

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION (L) NO.796 OF 2019

M/s Anjali Tours & Travels

And Others

... Petitioners

Versus

The Recovery Officer, Co-operative

Societies, Dept.Of Maharashtra

And Others

... Respondents

.....

Mr. Sunny Shah a/w Mr. Viral Shukla, Mrs. Priti Shukla, Mr. Darshan Shah and Ms. Heena Jewani i/b M/s Shukla & Associates for the Petitioners.

Mr. Ashutosh R. Gole for Respondent No.2.

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CORAM : S.C. GUPTE, J.

DATE : 25 MARCH 2019

(Oral Judgement)

. Heard learned Counsel for the parties.

2 This writ petition challenges an attachment order issued by the Recovery Officer of Respondent No.2 bank in respect of the Petitioners' bank accounts. The attachment order is passed under Section 156 of Maharashtra Co-operative Societies Act, 1960 ("Societies Act") read with Rule 107 of the Maharashtra Co-operative Societies Rules, 1961 ("Societies Rules"). The order is in pursuance of a recovery certificate issued by the Recovery Officer under Section 101 of the Societies Act, in favour of Respondent No.2 bank. It is not in dispute that recovery certificate was

challenged by the Petitioners in a revision before the Divisional Joint Registrar of Co-operative Societies and that challenge was repelled by the latter on the ground of non-deposit of 50 per cent amount of the recovery certificate. The present challenge to the attachment order is principally on the ground that Respondent No.2 has already availed of a remedy under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (“SARFAESI Act”). Learned Counsel submits that having sought to recover its dues from the property of the Petitioners mortgaged to it under the provisions of SARFAESI Act, Respondent No.2 cannot be permitted to execute the recovery certificate issued under Section 101 of the Societies Act on the other properties of the Petitioner.

3 It is not in dispute that the property mortgaged by the Petitioner was put to auction by Respondent No.2, but it could not fetch any offer and the sale could not be completed as of date. As a result, Respondent No.2 seeks to execute the recovery certificate against other available properties of the Petitioner. This cannot be objected to as a matter of principle. There is nothing in law to prohibit a creditor from executing a recovery certificate against any available property of the debtor. Learned Counsel for the Petitioner is unable to point out any legal provision which restricts the creditor's right to do so.

4 Learned Counsel for the Petitioner relies on the judgment of a Division Bench of our Court in the case of **Gandhi Trading Vs. Assistant Commissioner of Income-Tax**¹. Relying on this judgment, it is submitted that Respondent No.2, as a creditor to whom monies are owed by the

1 1999 SCC OnLine Bom 967

Petitioner, can only attach such properties of the Petitioner as are necessary to satisfy the debt owed to him by the debtor. Learned Counsel submits that the immovable property mortgaged by the Petitioner is sufficient to satisfy the Respondents' claim of outstanding dues. The judgment of **Gandhi Trading** (supra) is clearly distinguishable from the facts of the present case. That was a case, where attachment was made under Section 281 B of Income-Tax Act 1961. Section 281 B provides for a provisional attachment of the assessee's property to protect the revenue in certain cases. Where, during the pendency of any proceeding for assessment of income or for assessment or reassessment of income which has escaped assessment, the Assessing Officer is of the opinion that for the purpose of protecting the interest of the revenue it is necessary to do so, such attachment may be ordered. The Court was of the view that though the Assessing Officer in that case was entitled to order provisional attachment, even though there was no outstanding demand against the assessee, to ensure that this power was not misused, a number of safeguards had been provided in the Section itself. Whereas the Court did not consider all individual safeguards in this behalf, it observed that what was clear was that the power should be exercised by the Assessing Officer, only if there is a reasonable apprehension that the assessee is about to dispose of the whole or any part of his property with a view to thwart the ultimate collection of demand and in the interest of revenue, it is necessary to do so. The court noticed that this was a drastic power and it should be exercised with extreme care and caution; it should not be exercised unless there is sufficient material on record to justify the satisfaction of the Assessing Officer that the assessee is about to dispose of the whole or any part of his property with a view to thwart the ultimate collection of the demand. In

the case before the Court, there was no demand for outstanding dues and the attachment was levied by the recovery officer for an anticipated demand. The Court noted that there were two immovable properties attached by the Assessing Officer worth Rs.5.83 crores as per the valuation of an approved valuer as against the estimated tax liability of Rs.2.68 crores, and therefore, there was no need to levy any attachment on the bank accounts or fixed deposits of the assessee. Our Court, in the premises, did not find any justification in allowing the attachment of bank accounts or fixed deposits. These facts are clearly distinguishable. The provision of attachment under Section 281 B, is clearly for the purpose of protecting the interest of revenue pending an assessment and when there is no outstanding demand from the assessee. This is completely different from the situation that we are considering in the present case. In the present case, the attachment is in the course of a recovery proceeding. The Division Bench of our Court in **Gandhi Trading** itself has noted this distinction. The Division Bench, in terms, has observed that attachment under Section 281 B of the Income Tax could not be equated with an attachment in case of recovery proceedings. In case of an attachment in a recovery proceeding, the decree-holder or certificate-creditor is seeking to actually recover his dues, and observations made by our Court in the context of Section 281 B do not apply to such attachment. This is, of course, not to suggest that in every case attachment can be levied in respect of any and every property of the debtor irrespective of their values in the context of the decretal claim to be recovered. It is just that the debtor can have no say in the matter of the creditor proceeding against any particular property; he cannot be heard to say that execution must be levied against only certain property or properties and not others.

5 Learned Counsel for the Petitioner submits that there is no explanation in the attachment order as to how the recovery officer has computed the alleged dues owed by the Petitioner to Respondent No.2 in pursuance of the recovery certificate. Learned Counsel, however, is unable to show that the amount awarded in the recovery certificate, which is of the year 2013 and which puts the total amount of dues at Rs.1.75 crores as at that date, with interest at the rate of fifteen and half per cent per annum, does not work out to the sum named in the attachment order, namely, Rs. 2.45 crores, after giving credit for the amount of Rs.55 lacs paid by the Petitioner to Respondent No.2 after the date of the recovery certificate. Anyway that is a matter of accounts. Learned Counsel for Respondent No.2 offers to make available a statement of accounts showing the total number of dues computed in the attachment order within a period of one week from today. In any event, as far as the present attachment order is concerned, the bank accounts attached by Respondent No.1 recovery officer are said to have an aggregate balance of Rs.60 lacs according to the Petitioner, and about Rs.1 crore according to Respondent No.2. These sums are anyway insufficient to satisfy the claim of Respondent No.2 even as of the date of the recovery certificate without adding further interest to the principal amount of the claim. Accordingly, there is no merit in restricting or restraining recovery of these monies on the basis of an objection to the computation of the claim. If the Petitioner is able to show that the recovery to be made is of a lesser amount or that such recovery has been fulfilled through recovery proceedings at any particular stage, it would definitely have an opportunity to seek redressal of its grievance. As of now there is no case made out in that regard.

6 The petition is, accordingly, dismissed. Learned Counsel for the Petitioner requests for continuation of the ad-interim protection granted in his client's favour. This protection was granted at a stage when the Respondents were not represented before the Court and in view of emergent circumstances brought out by the Petitioner. Now that the petition has been comprehensively heard and disposed of, there is no question of any stay. The application for continuation of ad-interim protection is, accordingly, refused.

(S.C. GUPTE, J.)