

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6654 OF 2021

CHANDKHAN IMAMKHAN PATEL
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioners : Mr. M. V. Nagargoje
AGP for Respondents No.1 and 2-State : Mr. K. B. Jadhavar
Advocate for Respondents No. 4 to 6 : Mr. Kamlakar J. Suryawanshi

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CORAM : AVINASH G. GHAROTE, J.

DATE : 27th JULY, 2021

PER COURT :-

Heard Mr. M. V. Nagargoje, learned counsel for the petitioner, who challenges the order dated 15-06-2020, passed by the respondent No.2, whereby, the claim made for quashing and setting aside the recovery certificate issued by the respondent No.3, dated 26-10-2010, has been rejected.

2. Learned counsel for the petitioner submits, that the recovery certificate dated 26-10-2010 was issued in the name of dead person, namely, Imamkhan Sajjankhan Patel, who according to him, had passed away in the year 2004. He, further, submits that the attachment of the tractor trolley in pursuance to the recovery certificate is also illegal as the principles of natural justice had not been followed.

3. Mr. K. J. Suryawanshi, learned counsel appearing for the respondents no. 4 to 6, submits, that the contentions are *per se* false, as the recovery certificate, shows that the name of the petitioner, as the legal representative of the deceased Imamkhan Sajjankhan Patel. He further submits, that for the recovery of trolley, the petitioner had initially filed Regular Civil Suit No. 101 of 2011, before the Civil Judge, Junior Division, Jalna, which came to be returned under Order VII, Rule 10 of the Code of Civil Procedure, 1908, by an order dated 08-07-2011, to be presented before the Co-operative Court, as it was held, that the Civil Court did not have jurisdiction. It is, further submitted, that in so far as the order, dated 08-07-20211, an Appeal was filed before the Ad-hoc District Judge-1, Jalna, which came to be dismissed on 22-08-2013. Writ Petition No. 4551 of 2014 filed against the same, was also dismissed on 12-01-2015. Thereafter, Dispute No. CCA-31/2015 was instituted before the Co-operative Court, Aurangabad, for the said relief amongst others, in which, the Application for injunction came to be allowed by the Judge, Co-operative Court, Aurangabad, by order dated 14-01-2016. On appeal, the Co-operative Appellate Tribunal, by Judgment, dated 22-04-2016, was pleased to quash and set-aside the order dated 14-01-2016 passed below Exhibit-5, in Dispute No.CCA-31/2015 and reject the application for injunction. There is no further proceeding carried to this Court against the said Judgment.

4. Learned counsel Mr. Suryawanshi for respondents No.4 to 6, therefore, submits that the matter, therefore, is now *sub-judice* before the Co-operative Court in Dispute No. CCA-31/2015, whereby raising a plea that the disputant/petitioner was not liable for the amount claimed, indirectly, the recovery certificate dated 26-10-2010 has also been challenged for the reason that the Co-operative Court finds that the disputant was not liable to pay any amount in respect to the loan account and for issuance of no dues certificate and refund for excess amount, if so found as mentioned in prayer clause 'G', the recovery certificate dated 26-10-2010 would automatically stands cancelled. He, therefore, submits that the petitioner cannot raise the same grievance in different forums and the petition needs to be dismissed.

5. It is not in dispute, that a loan was taken by the father of the petitioner for non payment of which the recovery certificate came to be issued on 26-10-2010. The respondent No.2 on a challenge laid to it in the year 2017, after condoning the delay by the impugned order has found that on the basis of the recovery certificate dated 26-10-2010, the bank had taken possession of the tractor trolley on 20-01-2011, and therefore, the petitioner was aware of the recovery certificate. It is material to state that the recovery certificate is of the sum of Rs.2,71,175/-, issued in the year 2010, in respect of which, the petitioner is raising the claim, that the same has already been repaid and nothing is payable now.

This is the relief, which is claimed by the petitioner in Dispute No. CCA-31/2015, and would be adjudicated by the concerned Court. In so far as the impugned order is concerned, it records that on account of default in the loan account of the father of the petitioner, the recovery certificate was issued, in pursuance to which, the tractor trolley was attached. The respondent No.2 has not found any infirmity with the attachment made. So far as the contention that the recovery certificate has been passed in the name of dead person, the copy of recovery certificate is placed on record at page No. 19, which indicates, that the petitioner's name is there, as a legal representative of the deceased Imamkhan Sajjankhan Patel. That being the position, the plea raised in this regard is clearly untenable. The petition being devoid of merits is, accordingly, dismissed.

(AVINASH G. GHAROTE)
JUDGE

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