

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

WRIT PETITION NO. 7082 OF 2012

1. **Shri.Vijay Vitthal Malwade**
2. **Shri.Tukaram Maruti Malwade**
Both R/o. Peth Wadgaon,
Tal. Hathangale, Dist-Kolhapur ..Petitioners

V/s.

1. **Recovery Officer,**
Dr.Annasaheb Chougule Urban
Co.Op. Bank Ltd.,
Wadgaon, Tal. Hathangale, Dist-Kolhapur
2. **Chairman**
Dr.Annasaheb Chougule Urban
Co.Op. Bank Ltd.,
Wadgaon, Tal. Hathangale, Dist-Kolhapur
3. **Shri.Lalaso Hariba Bobhate**
R/o. Wadgaon, Tal. Hathangale,
Dist-Kolhapur
4. **Jahangir Husain Inamdar**
R/at Pulchi Shirol, Yadav Vadi,
Dr.Annasaheb Chougule Urban
Tal. Hathangale, Dist-Kolhapur ..Respondents

Mr.PD. Pise for the Petitioners.

Mr.Anant Vadgaonkar for Respondent Nos.1 and 2.

Mr.PB. Kulkarni for Respondent No.4.

Ms.VS. Nimbalkar, AGP for the Respondent-State.

CORAM : C.V. BHADANG, J.

JUDGMENT RESERVED ON : 06/02/2020

JUDGMENT PRONOUNCED ON : 19/03/2020

JUDGMENT :-

1. This is fourth round of litigation between the parties before this Court, arising out of a dispute stemming from grant of a vehicle loan of Rs.1,15,000/- by the respondent No.2 to the petitioner No.1 in the year 2000.

2. On 03rd March 2000 the petitioner No.1 was granted a vehicle loan of Rs.1,15,000/- by the respondent No.2-bank on the hypothecation of a Tempo Trax vehicle bearing No.MH-09-G-2009. The petitioner No.2 was one of the guarantors to the said loan. According to the petitioners the loan amount was regularly repaid by installments and till 07th February 2003 an amount of Rs.1,10,000/- has been repaid towards the loan amount.

3. On 24th February 2003 the respondent No.2 applied for a grant of recovery certificate against the petitioners under Section 101 of the Maharashtra Co-operative Societies Act, 1960 ('Act' for short) before the Assistant Registrar of Co-operative Societies,

Kolhapur. According to the petitioners they were not aware of the filing of any such application. Be that as it may, the Assistant Registrar issued a recovery certificate on 27th March 2003 for recovery of an amount of Rs.1,45,992/-.

4. It appears that somewhere in the month of February 2003 the possession of the Tempo Trax was obtained by the bank and the same was sold to one Mr.Subhash Jyoti Patil on 05th June 2003. The petitioners did not take any immediate steps to challenge the recovery certificate or the action of the respondent No.2 to obtain possession of the said vehicle and its subsequent sale to Mr.Subhash J. Patil, on the spacious ground that the petitioners were unaware of any such fact.

5. On 18th July 2007 the respondent No.1 Recovery Officer, issued a auction notice of a property bearing CTS No.102/A admeasuring 0.2 gunthas situated at Village-Peth-Vadgaon, belonging to the petitioner No.2. According to the petitioner this was when the petitioners for the first time came to know of the grant of the recovery certificate.

6. The petitioner No.1 therefore preferred Revision Application No.330 of 2007 before the Divisional Joint Registrar of Co-operative Societies at Kolhapur, challenging the recovery certificate dated 27th March 2003. The learned Divisional Joint Registrar dismissed the Revision Application on 17th August 2007 for want of compliance with Section 154(2A) of the said act by deposit of 50% of the amount recoverable. The petitioner challenged the said order before this Court in Writ Petition No.2473 of 2008. This Court disposed of the said petition on 09th April 2008 after recording an undertaking on behalf of the petitioners to comply with the requirements of Sub-Section 2 of Section 154 within three weeks by depositing the 50% of the amount recoverable.

7. It appears that in pursuance of the said order the petitioners deposited an amount of Rs.52,300/-, claiming that it is 50% of the amount which was recoverable. The Divisional Joint Registrar found that the recoverable dues were Rs.2,78,354/- and therefore the petitioners ought to have deposited Rs.1,39,177/-, in compliance of Section 154(2A) of the Act. In short the Divisional Joint Registrar found that there is non-compliance of the said provision and the Revision Application came to be rejected on the said ground on 10th October 2008.

8. That was challenged by the petitioner before this Court in Writ Petition No.7317 of 2008. That petition was disposed of by this Court on 30th January 2009 after recording an undertaking on behalf of the petitioners that they will deposit 50% of the dues after deducting Rs.52,300/- which was already deposited. In that view of the matter the Revision Application was again restored to file with a direction to respondent No.2 to receive the balance amount of Rs.86,877/-.

9. According to the petitioner a demand draft in the sum of Rs.86,900/- was sent to respondent No.2 on 12th March 2009. The respondent No.2 by its letter dated 14th March 2009 refused to accept the demand draft. Hence, the petitioner approached the Revisional Authority with a request to hear the Revision Application. The Divisional Joint Registrar after hearing the parties once again rejected the Revision Application on 24th August 2009 which was challenged by the petitioner before this Court in Writ Petition No.8707 of 2009. This Court allowed the petition on 26th February 2010 and again restored the Revision Application to the file of the learned Divisional Joint Registrar. Finally, the Divisional Joint Registrar by the impugned judgment and order dated 01st November 2011 has dismissed the Revision Application *inter alia* on the ground

that the Revision Application is not filed within limitation and also on the ground that the recovery certificate is already executed and the property is sold in auction.

10. The learned counsel for the petitioners submitted that the petitioners were not aware of the order granting recovery certificate and therefore the Revisional Authority was in error in dismissing the Revision Application on the ground of limitation. It is submitted that in any case the Revisional Authority ought to have adopted a liberal approach for condoning the delay, if any. It is submitted that the Revision Application also could not have been dismissed on the ground that the recovery certificate is already executed and the property sold in auction. It is submitted that still the possession of the property is not handed over to the auction purchaser. It is submitted that the Revisional Authority also erred in not complying with the principles of natural justice. It is submitted that the Revision Application is dismissed on a technical ground. It is submitted that the respondent-bank has recovered Rs.1,10,000/- apart from having auctioned the Tempo Trax as also auctioned the property belonging to the petitioner No.2 which is illegal. It is submitted that the impugned order shows that the Revisional Authority has failed to exercise jurisdiction vested in it.

11. On behalf of the petitioners reliance is placed on the decision of this Court in the case of *O.K. Vasudevan V/s. Shree Paras Darshan Co-operative Housing Society and Ors*¹, *M/s.Jyoti Sakharam Bhogle and Others V/s. The Saraswat Co-Operative Bank Ltd & Ors.*² and *Puran Automobiles, Through Its Partner V/s. State of Maharashtra & Ors.*³

12. On the contrary the learned counsel for the contesting respondents has supported the impugned order. It is submitted that the petitioners are only trying to gain time by repeatedly approaching this Court, when the property is already sold in auction way back in the year 2008 and the entire loan account is liquidated and the balance amount has been transferred to the saving bank account of the petitioner No.1. It is submitted that even the challenge before this Court is belated and there is no error in the impugned order, requiring interference.

13. I have given any anxious consideration to the rival circumstances and the submissions made. The recovery certificate was granted on 27th March 2003 and it was sought to be challenged

1 2005(2) ALL MR 443

2 2014(3) ALL MR 344

3 2012(5) Mh.L.J. 843

for the first time by filing Revision Application on 17th August 2007 and that too without compliance with the provisions of Section 154(2A) of the said Act. Be that as it may, the reason shown by the petitioner is that they were not aware of the grant of the recovery certificate which in my considered view cannot be accepted, inasmuch as, the bank had taken possession of the said vehicle and the same was sold to one Mr.Subhash Patil somewhere in June 2003. Thus it is not possible to accept that the petitioners were unaware of the steps taken by the bank, including, obtaining of the recovery certificate.

14. The facts which have been set out above would clearly show that twice opportunity was granted to the petitioner to comply with Section 154(2A) of the Act and that was complied with initially in part by deposit of an amount of Rs.52,300/- and thereafter by deposit of the balance amount of Rs.86,877/- as per the order of this Court dated 30th January 2009 in Writ Petition No.7317 of 2008. After these opportunities were granted the Revision Application stood restored and has now been dismissed by the Divisional Joint Registrar by the impugned order. A perusal of the impugned order dated 01st November 2011 shows that there was no appearance on behalf of the applicant Mr.Vijay Malwade before the Divisional Joint

Registrar. The Divisional Joint Registrar, as indicated earlier, has dismissed the Revision Application on the ground of limitation and on the ground that the recovery certificate is already executed and the property is sold in auction. It appears that the immovable property has been auctioned on 29th August 2007 and the bank has recovered the balance amount of the loan which would be evident from the certificate dated 04th February 2008 from the Chief Executive Officer ('CEO' for short) of the Bank. Thus, the loan account stands closed somewhere in the year 2008. The certificate dated 04th February 2008 issued by the CEO of the bank also shows that the balance amount of Rs.1,28,166/- out of the sale proceeds of the auction sale, have been deposited in the savings bank account of the petitioner No.1 on 25th September 2008.

15. It is further necessary to note that even in filing the present petition the petitioners have not acted with promptitude, inasmuch as the order dated 01st November 2011 has been sought to be challenged in the present petition, which is filed on 16th July 2012. Considering the overall circumstances, I do not find that any case for interference, in the supervisory jurisdiction of this Court under Article 227 of the Constitution of India is made out.

16. Reliance placed on the decision of this Court in the case of *Puran Automobiles* is misplaced, as unlike that case there is no challenge to the auction sale or the sale certificate, issued by the Recovery Officer in this case. The challenge is essentially to the grant of the recovery certificate.

17. The case of *O.K. Vasudevan* also turned on its own facts, inasmuch as the Revision application was dismissed with a cryptic order as under:-

“ORDER :-The Revision Application is dismissed. The impugned Recovery Certificate dated 6-11-2001 issued by the respondent No.2, Deputy Registrar Co-Op. Societies, N Ward, Navi Mumbai u/s 101 of the M.C.S. Act, 1960 is hereby confirmed. No order as to cost.”

It can thus be seen that what weighed with this Court was that there were absolutely no reasons in the order passed by the Revisional Authority dismissing the Revision Application.

18. Lastly, in the case of *Ms.Jyoti Sakharam Bhogle* one of the questions was whether the revisional powers under Section 154 of the Act, are affected by virtue of the change in the character of

the society which was converted into a multi state co-operative society, during the pendency of the Revision Application. It further appears that in that case the challenge was also to the sale notices unlike in the present case.

**Nilam
Kamble** Digitally signed
by Nilam Kamble
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19. The petition is accordingly dismissed, with no order as to costs. It is however made clear that the observations and the findings herein are limited for the purpose of examining the validity of the order dismissing the Revision Application, challenging the grant of the recovery certificate and shall not affect the remedy of the petitioners, if any, against the auction sale.

C.V. BHADANG, J.