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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION (STAMP) NO.15791 OF 2018

- 1). M/s.Medihealth Care Private Limited)
a Private Limited Company registered)
under the provisions of the Companies)
Act, 1956, having its registered office)
at 3, Sundeep Apartment, Near Shiv)
Sena Shaka, Daji Ramchandra Road,)
Charai, Thane (W), Mumbai – 400 601.)
)
 - 2). Dr.Kushal Rameshchandra Patel)
Director of Petitioner No.1, age Adult,)
Occupation Business, Indian Inhabitant)
)
 - 3). Dr.Bharati Kushal Patel,)
Director of Petitioner No.1, age Adult,)
Occupation Business, Indian Inhabitant)
)
Both residing at Flat No.104,)
Sonal Apartments, Near Saraswati)
School, Panchpakhadi, Thane (W) – 02)
- ...Petitioners

....Versus....

- 1). State of Maharashtra,)
Through its Secretary for Co-operation)
Marketing & Textile Department,)
State of Maharashtra, Mantralaya)
Mumbai – 400 032.)
)
- 2). Deputy Registrar, Co-operative)
Societies, Thane City Thane,)
Having its office at 1st Floor,)
Gaondevi Bhaji Market, Near)
Gaondevi Ground, Thane (W) – 02.)
)
- 3). Thane Bharat Sahakari Bank Limited)
1st Floor, Shri Satyam Premises,)
)

M.G. Road, above Punjab National)
Bank, Naupada, Thane (W) – 400 602.)
)
4). The Recovery Officer,)
Duly authorized under the provisions)
of M.C.S. Act, 1960 and Rules framed)
thereunder, 1961 by the Respondent)
No.3, having office at 1st Floor,)
Shri Satyam Premises, M.G. Road,)
above Punjab National Bank,)
Naupada, Thane (W) – 400 602.) ...Respondents

Mr.Amrut Joshi with Mr.Ahkil Kusade i/b Manoj Harit & Co. for the
Petitioners.

Ms.Geeta P. Sonawane, A.G.P. for the State – Respondent No.1.

Mr.Vishal Kanade with Mr.Nikhil Rajani i/b V. Deshpande for the
Respondent Nos.3 and 4.

CORAM : R.D. DHANUKA, J.
DATE : 28TH JUNE, 2018.

ORAL JUDGMENT :-

1. By this petition filed under section 227 of the Constitution of India, the petitioners have impugned the order dated 31st March, 2008 passed by the Deputy Registrar Co-operative Societies under section 101 of the Maharashtra Co-operative Societies Act, 1960. Learned counsel for the petitioners on instructions does not press prayer clause (e) of the petition and seek liberty to file appropriate claim against the respondent no.1 before the appropriate Court. Leave to amend is granted to delete prayer clause (e) from the writ petition. The amendment to be carried out within one week from

today.

2. Insofar as the challenge to the recovery certificate dated 31st March, 2008 issued by the learned Deputy Registrar, Co-operative Societies is concerned, Mr.Kanade, learned counsel appearing for the respondent nos.3 and 4 raises an issue of maintainability of this writ petition on the ground that the petitioner ought to have availed of alternative remedy provided under section 154 of the Maharashtra Co-operative Societies Act, 1960. In his alternate submission, he urged that in any event no case is made out insofar as the validity of the recovery certificate is concerned.

3. Learned counsel appearing for the petitioners invited my attention to the written submissions filed in the application under section 101 of Maharashtra Co-operative Societies Act, 1960 by the respondent nos.3 and 4 before the Deputy Registrar and submits as under :-

a). There were several disputed questions of fact raised by the petitioners before the Deputy Registrar.

b). The respondent nos.3 and 4 have not annexed any statement of account along with the application under section 101 of the Maharashtra Co-operative Societies Act, 1960.

c). The counter claim filed by the petitioners has not been considered by the Deputy Registrar in the proceedings filed under

section 101 of the Maharashtra Co-operative Societies Act, 1960.

4. Mr.Kanade, learned counsel for the respondent nos.3 and 4 on the other hand submits that the petitioners herein did not raise any dispute about the correctness of the chart filed by the respondent nos.3 and 4 before the learned Deputy Registrar. The petitioners also did not raise any issue that no order on the said application filed under section 101 of the Maharashtra Co-operative Societies Act, 1960 could have been passed by the Deputy Registrar without the respondent nos.3 and 4 filing any statement of account. Insofar as the issue of counter claim not having been considered by the learned Deputy Registrar is concerned, it is submitted that no such counter claim could be adjudicated upon in a summary proceedings filed under section 101 of the Maharashtra Co-operative Societies Act, 1960 by the learned Deputy Registrar. In his alternate submission, he submits that no such counter claim was in fact made by the petitioners in the said proceedings.

5. With the assistance of the learned counsel for the parties, I have perused the averments made in the written submissions filed by the petitioner before the learned Deputy Registrar in the proceedings filed by the respondent nos.3 and 4 under section 101 of the Maharashtra Co-operative Societies Act, 1960. Learned counsel for the petitioners fairly pointed out that no such issue was raised by the

petitioners in the written submissions that the Deputy Registrar could not have passed an order under section 101 of the Maharashtra Co-operative Societies Act, 1960 without there being any statement of account being on record. The petitioners also did not dispute the correctness of the chart produced by the respondent nos.3 and 4 filed in the proceedings under section 101 of the Maharashtra Co-operative Societies Act, 1960. In my view, since the petitioners did not raise any dispute about the quantification of the claim made by the respondent nos.3 and 4, the petitioners cannot be allowed to urge that there being disputed questions of fact and thus the dispute could be adjudicated upon only by the Co-operative Court under section 91 of the Maharashtra Co-operative Societies Act, 1960. In my view, the judgment of this Court in case of **M/s.Top Ten vs. State of Maharashtra & Ors., 2012(1) Mh.L.J. 347** will not assist the case of the petitioners.

6. Insofar as the submission that the counter claim ought to have been considered by the learned Deputy Registrar in the proceedings filed under section 101 of the Maharashtra Co-operative Societies Act, 1960 is concerned, in my view, the same is totally without any substance. The proceedings under section 101 of the Maharashtra Co-operative Societies Act, 1960 are a summary proceeding, which can be filed by certain societies referred in the said

provision against various persons. No other claim can be entertained by the learned Deputy Registrar under section 101 of the Maharashtra Co-operative Societies Act, 1960 except such societies or by other persons against such societies. Section 101 of the Maharashtra Co-operative Societies Act, 1960 empowers the Registrar to grant a certificate for the recovery of amount stated therein to be due to the Co-operative Society. The certified amount can be recoverable as arrears of land revenue. The Registrar has no power to make any adjudication on the claims or counter claims of the other parties against such Co-operative Societies under section 101 of the Maharashtra Co-operative Societies Act, 1960. The counter claim thus made by the respondent was not maintainable under section 101 of the Maharashtra Co-operative Societies Act, 1960.

7. Be that as it may, the fact remains that the petitioners also did not make any counter claim along with the written submission filed before the learned Deputy Registrar. This Court has already granted liberty to the petitioners to file such claim against the respondent nos.3 and 4 while granting liberty to withdraw prayer clause (e) of the petition. It is made clear that this Court has not expressed any views on such claims proposed to be made by the petitioners against the respondent nos.3 and 4 by filing appropriate proceedings.

8. There is no other issue raised by the learned counsel for the petitioners insofar as the validity of the impugned order passed by the learned Deputy Registrar is concerned.

9. In my view, the petition is devoid of merit and is accordingly dismissed. There shall be no order as to costs.

(R.D. DHANUKA, J.)