

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11598 OF 2013

ALONGWITH

WRIT PETITION NO. 11612 OF 2013

ALONGWITH

WRIT PETITION NO. 11613 OF 2013

Jaysing Nanasaheb Deshmukh

..... Petitioner

VERSUS

Divisional Joint Registrar,

Co-operative Societies, Pune Division & Ors. Respondents

ALONGWITH

WRIT PETITION NO. 11610 OF 2013

Sambhaji Nanasaheb Deshmukh

..... Petitioner

VERSUS

Divisional Joint Registrar,

Co-operative Societies, Pune Division & Ors. Respondents

Mr.P.D.Dalvi for the Petitioners.

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

Mr.Murlidhar l. Patil for the Respondent no.3.

CORAM : R.D. DHANUKA, J.

DATE : 13th AUGUST, 2018

P.C.

By consent of parties, all four writ petitions are disposed of by a common order. This court shall summarize the facts in the Writ Petition No.11598 of 2013.

2. The petitioner was a guarantor for the respondent no.3 who had obtained a loan of Rs.75,000/- from the respondent no.2. Since the petitioner as well as the respondent no.3 committed default, the respondent no.2 obtained recovery certificate on 19th May,2008 under section 101 of the Maharashtra Co-operative Societies Act, 1960 from the Assistant Registrar, Co-operative Societies, Akluj, District Solapur for recovery of amount of Rs.1,96,640/-. Similar recovery certificates are issued in favour of the respondent no.2 which are subject matter of the remaining three petitions.

3. It is an admitted position that neither the petitioner nor the respondent no.3 challenged the said recovery certificates issued by the Assistant Registrar, Co-operative Societies, Akluj and the same have attained finality.

4. The special recovery officer was appointed for the purpose of executing the certificates issued by the Assistant Registrar, Co-Operative Societies. The property of the petitioner has been attached under Rule 107(10) of the MCS Rules, 1961. The said attachment came to be challenged by way of revision under section 154 of the MCS Act before the Divisional Joint Registrar. The petitioner did not deposit 50% amount of the recoverable dues under section 154(2A) of the MCS Act before the learned Divisional Joint Registrar. The learned Divisional Joint Registrar accordingly dismissed the said revision application by order dated 25th June, 2013. The said order is impugned by the petitioner in this writ petition.

5. Mr.Dalvi, learned counsel for the petitioner submits that the issue as to whether under section 154(2A), the guarantor is required to deposit 50% amount in the proceedings challenging the order of attachment under section 154(2A) or not is pending before the larger Bench of this court. He placed reliance on the order dated 19th July, 2005 passed by this court in Writ Petition No.4372 of 2005.

6. This court in several other judgments have adverted to the judgment of this court in case of ***Greater Bombay Co-operative Bank Ltd. & Ors. vs. Dhillon P. Shah & Ors., 2014 (1) Mh.L.J. 996*** and has held that even if an order of attachment is challenged without challenging the recovery certification under section 101 of the MCS Act, section 154 (2A) of the MCS Act would be attracted. The said judgment applies to the facts of this case. I am respectfully bound by the said judgment.

7. I do not find any infirmity in the impugned orders passed by the learned Divisional Joint Registrar in rejecting the revision application on the ground that the petitioner has not deposited 50% of the dues under section 154(2A) as a condition precedent in the aforesaid applications.

8. All the aforesaid writ petitions are thus devoid of merits and are accordingly dismissed. There shall be no order as to costs.

[R.D. DHANUKA, J.]