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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 2457 OF 2019

M/s. R. S. M. Transport
Through Mr. Y. A. Dwivedi .. Petitioner
Vs.
State of Maharashtra & Ors. .. Respondents

Ms. Smita Ajinkya for the Petitioner.
Mr. P. P. Pujari, AGP for Respondent No.1-State.
Mr. Shivaji K. Lanke for Respondent No.3.

CORAM : V. L. ACHLIYA, J.
DATE : 25th FEBRUARY, 2019.

P. C. :

1. The Petitioner has filed this Petition claiming following reliefs:
 - (1) *to issue a writ in the nature of certiorari quashing the order dated 04.02.2018 passed by the respondent and issue any other writ, order or direction as may be necessary for the ends of justice.*
 - (2) *to pass such other order and further orders as may be deemed necessary on the facts and in the circumstances of the case.*
2. By impugned communication dated 04.02.2019 the Circle Officer, Kurla Tahasil, Mumbai informed the Petitioner that vide order dated 13.11.2018 passed by the District Collector, Suburb Mumbai in exercise of powers under Sections 107(11)(D-1)(VI)(A) of the Maharashtra Co-operative Societies Rules, 1961 has directed to take over the possession of property bearing No. 3/A/102, Swagat Co-operative Housing Society

Ltd., Damodar Park, L. B. S. Road, Ghatkopar (W), Mumbai-400 086 mortgaged with Respondent No.3-Bank and hand over the same to the said Bank. By the said communication, the Petitioner was intimated to remain present on 11.02.2019 at 11.30 a.m. to hand over the said property. Failure to hand over possession of said property, the possession shall be taken by applying force.

3. Learned Counsel for the Petitioner submits that the property referred in communication dated 04.02.2019 was never mortgaged with Respondent No.3-Bank. The Petitioner has secured overdraft facility and said property was provided as co-lateral security towards loan secured from Respondent No.3-Bank. Only documents of property were taken by Respondent No.3-Bank. No mortgage was created. It is submitted that the Petitioner has repaid the substantial loan amount and ready to settle the matter with Respondent No.3-Bank. However, the Respondents are acting in high ended manner and trying to forcibly evict the Petitioner and his family members which include minor children. The learned Counsel urged to extend protection to Petitioners from forcible dispossession from said property.

4. On the other hand, learned Counsel for Respondent No.3-Bank opposed the admission of the Petition. It is submitted that the Petitioners have suppressed true facts from the Court. It is submitted that on

17.01.2014, the Petitioner had applied for overdraft facility of Rs.1 Crore. Respondent No.3-Bank has sanctioned overdraft facility to the tune of Rs.90 lakhs to Petitioners. The Petitioners have offered flat premises bearing No. 102, 1st Floor, 'A' Wing, Swagat Co-operative Housing Society, Damodar Park, L. B. S. Road, Ghatkopar (W), Mumbai-400 086 and Flat No. 302, 3rd Floor, Building No.11A, Oshivara, Rosewood CHS Ltd., Patliputra Nagar, Jogeshwari (W), Mumbai-400 102 as security towards the overdraft facility and also furnishing guarantors. The Petitioner has availed the overdraft facility. Since the account became non-performing account, the recovery proceeding was initiated under Section 101 of the Maharashtra Co-operative Societies Act, 1960 against the Petitioner and his guarantors. On 26.03.2018, the Deputy Registrar, Co-operative Societies, Mumbai issued recovery certificate directing the Petitioners and guarantors to pay the sum of Rs.1,11,57,609/- with interest @ 14.5% over the principal amount of Rs.1,05,58,246/- w.e.f. 01.04.2017. It is submitted that pursuant to recovery certificate, the demand notice was issued claiming amount of Rs.1,26,65,523/-. However, the Petitioners have failed to pay the amount. Therefore, Respondent No.3-Bank has initiated recovery proceeding under Section 156 read with Section 107 of the Maharashtra Co-operative Societies Rules, 1961. It is submitted that symbolic possession of said Flat No. 102 at Ghatkopar (W), Mumbai was taken on 12.09.2018. After fixing upset price, further process of sale of the flat has been initiated by the Petitioners. By order dated 13.11.2018

passed by the Deputy Collector, G.A.D., Mumbai Suburb, Tahasil Kurla directed the Circle Officer, Kurla to take over the possession of the said flat and to hand over the same to Respondent No.3-Bank for realising the dues of Respondent No.3. It is submitted that the impugned communication dated 04.02.2019 in fact issued pursuant to order dated 13.11.2018 passed by District Magistrate. It is further submitted that pursuant to communication dated 04.02.2019, the Petitioners appeared before the Circle Officer on 04.02.2019 and promised to pay the amount on or before 10.02.2019 and further assured that on failure to pay the amount on and before 10.02.2019, he will raise objection to take possession of said flat. In this background, the learned Counsel submits that there is absolutely no merit in the case of the Petitioners and the Petition filed is devoid of substance and merit therein.

5. On due consideration of submissions advanced, I am of the view, no case is made out to entertain the Petition. It is an admitted position that the recovery certificate has been issued under Section 101 of the MCS Act in favour of Respondent No.3 and as against the Petitioners which was never challenged by the Petitioners. The impugned communication dated 04.02.2019, in fact, the letter sent by Circle Officer pursuant to order passed by the District Magistrate to take over the possession of the secured asset and to hand over the same to Respondent No.3-Bank. It is apparent from the communication dated 04.02.2019 annexed with the

Affidavit-in-Reply filed by Respondent No.3 as Exhibit 'K' (Page 61) that the Petitioners have agreed in writing to hand over the possession of the flat in question on 11.02.2019. In absence of challenge to the recovery proceeding and the order passed by the District Magistrate dated 13.11.2018, the challenge raised in the Petition to letter dated 14.02.2019 is totally irrelevant. If the Petitioner is having any objection or legitimate grievance as to attachment of property, the Petitioner then the same can be raised before the Recovery Officer. In that view, no case is made out to entertain the Petition. I am, therefore, not inclined to entertain the Petition. Accordingly, the Petition is dismissed with no order as to costs.

[V. L. ACHLIYA, J.]