

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1772 OF 2018

Smt. Shilpa Mukesh Shah

....Petitioner

V/s.

The State of Maharashtra
and Ors.

....Respondents

* * * * *

Mr. Ghansham Upadhyay a/w. Mr. Parth Pandey, i/by.
Law Juris, Advocate for the petitioner.

CORAM :-

R.M.SAVANT, &

SANDEEP K. SHINDE, JJ.

DATE :-

15TH FEBRUARY, 2018.

P.C. :-

1. The writ jurisdiction of this Court is invoked seeking a direction against the respondent no.3 to act upon the OTS proposal/offer given by the petitioner in a non-discriminatory and in a fair and reasonable manner in adherence to the Notification / Guidelines issued by the respondent no.2.

2. The second relief sought, is for quashing and setting aside the order dated 17th January, 2018 passed by the Learned Chief Metropolitan Magistrate

under Rule 107(11)(vi)(a) of of the Maharashtra Co-operative Societies Rules, 1961 and thereby ordered to take possession of the mortgaged property.

3. Mr. Upadhyay, the Learned Counsel for the petitioner submits that, though the above petition contains the claim for aforesaid reliefs, he seeks to raise a larger challenge as regards the applicability of the Maharashtra Co-operative Societies Act in the matter of conducting recovery proceedings against a defaulting borrower. The Learned Counsel sought to place reliance on the Full Bench Judgment of this Court reported in **CDJ Law Journal 2003 BHC 810 in the matter of Narendra Kantilal Shah V/s. Joint Registrar Co-operative Societies (Appeal) Bombay and Others**, wherein the issue which was referred to the Full Bench of this Court was whether the Courts and Authorities constituted under the Maharashtra Co-operative Societies Act, 1960 (the MCS Act, 1960) and Multi-State Co-operative Societies Act, 2002 (the 2002 Act), continue to have jurisdiction to entertain applications / disputes submitted before them

by the Co-operative Banks incorporated under the 1960 and 2002 Act for an order for recovery of debts due to them, after establishment of a Tribunal under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. The said issue, according to the Learned Counsel was answered by the Full Bench by holding the Courts and the Authorities under the MCS Act, 1960, as also, the 2002, Act would cease to have jurisdiction to entertain the applications submitted by the Co-operative Banks for recovery of their dues. The Learned Counsel, however, thereafter conceded that the aforesaid Full Bench judgment of this Court has been overruled by the Apex Court in the judgment in **Greater Bombay Co-operative Bank Ltd. V/s. United Yarn Tex (P) Ltd. and Ors.**, reported in (2007) 6 SCC page 236, wherein the Apex Court held that the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 would not include the Courts or Officer by him under the Maharashtra Co-operative Societies Act and the Co-operative Societies Act, operational in other States. The Learned Counsel, would

further contend that the issue as to whether the provisions of the Maharashtra Co-operative Societies Act could be invoked by the Authorities and Courts exercising powers under the said Act is pending before the Apex Court in view of the reference made by a Three Judge Bench of the Apex Court by order dated **26th February, 2016** in **Civil Appeal No. 5674 of 2009** in the matter of **Pandurang Ganpati Chaugule V/s. Vishwasrao Patil Murgud Sahakari.**

4. We have perused the order of Reference dated **26th February, 2016** of the Three Judge Bench of the Apex Court. From para-2 of the said order, it can be seen that, the reference pending before the Apex Court is in respect of the issue namely the applicability of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 to the Co-operative Societies/Banks and not the issue as to whether the Authorities and the Courts under the Maharashtra Co-operative Societies Act can initiate proceedings for recovery under the said MCS Act, 1960. We are therefore

unable to accept the contention urged by the Learned Counsel that the issue whether the Authorities/Courts under the MCS Act, 1960 can invoke the provisions of the MCS Act, 1960 for effecting recovery is pending before the Apex Court.

5. The impugned order passed by the Learned Chief Metropolitan Magistrate is a consequence of the proceedings for recovery under Section 101 of the MCS Act, 1960. The order passed under Section 101 of the MCS Act, 1960 has not been challenged but what is challenged is only the consequential action. The petitioner is admittedly a defaulter against whom recovery proceedings as above have been adopted. We do not propose to issue any direction as sought vide prayer clause (a) and we do express any opinion in that regard. However, we do not find any merits in the above petition, which is accordingly dismissed.

(SANDEEP K. SHINDE, J)

(R.M. SAVANT, J)