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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10803 OF 2014

WITH
CIVIL APPLICATION NO.1287 OF 2018
IN
WRIT PETITION NO.10803 OF 2014

Mrs.Tarulata A. Bava	...Petitioner
V/s.	
The State of Maharashtra & Ors.	...Respondents

Mr.Hiralal Thacker, Senior Counsel with Mr.Yogendra Rajgor i/b Legal Chartered for the Petitioner.

Ms.Kavita N. Solunke, A.G.P. for the State – Respondent Nos.1 to 3.

Dr.Birendra Saraf with Mr.Vishal Kanade i/b V.Deshpande & Co. for the Respondent No.5.

Mr.Pankaj Birwadkar, Assistant General Manager, Thane Bharat Sahakari Bank Limited present.

CORAM : R.D. DHANUKA, J.
DATE : 3RD JULY, 2018.

P.C. :-

1. By this petition, filed under Article 227 of the Constitution of India, the petitioner has impugned the recovery certificate dated 12th December, 2013 and also the order dated 31st October, 2014 passed by the Divisional Joint Registrar refusing to entertain the revision application filed by the petitioner under section 154 of the Maharashtra Co-operative Societies Act, 1960 in view of the petitioner

failing to deposit 50% of the certified amount under section 154 (2-A) of the Maharashtra Co-operative Societies Act, 1960.

2. The main grievances of the petitioner in this petition are two fold (i) the impugned order was passed when the petitioner could not remain present before the learned Deputy Registrar, Co-operative Societies at the time of hearing of the application, (ii) there were serious allegations of fraud against the officers of the respondent no.5 society insofar as various loans, including the loan in question is concerned. The petitioner was thus not required to deposit any amount under section 154 (2-A) of the Maharashtra Co-operative Societies Act, 1960 as a condition precedent for entertaining the revision application by the Divisional Joint Registrar.

3. Dr.Saraf, learned counsel appearing for the respondent no.5, on instructions, states that without admitting the allegations of the petitioner on the issues raised by the petitioner recorded aforesaid, the respondent no.5 has no objection if the impugned recovery certificate dated 12th December, 2013 is set aside insofar as the petitioner is concerned and an opportunity of being heard is rendered to the petitioner by the Divisional Joint Registrar. It is also submitted by the learned counsel that the said recovery certificate has been issued not only against the petitioner but also against several others. None of the other respondents to the said recovery certificate

have impugned the said Recovery Certificate dated 12th December, 2013 and the said recovery certificate has attained finality insofar as those respondents to the said recovery proceedings are concerned. He disputes the allegations of fraud made by the petitioner against his client. The statement made by the learned counsel for the respondent no.5 is accepted.

4. I therefore, pass the following order :-

a). The impugned recovery certificate dated 12th December, 2013 passed by the Deputy Registrar, Co-operative Societies under Recovery Certificate No.ABN/TBSB/101/31/13-14 is set aside, insofar as the same is against the petitioner. The petitioner would be at liberty to appear before the Deputy Registrar, Co-operative Societies and shall file an affidavit in reply. Such affidavit in reply shall be filed within two weeks from today and a copy thereof shall be served upon the respondent no.5 simultaneously.

b). The Deputy Registrar shall decide the matter afresh insofar as the petitioner is concerned in accordance with law and after complying with the principles of natural justice and without being influenced by the observations, if any, made against the petitioner in the impugned order.

c). The petitioner and the respondent no.5 bank are directed to appear before the learned Deputy Registrar, Co-operative Societies

on 23rd July, 2018 at 11:00 a.m., without fail. None of the parties shall seek any unnecessary adjournment before the learned Deputy Registrar, Co-operative Societies.

d). It is made clear that insofar as the recovery certificate dated 12th December, 2013 is concerned, since the other respondents to the said recovery certificate have not impugned the said recovery certificate, the said recovery certificate has attained finality against those respondents, including the borrowers. Learned Deputy Registrar, Co-operative Societies shall not re-open the said recovery certificate against those respondents.

e). In view of the aforesaid order passed by this Court, this Court need not go into the issue whether the petitioner was required to deposit 50% of the certified amount under section 154 (2-A) of the Maharashtra Co-operative Societies Act, 1960 or not.

f). It is made clear that this Court has not expressed any views on the merit of the matter. All the contentions of both the parties are kept open.

g). Learned Deputy Registrar, Co-operative Societies is directed to dispose of the said application insofar as the petitioner is concerned within two months from the date of the first hearing.

5. In view of the aforesaid order, Dr.Saraf, learned counsel appearing for the respondent no.5, on instructions, states that his

client will not proceed with the auction of the property to the extent of the petitioner's share in those properties at this stage. Statement is accepted.

6. The writ petition is disposed of in aforesaid terms. There shall be no order as to costs.

7. In view of disposal of the writ petition, the Civil Application No.1287 of 2018 does not survive and is accordingly disposed of. There shall be no order as to costs.

9. All the parties, including the Authorities to act on the authenticated copy of this order.

(R.D. DHANUKA, J.)