

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

960 WRIT PETITION NO.4834 OF 2020

**SHAIKH RAIS AHMED
VERSUS
SPECIAL RECOVERY OFFICER,
AMBAJOGAI PEOPLES CO-OPERATIVE BANK LTD.
& OTHERS**

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Mr.V.P.Kadam, Advocate for the petitioner.
Mr.Madhav Ghode, Advocate for the respondent
no.1.
Mr.P.N.Kutti, AGP for the respondent-State.
Mr.R.N.Jadhav, Advocate for the respondent
nos.3 and 5.

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**CORAM : V.L.ACHLIYA,J.
DATE : 18.08.2020**

ORAL ORDER :

The petitioner has filed this
Petition under Article 226 r/w Article 227 of
the Constitution of India seeking the
following relief :-

"B. By issuing the writ of mandamus
and/or any other appropriate writ,
order or direction, as the case may be,
this Hon'ble court may kindly be
pleased to quash and set aside the
impugned letter dated 01.02.2020 issued
by the respondent no.1 to the

respondent no.6 and allowed the petitioner to operate his salary account no.002711002002738 at Respondent no.6 bank."

2. In brief, it is the contention of learned counsel for the petitioner that the impugned order passed by the respondent no.1 directing the respondent no.6 to freeze the loan account of the petitioner is not sustainable in law. It is submitted that pursuant to the recovery certificate issued against the respondent nos.2 and 3, the respondent no.1 ought to have made an attempt to recover the said amount from the principal borrowers i.e. respondent nos.2 and 3 by attachment of their personal properties and secured assets. Instead that the respondent no.1 has directed the respondent no.6 to freeze the account of the petitioner-the guarantor. Before passing the order of freezing of account, the respondent no.1 has not given opportunity of hearing to petitioner. Account with the respondent no.6 is a salary account of the petitioner. Because of the impugned order the petitioner is put to starvation. The order passed is against the law. Because of freezing of

account the petitioner is unable to withdraw any amount from his bank account to maintain himself and his family. He made representation to the respondent no.1 on 25.06.2020. However, the respondent no.1 has not decided said representation. It is submitted that the action on the part of the respondent no.1 not only arbitrary but contrary to law. The respondent no.1 holds no power to freeze the bank account of any person.

3. Pursuant to the directions given vide order dated 07.08.2020, learned counsel for the respondent no.1 on instructions from respondent no.1 made statement that the respondent no.1 has no objection to allow the petitioner to withdraw the amount to the extent of 50% of the salary deposited in each month in his salary account with the respondent no.6 to maintain himself and his family.

4. In view of the statement made on behalf of the respondent no.1 and the representation dated 25.06.2020 made by the petitioner is yet to be decided by the respondent no.1, the Petition can be

conveniently disposed of by issuing appropriate directions. Hence, the following order is passed :-

ORDER

(i) The respondent no.1 is directed to inform the respondent no.6 in writing to regularly allow the petitioner to withdraw the amount to the extent of 50% of monthly salary deposited in his salary account. The communication be made within one week from the date of this order.

(ii) The petitioner is directed to appear before the respondent no.1 on 1st September, 2020. On appearance of the petitioner, the respondent no.1 is directed to decide the representation dated 25.06.2020 after giving opportunity of hearing to the petitioner as expeditiously as possible and preferably within four weeks from the date of appearance of the petitioner before the respondent no.1.

(iii) All contentions raised in the Petition are kept open to be raised before the Respondent No.1.

(iv) The Petition is disposed of in above terms.

[V.L.ACHLIYA]
JUDGE

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