

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12358/2018

M/s. Star Enterprises

... Petitioner

V/s.

Special Recovery Officer,
Jankalyan Sahakari Bank Ltd. & Ors.

... Respondents

Mr. C. J. Jovesan i/b. Rohini M. Amin for the Petitioner
Mr. Omkar Warange for Respondent No.1.

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

DATED : OCTOBER 26, 2018

P.C. :

1 Heard. By this petition, the Petitioner seeks declaration that Rule 107(11)(D-1) of the the Maharashtra Cooperative Societies Rules 1961 is unconstitutional and void and has no force in law. He also seeks declaration that the Award dated 16.03.2016 passed by Respondent No.2 Dy. Registrar u/s.101 of the Maharashtra Cooperative Societies Act, 1960 is illegal and be set aside.

2 The learned counsel for the Petitioner submits that the Petitioner had raised several objections before the Dy. Registrar, Cooperative Societies in Recovery Application No.101-225/2015. He further submits that the Petitioner has also made an Application u/s.340 read with Section 195 of the Code of

Criminal Procedure, 1973. He submits that without considering their objections and the Application dated 23.04.2015 (Exhibit-C page 48 to the petition), Respondent No.2 issued recovery certificate dated 16.03.2016 for the sum of Rs.1,45,60,954/- with 12% interest on principal amount of Rs.1,11,09,358/- from 01.01.2015 till the date of realisation. On the basis of this submission, the learned counsel for the Petitioner submits that the operation and implementation of the impugned certificate dated 16.03.2016 u/s.101 of the the Maharashtra Cooperative Societies Act, 1960 be stayed till hearing and final disposal of the Writ Petition.

3 On the other hand, the learned counsel for Respondent No.1 vehemently opposed the Writ Petition. He submits that bare reading of the entire petition shows that the Petitioner is challenging the recovery certificate dated 16.03.2016 issued by Respondent No.2 Dy. Registrar u/s.101 of the the Maharashtra Cooperative Societies Act, 1960. He submits that an alternate efficacious remedy is available to the Petitioner u/s.154 of the said Act. Instead of filing Revision Application, the Petitioner moved this court by way of the present Writ Petition.

4 The learned counsel for Respondent No.1 submits that earlier the Petitioner had filed Writ Petition No.4789/2018 for similar reliefs as sought in the present Writ Petition. At that time, this court (Coram : A. A. Sayed and Ravindra V. Ghuge, JJ) by order dated 17.04.2018 directed the Petitioner to deposit 50% of the amount mentioned in the recovery certificate in the

Registry of this court. Order dated 17.04.2018 reads thus:

“Issue notice to the Respondent-Bank, returnable on 2 May 2018. Hamdast is permitted.

2. Learned Counsel for the Petitioner, on instructions from Mr.Sanjeev Tejwani, who is stated to the Power of Attorney holder of the Petitioner, makes a statement that the Petitioner shall deposit 50% of the Recovery Certificate amount before the next date in this Court. We accept the statement. We make it clear that if the amount is not deposited, the Petition shall stand dismissed without further reference to the Court. In the event the amount is deposited, place the Petition for admission on 2 May 2018.”

5 The learned counsel for Respondent No.1 submits that instead of complying with the said order, the Petitioner made Civil Application (ST) No.14974/2018 (Exhibit- H page 81 to the petition) for review and recall of the order dated 17.04.2018 directing the Petitioner to deposit 50% of the amount claimed by the Bank. He submits that during pendency of the said proceedings, the Petitioner has filed the present Writ Petition for the same cause of action. Therefore, there is no question of entertaining the Writ Petition. He submits that they have decided to take possession of the suit property on 30.10.2018. In view of these facts, there is no substance in the Writ Petition and same to be dismissed with costs.

6 Heard both sides at length. The learned counsel for the Petitioner has placed on record a copy of the Writ Petition No.4789/2018 by which the Petitioner had challenged the order

dated 16.03.2016 passed by Respondent No.2 u/s.101 of the the Maharashtra Cooperative Societies Act, 1960. In the said petition, the Petitioner has made following prayers:

“a. Declare that Rule 107(11) [D-1] of the the Maharashtra Cooperative Societies Rules 1961 brought about Respondent No.10 by Notification No. G.N.No.CSL-2014/697/CR 04/13-C dated 30.08.2014 is unconstitutional and void and it has no force of law.

b. That it be declared that Respondent No.2, Deputy Registrar is not competent to decide dispute between the Petitioner and the Respondents which is the subject matter of the statement of claim (Exhibit-A) filed by the Respondent No.1 before the Respondent No.2, as the dispute involved disputed questions of fact and law which the Respondent No.2 is not competent to decide.

c. That it be held and declared that there is a disputable question of law and fact which is to be decided by a Court of Competent Jurisdiction, arising between the Petitioner and the Respondent.

d. That it be held and declared that the award dated 16.03.2016 Exhibit-D passed by the Defendant No.2 be declared illegal and set aside.

e. Issue a writ in the nature of prohibition or any other appropriate writ, order or direction, restraining and prohibiting the Respondent Nos.1 to 6, 8 and 9 from executing the Award dated 16.03.2016 Exhibit- D or in any way acting in furtherance of the Notice of Dispossession at Exhibit-F same or dispossessing the Petitioner to execute the award in the future.

f. Till the decision of this Petition, the Defendant No.1 be directed from any proceeding any further with the Award dated 16.03.2016 at Exhibit- D and or the notice of dispossession at Exhibit-F.

g. Interim and ad-interim reliefs in terms of prayer clause (f) be granted.

h. Cost be granted.

i. Pass such further and other orders as the nature and circumstances of the case may require.”

7 Bare reading of those prayer clauses, show that on the same footing and same prayers, the Petitioner has filed the present Writ Petition without complying with the order dated 17.04.2018 passed in Writ Petition No.4789/2018 i.e. deposit of 50% of the amount mentioned in the recovery certificate. The order dated 17.04.2018 shows that the learned counsel for the Petitioner, after taking instructions from his client Mr. Sanjiv Tejwani, made a statement that they would deposit the said 50% amount. Instead of complying with the said order, they made a Civil Application for review and recall of the said order.

8 Apart from these facts, the Petitioner has an alternate remedy u/s.154 of the said Act to file Revision Application. Considering these facts and as an alternate remedy is available to the Petitioner, we do not find any reason to entertain the Writ Petition. Not only that, earlier the Petitioner has filed Writ Petition No.4789/2018 for the same cause of action which is pending and in spite of that the Petitioner has filed the present Writ Petition, therefore, we are of the opinion that the Petitioner must pay cost of Rs.50,000/-.

9 Hence, the following order is passed:

a. The Writ Petition stands dismissed with costs.

- b. The Petitioner to pay cost of Rs.50,000/- in the Registry of this court within four weeks from today.
- c. If the cost is deposited within stipulated time as stated hereinabove, the office is directed to transfer the same to the Maharashtra State Legal Services Authority, High Court, Bombay.
- d. If the cost is not deposited within stipulated time as stated hereinabove, the Registry is directed to forward a copy of this order to the concerned Collector for recovery of the same as land revenue under the Maharashtra Land Revenue Code, 1966.

(N. J. JAMADAR, J.)

(K. K. TATED, J.)