

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

8. WRIT PETITION NO. 3825 OF 2016

Kiran Narayan Ayarekar,
age 66 years occupation Motor Driving School
R/o Vikas Colony, Sakri road, Dhule Tal. & Dist. Dhule
...Petitioner

VERSUS

1. The Special Recovery and Sales Officer,
The Rajwade Mandal People's Co-operative Bank Ltd.,
opposite Dhule Municipal Corporation,
Dhule Taluka and Dist. Dhule
2. The Liquidator,
The Rajwade Mandal People's Co-operative Bank Ltd.,
opposite Dhule Municipal Corporation,
Dhule Taluka and Dist. Dhule
3. The State of Maharashtra
Through : The Divisional Joint Registrar,
Co-operative Societies, Nashik Division, Nashik.
...Respondents

Mr. M.S. Kulkarni, Advocate for petitioner
Mr. A.D. Shinde, Advocate for respondents No.1 & 2
Mr. N.T. Bhagat, Asstt. Govt. Pleader for respondent No. 3

CORAM : ROHIT B. DEO, J.

DATE : 9th January, 2020

J U D G M E N T :

1. Rule. Rule is made returnable forthwith. Heard finally
by consent.

2. The petition is directed against the order dated 14th January 2016, whereby and whereunder the Divisional Joint Registrar, Co-operative Societies, Nashik, rejected the revision preferred by the petitioner challenging the notice of attachment issued under Rule 107 of the Maharashtra Co-operative Societies Rules, 1961 on the ground that the revision is barred by the principles of *res-judicata*.

3. The view taken by the Divisional Joint Registrar is patently erroneous.

4. The petitioner did file a revision challenging the very same notice, which was dismissed, vide order dated 29th October 2014. However, the dismissal was not on merits. The revision came to be dismissed for want of permission from the appropriate authority, as mandated by the provision under Section 107 of the Mah. Co-operative Societies Act, 1960 (for short "The Act"). The petitioner thereafter obtained the permission of the appropriate authority to prefer revision challenging the action of attachment and pursuant to the said permission, preferred the revision, which is dismissed assuming that the revision is barred by the principles of *res-judicata*.

5. According to the learned Counsel for the respondents,

the order impugned takes a correct view in law. However, the submission of the learned Counsel for the respondents is that while the recovery certificate issued under Section 101 of the Act is not challenged and the revision challenges only derivative action of attachment, provisions of section 154(2-A) of the Act would come into play and the petitioner will have to deposit 50% of the recoverable amount as is mandated by the said provision.

6. The learned Counsel for the respondents would rely on the decision of this Court in ***Barindra Overseas Pvt. Ltd. and another Vs. Shilpa Shares and Securities and others, [2019(3) Mh.L.J. 651]***. The ratio of the said decision does support the contention of the learned Counsel for the respondent.

7. Shri Kulkarni, learned Counsel for the petitioner, would however, urge that the order impugned be quashed and the liability to deposit the amount, as envisaged by Section 154(2-A) may be left open for the revisional authority to decide. Shri Kulkarni would submit that in view of the fact that the petitioner has deposited sizable amount, he would be in a position to demonstrate that the statutory requirement, assuming the said provision is applicable to revision filed challenging the derivative action pertaining to recovery certificate issued prior to the Amendment dated 23rd August 2000, is complied with.

8. In the light of the discussion supra, the order impugned is set aside and the revision is remitted to the Divisional Joint Registrar, Co-operative Societies, Nashik Division, Nashik, for afresh decision in accordance with law.

9. The Divisional Joint Registrar shall, before entertaining the revision on merits, decide whether the petitioner is required to comply with the provision of Section 154(2-A) of the Act.

10. The parties are directed to appear before the Divisional Joint Registrar, Nashik, on 3rd February 2020.

11. The decision on the compliance with the provision of Section 154(2-A) shall be taken within seven days of appearance of the parties and if the revision is thereafter to be decided on merits, the revision shall be disposed of within three months thereafter.

12. Rule is made absolute in the aforestated terms.

(ROHIT B. DEO)
JUDGE