R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10749 OF 2018

Anil Ganpat Tupe .. Petitioner

Versus

State of Maharashtra & Ors. .. Respondents

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- Mr. Manoj Patil for the Petitioner
- Mr. A.P. Vanarase, AGP for Respondent Nos. 1 and 2
- Mr. Sanjeev P. Kadam i/by Mr. Prashant P. Raul for Respondent Nos. 6, 7 and 8

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CORAM : K.K. TATED &
N.J. JAMADAR, JJ.

DATE : OCTOBER 12, 2018.

P.C.:

1. Heard learned counsel for the parties.

2. By this petition, the petitioner is challenging the impugned possession notice dated 18.9.2018 issued by the Additional Circle Officer of Kalyan, Taluka Kalyan, District Thane in respect of handing over the petitioner's property i.e Sugandha Bungalow No. 2, Vaishali CHS Ltd, Lane No. 4, Rajaji

Path, Dombivali (E), Dist. Thane in favour of respondent Nos. 6 to 8.

3. Learned Advocate appearing for the petitioner raised several objections including that the respondent bank failed to consider the Government Resolutions dated 16.3.2016 and 19.11.2017 in respect of one time settlement.

4. It is to be noted that in the present proceedings, initially, the respondent bank filed proceedings under Section 101 of the Maharashtra Co-operative Societies Act, 1960 for recover of sum of Rs. 50,53,733/- with interest. In that proceedings, the Authorities passed order and issued recovery certificate dated 26.2.2014 holding that the respondent bank is entitled to recover sum of Rs. 50,53,733/- with interest @ 14.5% on principal amount of Rs. 39,47,472/-. Thereafter, the petitioner preferred Writ Petition No. 4910 of 2018 before this Court. That Writ Petition was disposed of by this Court (Coram : R.D. Dhanuka, J) by order dated 25.4.2018. Paragraph 6 of the

said order reads thus:-

> "6. A perusal of Rule 107(11)(d-1) indicates that in the event of possession of the immovable property is taken by the Recovery Officer, such property shall be kept in his own custody or in the custody of any person authorized by him, who shall take as much care of the property in his custody as an owner of ordinary prudence. In my view, no right is created in favour of the petitioner to continue in possession of the suit property since the possession of the property is given to him for taking care of the property till such property is auctioned. The petitioner cannot insist that the possession of the property cannot be demanded by the landlord and / or by the Special Recovery Officer till such property is auctioned. The possession of the property is required for the purpose of auction. Considering the behaviour of the family members of the petitioner as affected in the letter dated 17th January, 2018 from the Tahsildar to the learned Circle Officer, I am not inclined to permit the petitioner to continue in possession of the flat which is required to be auctioned. Even otherwise, the petitioner cannot insist to continue to hold the property which is required to be sold by the respondent no. 6 bank pursuant to the order passed by the Special Recovery Officer and for execution of the recovery certificate issued by the learned Assistant Registrar."

5. This Court dismissed the said Writ Petition and vacated the ad-interim relief. Thereafter, the petitioner preferred Special Leave Petition No. 14887 of 2018. The Apex Court by

order dated 13.7.2018 dismissed the Special Leave Petition. Thereafter, the petitioner filed the present Writ Petition.

6. It is to be noted that the petitioner without challenging the recovery certificate issued by the Authorities under Section 101 of the Maharashtra Co-operative Societies Act, is filing several other proceedings even though the alternate remedy is available to challenge the said recovery certificate. In view of all these facts, we do not find any reason to entertain the present Writ Petition.

7. At this stage, the learned counsel appearing for the petitioner seeks protection restraining the respondents from taking possession of the suit property. Same is vehemently opposed by the respondent bank. Considering the previous conduct of the petitioner to file petitions challenging the possession notice without challenging recovery certificate under Section 101 of the Maharashtra Co-operative Societies Act, we do not find any reason to grant any ad-interim relief in

favor of the petitioner, hence, oral request of the petitioner is rejected. Hence,

a) The Writ Petition stands rejected on the ground that alternate efficacious remedy is available to the petitioner under Section 154 of the said Act.

b) No order as to costs.

[N.J. JAMADAR, J.] **[K.K. TATED, J.]**