

Kalpna Mahesh Bhanushali ... Applicant

Sujay P. Sawant, Recovery Officer ... Respondents
and Ors.

Mr. Upadhyay I/by Law Competere Consultus for Applicant.
Mrs. S. S. Kaushik, APP for State.

CORAM : NITIN W. SAMBRE, J.
DATE : APRIL 06, 2018.

The Applicant before this Court claimed to be holding rights by virtue of document styled as 'Power of Attorney' in rein to property, attached in an execution of the Recovery Certificate issued by the Deputy Registrar, Wadala Mumbai dated February 22, 2017 under Section 101 of the Maharashtra Co-operative Societies Act.

2. The present Applicant claiming that since the Applicant, neither a borrower nor a guarantor, her property ought not to have been attached. Based on the Power of Attorney, she has initiated Criminal Complaint for issuance of directions under Section 156 (3) of the Code of

Criminal Procedure, which was turned down by the learned Metropolitan Magistrate, 73rd Court, Vikhroli, Mumbai vide impugned order dated October 12, 2017, which was confirmed by the learned Additional Sessions Judge, Mumbai vide order dated January 8, 2018 in Revision Application No. 1150 of 2017, as such this Application.

3. Mr. Upadhyay, the learned Counsel for the Applicant would strenuously urge that the dismissal of the complaint is based on the non-compliance of requirement under Section 197 of the Code of Criminal Procedure. He would urge upon perusal of the requirement under Section 197 of the Code of Criminal Procedure, the protection thereunder cannot be extended to the Accused persons against whom the order pursuant to the provisions under Section 156(3) of the Code of Criminal Procedure was sought. He would try to emphasis by submitting that the State Government is not the competent authority as contemplated under Section 197 of the Code of Criminal Procedure for the removal of the Respondent – alleged Accused. As such the orders impugned are not sustainable.

4. In addition, Mr. Upadhyay, the learned Counsel for the Applicant would urge that the action on the part of the Accused is high handed and contrary to the provisions of Maharashtra Co-operative Societies Act.

5. So far as both these contentions are concerned, the learned Magistrate has in detail dealt with about the same, particularly keeping in

mind the scheme under Section 156(3) and Section 190 of the Code of Criminal Procedure.

6. The fact remains that the Applicant is not in a position to demonstrate before this Court her absolute title to the property which is attached. She has also not challenged the recovery certificate proceedings by taking out independent proceedings for the same. Very locus of the Applicant to initiate the criminal complaint case is under cloud. In view thereof, no interference is called for.

7. The present Application lacks in merits. Hence, the same is dismissed.

(NITIN W. SAMBRE, J.)