by affixing the possession notice on the outer door or at such conspicuous place of the property.

8. A perusal of the above extracted provisions shows that demand notice can be served upon the defaulter if he is present. If service of the demand notice cannot be effected, copy of the demand notice can be affixed on some conspicuous part of defaulters residence. Respondent No.2/Bank has complied the provisions of Rule-107, 5(a) of the Rules.

9. A perusal of the impugned order dated 5th August, 2016 shows that Divisional Joint Registrar has considered this aspect and observed thus:

“On the other side it appears that the Respondent Bank had issued the notice dated 20/06/2016 by publishing in the News paper. It seems that the Respondents had issued notices dated 05/04/2016 and 04/05/2016, however the Applicants have not accepted the same. Further the Respondent Bank stated that they will approach to Chief Metropolitan magistrate for the purpose of physical possession of the property. Therefore, it seems that the Respondent Bank has following the Rules 107 (11) (d) (1) of M.C.S. Rules, 1961”.

10. The findings recorded by the respondent No.3, the Divisional Joint Registrar show that the Divisional Joint Registrar has held that Bank had issued demand notices and the petitioners herein have not accepted the same. As the Divisional Joint Registrar has recorded finding of fact, I do not find that there is any infirmity in the order dated 5th August, 2016.

11. The petitioners are not in a position to demonstrate that findings recorded by the 3rd respondent are contrary to the material on record or that they are not supported by material on record. In other words, the petitioners have not demonstrated that findings recorded by the 3rd respondent are perverse. Merely because on the basis of material on record, another view is possible that itself is not a ground for invocation of powers under Article 226 of the Constitution of India. Hence, Petition fails and the same is dismissed.

[R.G. KETKAR, J.]