

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

WRIT PETITION NO. 1187 OF 2016

Mr.Baburao Yashwant Jadhav	}	
R/at, Flat No.A/1, Radha Govind Apt	}	
Pandurangwadi, 3 rd Galli Manpada Road	}	
Dombivali (East)	}	..Petitioner
V/s.		
Deputy Registrar Co. Op. So.	}	
Dombivali, & Ors.	}	..Respondents

Mr.R.H. Haridas for the Petitioner.

Mr.Vishal Patil for Respondent Nos.2 and 3.

CORAM : C.V. BHADANG, J.

DATE : 07th JANUARY 2020

P.C.:

1. The challenge in this petition is to the order dated 30th November 2015 passed by the Divisional Joint Registrar of Co-operative Societies, Navi Mumbai in Revision Application No.29 of 2014. By the impugned order the Revisional Authority, while dismissing the Revision Application filed by the petitioner has confirmed the order dated 04th August 2014 passed by the District Deputy Registrar of Co-operative Societies, Dombivali granting a recovery certificate under Section 101 of the Maharashtra Co-operative Societies Act ('Act' for short).

2. I have heard the learned counsel for the parties, perused record.

3. The brief facts are that the petitioner had availed a vehicle loan of Rs.3,50,000/- from the respondent No.2-society and two vehicles bearing No.MH-04-H-6551 and MH-01-L-737 were mortgaged by way of security for the said loan. According to the petitioner there was a restriction on plying of vehicles more than 8 years old in Mumbai City and as such it was suggested by the Officers of the respondent No.2-society to sale vehicle No.MH-01-L-737 and to repay the amount in the loan account. Accordingly, the petitioner had handed over the custody of the said vehicle to the respondent No.2-society in July 2006. According to the petitioner the respondent No.2-society unauthorisidly sold the said vehicle, however, did not deposit the amount of consideration in the loan account. It is the specific case made out that one of the officers of the respondent No.2-society had handed over a receipt dated 23rd December 2007 showing that the vehicle bearing No.MH-01-L-737 is sold for a consideration of Rs.2,10,000/-. It is submitted that the petitioner has also made certain repayments after the year 2008 to the tune of Rs.35,000/-. However, the respondent No.2-society claiming that there are no repayment made filed an application

before the District Deputy Registrar on 11th February 2013 seeking a recovery of Rs.5,39,779/-.

4. As noticed earlier the District Deputy Registrar has granted the certificate which has been confirmed by the Revisional Authority.

5. Mr.Haridas, learned counsel for the petitioner did not dispute that the enquiry under Section 101 of the Act is a summary enquiry and the authority entertaining an application under Section 101 of the Act cannot go into disputed questions of fact. The learned counsel for the petitioner has pointed out the decision of this Court in the case of *Top Ten, A Partnership Firm and Another V/ s. State of Maharashtra and Others*¹. In order to submit that in a case where such disputed questions of fact are required to be gone into, necessitating recording of evidence the authority may not entertain an application under Section 101 of the Act. The learned counsel has pointed out the various payments made by the petitioners, towards the repayment of the loan, including an amount of Rs.50,000/-, deposited before this Court. He submits that substantial amount of the loan has been repaid and therefore this

1 2012 (1) Mh.L.J. 347

Court may set aside the order, issuing the recovery certificate leaving it open to the respondent No.2-society to take recourse to the appropriate remedy, if any, and if so advised, in the matter.

6. The learned counsel for the respondent No.2 has supported the impugned order. It submitted that the Revisional Authority after considering that there is no acceptable proof produced by the petitioner that the vehicle was sold by the respondent No.2 for a consideration of Rs.2,10,000/-, has rightly refused to interfere, with the order granting recovery certificate.

7. I have considered the rival circumstances and the submissions made and I do not find that any case for interference is made out.

8. It is now well settled that the proceedings under Section 101 of the Act are summary proceedings. This Court in the case of ***Top Ten (Supra)*** has held that the provisions of the Rule 86-E of the Maharashtra Co-operative Societies Rules ('Rules' for short) which do not permit cross-examination in an enquiry under Section 101 of the Act are constitutionally valid. The contention is that if such disputed questions of fact are raised and are involved, the authority

entertaining the application for issuance of a recovery certificate under Section 101 of the Act, should stay its hands.

9. The contention in my considered view cannot be accepted in the facts and circumstances of the present case. I have perused receipt (at page 33 of the compilation) which is not at all issued under the letter head of the respondent No.2 nor bears any outward number etc. *Prima facie* no reliance could be placed on the said receipt dated 23rd December 2007 to find that the respondent No.2 had indeed sold the vehicle for a consideration of Rs.2,10,000/-. Secondly the Revisional Authority has noticed that the petitioner had given a letter dated 16th February 2012 stating that the vehicle No.MH-01-L-737 was stolen from Manipur, Karnataka and the Revisional Authority has rightly found that the petitioner is coming up with contradictory versions.

10. I have carefully gone through the impugned order and it does not suffer from any infirmity so as to require interference. The petition is without merit and is accordingly dismissed, with no order as to costs.

C.V. BHADANG, J.

**Nilam
Kamble**

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Nilam Kamble
Date: 2020.01.08
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