

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.3105 OF 2018

Dhiraj Hindocha ... Petitioner

V/s.

The Special Recovery
& Sales Officer and ors. ... Respondents

Mr.K.S.Patil i/by Mr.Sachin P. Shetye, Advocate for the
Petitioner.

Mr.R.V.Vengurlekar, Advocate for Respondent Nos.1 and
2.

Mr.Shantanu Raktate, Advocate for Respondent No. 3.

Mr.S.B.Gore, AGP for Respondent Nos.5 and 6-State.

**CORAM : UJJAL BHUYAN, J.
DATE : JANUARY 3, 2020.**

P.C.:-

1. Heard Mr.K.S.Patil, learned counsel for the petitioner;
and Mr.R.V.Vengurlekar, learned counsel for respondent
Nos.1 and 2; Mr.S.B.Gore, learned AGP appears for
respondent Nos.5 and 6 and waives notice.

2. By filing this petition under Article 226 of the
Constitution of India, petitioner has assailed legality and
correctness of order dated 28th March, 2018 passed by
the Chief Metropolitan Magistrate, Esplanade, Mumbai.

3. By the said order dated 28th March, 2018, learned Chief Metropolitan Magistrate has allowed the application of respondent No.1 by authorizing him to take over possession of the property mentioned therein, belonging to the petitioner, by giving 15 days prior notice.

4. On 27th April, 2018, this court passed an interim order to the effect that no coercive steps should be taken against the petitioner, which order has been continued since then.

5. It appears that two recovery certificates have been issued against the petitioner under Section 101 of the Maharashtra Co-operative Societies Act, 1960 (briefly “the Act” hereinafter); in one, petitioner was the guarantor and in the other, petitioner was the borrower himself.

6. Learned counsel for the petitioner submits that petitioner has not questioned the correctness of the recovery certificates. Grievance of the petitioner pertains to non-adherence to the procedure provided under Rule 107 of the Maharashtra Co-operative Societies Rules, 1961 (briefly “the Rules” hereinafter). He submits that

Rule 107 lays down the procedure for attachment and sale of property. Under Sub-Rule 19(a) of Rule 107, where any claim is preferred or any objection is made to the attachment of any property under Rule 107 on the ground that such property is not liable to such attachment, the Recovery Officer shall investigate the claim or objection and dispose it of on merits. He submits that petitioner had lodged his objection under the aforesaid provision contending that attachment of property is behind the recovery certificates. However, respondent No.1 rejected such objection vide order dated 7th June, 2016. Against such rejection order, petitioner had preferred revision application before the Joint Registrar of Co-operative Societies, Mumbai Division sometimes in the year 2016. No decision has been taken by the Revisional Authority.

7. On the other hand, learned counsel for respondent Nos.1 and 2 submits that the recovery certificates having attained finality, it is not open to the petitioner or for any authority to go behind or beyond the recovery certificates. He has referred to orders passed by this

court whereby petitioner was directed to clear the dues of respondent Nos.1 and 2 as per the recovery certificates. He further submits that the quantum of dues as per the two recovery certificates would be more than Rs.94 lakhs.

8. On a query by the court as under what provision of law the revision application has been filed, Mr.Patil, learned counsel for the petitioner submits that the revision application has been filed under Section 154 of the Act.

9. In response thereto, learned counsel for respondent Nos.1 and 2 submits that this is an indirect way of assailing the recovery certificates. Referring to Sub-section (2A) of Section 154, he submits that petitioner is required to deposit 50% of the recoverable dues before his revision application can be entertained.

10. Mr.Patil submits that as he has already clarified petitioner has not questioned the correctness of the recovery certificates; petitioner is aggrieved by the non-adherence to the laid down procedure particularly the

manner in which his objection under Sub-Rule 19(a) of Rule 107 was rejected by respondent No.1.

11. Submissions made have been considered.

12. After hearing learned counsel for the parties, it is evident that since Rule 107 (19) (a) of the Rules gives liberty to a person to lodge a claim or objection as regards attachment of any property on the ground that such property is not liable to attachment, with the further requirement that if such claim or objection is made, the Recovery Officer shall investigate the claim or objection and dispose it of on merits. However, as per the proviso, such investigation would not be required if the Recovery Officer considers the claim or objection to be frivolous.

13. In terms of the aforesaid provision, petitioner had lodged a claim and objection but the same was rejected by respondent No.1 vide order dated 7th June, 2016. Since the revision application against such order dated 7th June, 2016 is stated to be pending, court is of the view that it would be just and proper if the revision

application is finally decided instead of keeping it pending any further.

14. Consequently, the Revisional Authority i.e. Joint Registrar of Co-operative Societies, Mumbai Division is directed to take on board the revision application filed by the petitioner against the order dated 7th June, 2016 passed by respondent No.1 and decide the same in accordance with law within a period of six weeks from the date of receipt of an authenticated copy of this order. During this period of six weeks interim order passed by this court on 27th April, 2018 shall continue.

15. Needless to say, no opinion is expressed on merit and all contentions are kept open.

16. Writ petition is disposed of.

(UJJAL BHUYAN, J.)

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