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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6734 OF 2017

Mrs. Anita Arun Agarwal

..Petitioner.

V/s.

The Sahebrao Deshmukh Co-op.

Bank Ltd. & Ors.

..Respondents.

Mr.Madan Singh Khati for the petitioner.

Mr.Vishal Ghosalkar for respondent No.1.

Mr.C.D.Mali for respondent Nos.4 to 7.

CORAM: NITIN W.SAMBRE, J.

DATE : JUNE 17, 2019

P.C.:-

Heard Mr.Khati, learned counsel for the petitioner.

The order impugned in this petition is an order of recovery certificate in exercise of powers under section 101 of the Maharashtra Co-operative Societies Act, 1960 ('the Act' for short).

2. Learned counsel for the petitioner submits that the respondents had in connivance with the borrower has practiced fraud on the petitioner and the petitioner is made liable for repayment of loan amount in the capacity of a guarantor. His case

is that, the petitioner never stood as a guarantor nor mortgaged his property towards facilitating the loan amount.

3. The aforesaid contentions including the maintainability of the petition is objected to by learned counsel for the respondents on the ground that:

- a) That the petition involves disputed questions of fact;
- b) Even if it is presumed that the petitioner has a remedy, same is under section 154 of the Act by preferring a revision.

4. Having dwelt upon the controversy, it will have to be borne out from the statute that the provision particularly under section 154 of the Act provides for a revision before the Divisional Joint Registrar. Admittedly, the petitioner has not taken recourse to the said alternate remedy.

5. Apart from above, the petitioner has tried to canvass arguments based on the documentary evidence viz. no objection given by the society for the alleged mortgage and transfer, unregistered agreement for sale entered into between the private parties i.e. the borrower and the petitioner, etc. so as to canvass that the liability under section 101 of the Act cannot be fastened on the petitioner.

6. I am afraid, the said contention cannot be gone into and appreciated under the supervisory jurisdiction, particularly when the other side is disputing the same.

7. In the aforesaid backdrop, the petition is dismissed with costs.

(NITIN W.SAMBRE, J.)