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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9978 OF 2017

T.J.S.B. Sahakari Bank Ltd.	...Petitioner
V/s.	
The Divisional Joint Registrar, Pune & Ors.	...Respondents

Mr.Shailendra Kanetkar for the Petitioner.

Mr.S.D. Rayrikar, A.G.P. for the State – Respondent No.1.

Mr.Narendra Sharma for the Respondent No.2.

CORAM : R.D. DHANUKA, J.
DATE : 29TH JANUARY, 2018.

P.C. :-

1. By this petition filed under Article 227 of the Constitution of India, the petitioner has impugned the order dated 6th July, 2017 passed by the respondent no.1 thereby allowing the Revision Application No.68 of 2017 filed by the respondent no.2.

2. A perusal of the record clearly indicates that the respondent no.2 had filed the revision application under section 154 of the Maharashtra Co-operative Societies Act, 1960 against the recovery certificate dated 2nd September, 2015 passed by the Deputy Registrar in favour of the petitioner. The impugned order indicates that the attachment order has been set aside by the Revisional

Authority only on the ground that the attachment order was issued with a Government seal in violation of the Government Resolution dated 23rd November, 2006.

3. Mr.Kanetkar, learned counsel appearing for the petitioner invited my attention to the order dated 13rd September, 2005 passed by the Division Bench of this Court in Writ Petition No.1487 of 2005. By the said order, the Division Bench of this Court has made the said writ petition absolute and has held that the Recovery Officer has to put his seal and signature on the recovery certificate. The Recovery Officer is not covered by sub-section (1), (2) and 3 of section 3 of the Bombay Public Authorities Seals Act, 1883. It is held that it is for the State Government under section 3(4) to direct what official seal such recovery officer shall use. It is held that once a notification being issued, the Recovery Officer can continue to use seal until the State Government modifies or rescinds the order made by separate notification.

4. A perusal of the record indicates that after passing of the said order dated 13th September, 2005, the State Government issued a circular dated 23rd November, 2006. The said circular is stayed by the Division Bench of this Court vide an order dated 26th March, 2007 in Writ Petition No.1992 of 2007. The said writ petition was subsequently admitted by this Court vide an order dated 30th April,

2007. This Court granted interim relief and made it clear that in the meantime it would be open to the respondent to select another seal. It is thus clear that the circular dated 23rd November, 2006 of which violation is alleged to have been committed by the petitioner on the basis of which the revision application of the respondent no.2 is allowed, is already stayed. The impugned order thus passed by the authorities is *ex-facie* perverse and contrary to the orders passed by this Court.

5. Learned counsel appearing for the respondent no.2 tenders a copy of the fresh attachment order dated 11th August, 2017 and it is submitted that in view of the fresh attachment order issued by the Recovery Officer, nothing survives in this petition. A perusal of the said certificate also indicates that the Recovery Officer has put a seal on that certificate also. Learned counsel for the respondent no.2 states that his client will not raise any objection though such certificate also bears the seal of the Government. The statement is accepted.

6. In view of the fact that the impugned order passed by the Revisional Authority is on a wrong premise that there was violation of a circular dated 23rd November, 2006, which is already stayed by this Court, the impugned order deserves to be set aside. In any event, in view of the statement made by the learned counsel for the

respondent no.2 that his client will not raise any objection about the attachment order dated 11th August, 2017 on the ground that Government seal is affixed thereon, no prejudice would be caused to the respondent no.2 if the impugned order is set aside.

7. I therefore, pass the following order :-

a). The impugned order dated 6th July, 2017 annexed at Exhibit "P" is set aside. The attachment order dated 2nd September, 2015 is restored to file. The petitioner shall be at liberty to apply for enforcement of the attachment order by approaching the employer of the respondent no.2. If the said order is produced before the employer of the respondent no.2 i.e. Force Motors Limited, Akurdi, the same shall be implemented by the said Force Motors Limited without fail.

b). The parties as well as Force Motors Limited to act on the authenticated copy of this order.

8. The writ petition is disposed of in aforesaid terms. No order as to costs.

(R.D. DHANUKA, J.)