

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 1137 OF 2020

Shri.Namdev Shankar Khumbhar

..Petitioner

V/s.

Shri.Bahubali Zilla Nagari Sahakari

Pat Sanstha Marya, Jaysingpur,

Kolhapur & Anr.

..Respondents

Mr.Y.S. Gharal for the Petitioner.

Mr.M.A. Patil for Respondent No.1.

Mr.S.D. Rayrikar, AGP a/w Mr.T.D. Deshmukh 'A' Panel counsel for
Respondent No.2-State.

CORAM : C.V. BHADANG, J.

DATE : 04th FEBRUARY 2020

PC.

1. The challenge in this petition is to the order dated 19th November 2019 passed by the learned District Magistrate at Kolhapur in Recovery Proceedings No.SR/6/2019. By the impugned order the learned District Magistrate has appointed the Taluka Magistrate and Tahasildar-Hatkanangale, District-Kolhpaure for taking possession of the subject property belonging to the petitioner.

2. I have heard the learned counsel for the parties. Perused record.

3. It is undisputed that the respondent No.1 has obtained a Recovery Certificate against the petitioner in the year 2006 in the sum of Rs.5,95,288/- which recovery certificate bears No.101/Bahubali/801/2005. It is also not in dispute that it is the only recovery certificate obtained by the respondent No.1 against the petitioner. It is undisputed that the recovery certificate has attained finality as the same was not challenged by the petitioner.

4. The record discloses that there were two demand notices issued by the respondent No.1 to the petitioner i.e. on 02nd March 2018 and 25th October 2018, which notices were challenged by the petitioner in Revision Application No.257 of 2018 and 388 of 2018 and both these Revision Applications have been dismissed. Thus, both the recovery certificate and the demand notices have become final.

5. The learned counsel for the petitioner has submitted that the recovery certificate as well as proceedings in which the impugned order is passed by the learned District Magistrate are without the petitioner being supplied with necessary documents. Secondly, it is contended that the recovery proceedings are barred by the provisions of law, inasmuch as, as per Section 156(2) of the

Maharashtra Co-operative Societies Act, ('Act' for short) the recovery certificate has to be executed within the period as provided by Article 136 of the Limitation Act, 1963. It is submitted that the recovery certificate of the 2006 is being sought to be executed/enforced in the year 2018-19.

6. It is further submitted that the impugned order is also bad in view of the provisions of Rule 108(11)(b) of the Rules framed under the said Act. Except these there are no contentions raised.

7. The learned counsel for respondent No.1 has supported the impugned order. It is submitted that once the recovery certificate as well as the demand notices have attained finality, the impugned order by which learned District Magistrate has directed the Taluka Magistrate to take possession of the property can not conceivably be challenged. The learned counsel has referred to the Roznamma which is at page 67 of the compilation in order to submit that the respondent No.1 is taking action for recovery of the amount consistently since prior to the year 2010. In this regard specific reliance is placed on roznamma of July 2010. It is submitted that the petitioner was supplied with all the necessary documents, as is evident from the record and that in the absence of the petitioner

succeeding in his challenge to the demand notice, in the present petition the said objection about non-compliance with Rule 107(11) (b) of the Rules cannot be considered.

8. I have carefully considered the rival circumstances and the submissions made. Insofar as the limitation is concerned it is true that Section 256(2) of the Act provides that the limitation as provided under Article 136 of the Limitation Act would apply, which is 12 years. The record discloses that the respondent No.1 has been attempting to execute the recovery certificate at least from year 2006. This is evident from the roznamma produced in this petition from page 55 onward.

9. The learned counsel for the petitioner has raised a contention that the roznamma of July 2010 refers to recovery certificate which is numbered as 800/2005 while the recovery certificate issued against the petitioner is bearing No.801 of 2005. In my considered view the it clearly appears to be an error arising out of accidental slip or omission, inasmuch as, it is no body's case that any other recovery certificate is issued against the petitioner. It is significant to note that the roznamma of July 2010 specifically refers to the amount of the recovery certificate i.e. Rs.5,88,298/- issued

against the petitioner. The contention about demand notices being in breach of Rule 107(11)(b) of the Rules also cannot be accepted, for more reasons than one. Firstly, the petitioner has unsuccessfully challenged the demand Notices in Revision Application Nos.257 of 2018 and 388 of 2018 and these orders are not subject matter of challenge any further. That apart even the record shows that the necessary documents are supplied to the petitioner. Thus, considering the overall circumstances I do not find that any case for interference is made out in the supervisory jurisdiction of this Court under Article 227 of the Constitution of India. It is necessary to note that the respondent No.1 is trying to execute the recovery certificate since in the year 2006 which has attained finality.

10. The petition is without any merit and it is accordingly dismissed, with no order as to costs.

11. The learned counsel for the petitioner submitted that the petitioner has deposited substantial amount towards the recovery certificate which only shows that the petitioner has complied with part of the recovery certificate.

C.V. BHADANG, J.