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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5238 OF 2019

Shri. Manishkumar Binodkumar Jagnani .....Petitioner

V/s.

The State of Maharashtra through .....Respondents
GP and others

Advocate Lancy D'Souza with V. M. Parkar for the Petitioner
Mr. Shivaji L. a/w Mr. Vijaykumar B. Dighe for respondent no. 3
Mr. S. S. Panchpor AGP for respondent nos. 1 & 2
Mr. Krishna Parab Recovery Officer of Bank.

CORAM : NITIN W. SAMBRE, J.

DATE : JULY 22, 2019.

P.C.

This petition is by a guarantor questioning recovery certificate issued under Section 101 of The Maharashtra Co-operative Societies Act, 1960. ('the Act' for short).

2 Though an alternate remedy under Section 154 of the Act is available, it is the contention of the petitioner, the bar of alternate remedy will not operate in the case in hand as recovery certificate is

issued without hearing him.

3 The learned counsel submits that in the loan sanction document, petitioner stood as guarantor and provided following address “301 Ganesh Krupa CHS Ltd., Sector 26, Vashi, Navi Mumbai”. According to him, the notice of proceedings are served on some different address. As such, without notice to the petitioner, proceedings under Section 101 of the Act are decided. He would invite attention of this Court to the very Scheme of Section 101 r/w Rule 86B (4) so as to claim that there should have been notice to the petitioner by registered post AD on the address. A further contention of the learned counsel for the petitioner is, notices were sent on the mentioned address in his Aadhar Card, were not received by the petitioner and as such it cannot be termed as good service.

4 The claim is opposed by the learned counsel for respondent-bank.

5 Considered rival submissions.

6 In the Aadhar card, address of the petitioner is provided as "A-504 Lokshillp CHS Ltd, Plot No. 59, Sector 17, Vashi, New Mumbai".

7 In the loan documents, the petitioner has mentioned his address as "301 Ganesh Krupa CHS Ltd., Sector 26, Vashi, Navi Mumbai".

8 It appears from the record that the petitioner was informed about the vehicle sanction loan for which he stood guarantor at his address as mentioned in Aadhar Card. This address was made available by the petitioner himself. Apart from above, the fact remains that the notices which were addressed to the petitioner were sent on address mentioned in Aadhar Card, i.e. "A-504 Lokshilp CHS Ltd, Plot No. 59, Sector 17, Vashi, New Mumbai".

9 That being so, in my opinion, notices which were issued to the petitioner on address at "A-504 Lokshilp CHS, Plot No. 59, Sector 17, Vashi, New Mumbai". Is in accordance with his address mentioned in Aadhar card, which is also mentioned on the loan documents.

10 That being so, there is material to infer that the very address which the petitioner was served with notices was provided by the petitioner and accordingly, the bank, pursuant to the provisions of Section 101 and Rule 86 of the Act, proceeded against him. As far as the contention of good service is concerned, it is worth to mention here that once the petitioner has furnished his address as is mentioned in Aadhar Card and the notices by the bank in the recovery proceedings are forwarded at such an address, non-receipt thereof because of default of the petitioner cannot be inferred to the detriment of the respondent-bank. As such, the said contention also stands rejected.

11 In view of above, in my opinion, no case for interference is made out. Petition fails, dismissed.

[NITIN W. SAMBRE, J.]