

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

WRIT PETITION NO. 5839 OF 2021

Chandrashekhar Madanlal Agrawal

..Petitioner

Versus

The State of Maharashtra and ors.

..Respondents

Mr Milind M. Patil, Advocate for petitioner

Mr S.P. Tiwari, A.G.P. for respondents no.1 and 2

Mr K.B. Jadhav, Advocate for respondent no.3

**CORAM : S.V. GANGAPURWALA AND
SHRIKANT D. KULKARNI, JJ.**

DATE : 5th April 2021

PER COURT :

1. The petitioner is challenging the auction.
2. Mr Patil, learned Counsel for the petitioner submits that the petitioner is neither borrower nor guarantor to the loan allegedly obtained by present respondent no.5 from respondent no.4 - credit society.
3. The house in which the petitioner has a share is put to auction. The said property is not mortgaged with the Bank for the alleged loan. The brother of the petitioner is alleged to be the guarantor. The attachment order is to the share of the petitioner's brother and not the petitioner's share. The petitioner has raised an objection at the time of fixation of offset price. The petitioner is not given opportunity of hearing. Section 156 of the Maharashtra Co-operative Societies Act prescribes opportunity of hearing to the petitioner.
4. It is further submitted that the petitioner is entitled for equal opportunity of law under Article 14 of the Constitution of India. The property of the petitioner cannot be subjected to auction, more particularly when the

petitioner is not the borrower or guarantor to the loan nor the property is mortgaged with the Bank.

5. The real brother of the petitioner is held to be the guarantor for the loan availed by the respondent/borrower. Recovery certificate under Section 101 of the Maharashtra Co-operative Societies Act is already issued in which the real brother of the petitioner is also party - respondent.

6. If the petitioner feels that his share is being prejudiced and/or affected, the petitioner has remedy to file suit for partition and separate possession. The petitioner has also remedy to file revision under the provisions of Section 154 of the Maharashtra Co-operative Societies Act. It is for the petitioner to avail the appropriate remedy.

7. In view of that, we dispose of the petition with liberty to the petitioner to avail the appropriate remedy, as available in law. In that event, all contentions are kept open. No costs.

(SHRIKANT D. KULKARNI, J.)

(S.V. GANGAPURWALA, J.)

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