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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9837 OF 2019

Smt.Sulochana P. Mohte	...Petitioner
V/s.	
Deputy Registrar, C.S. Karad & Ors.	...Respondents

Mr.Pratap Patil for the Petitioner.

Mr.Rajan S. Pawar, AGP for the State- Respondent Nos.1 to 4.

Mr.Rajesh N. Kachare for the Respondent No.5.

CORAM : R.D. DHANUKA &
V.G. BISHT, JJ.
DATE : 15TH MARCH, 2021.

P.C. :-

1. By this petition filed under Article 226 of the Constitution of India, the petitioner has impugned the notice dated 31st August, 2019 issued by the Circle Officer, Koparde Haveli, Taluka Karad, District Satara for enforcement of the recovery certificate dated 30th November, 2017 issued by the Deputy Registrar, Co-operative Societies, Karad and for pother reliefs.

2. The deceased husband of the petitioner had borrowed certain loan from the respondent no.5. The respondent no.5 had filed the proceedings under section 101 of the Maharashtra Co-operative

Societies Act, 1960 (MCS Act) against the deceased husband of the petitioner. It is not in dispute that before recovery certificate dated 30th November, 2017 came to be issued by the Deputy Registrar, Co-operative Societies, the husband of the petitioner had already expired. A copy of the death certificate is annexed to the writ petition which indicates that the deceased husband of the petitioner had expired on 11th November, 2017.

3. Mr.Kachare, learned counsel appearing for the respondent no.5 states that though various properties of the said deceased was mortgaged in favour of the respondent no.5, some of the properties are sold by the petitioner. He submits that if this Court considers to set aside the impugned certificate and to remand the matter back to the Deputy Registrar, Co-operative Societies, the petitioner shall be asked to deposit certain amount or shall be restrained from selling, alienating or creating any third party rights in respect of the balance properties.

4. Learned counsel for the petitioner states that some part of the mortgaged properties are already sold by his client and 40 flats and 13 shops are not yet sold. Statement is accepted.

5. In view of the fact that the husband of the petitioner against whom the proceedings under section 101 of the MCS Act had been filed, had expired prior to the date of issuance of recovery

certificate dated 30th November, 2017, we are inclined to set aside the recovery certificate dated 30th November, 2017 and consequently also the impugned notice dated 31st August, 2019 issued by the Circle Officer, Koparde Haveli, Taluka Karad, District Satara.

6. We accordingly pass the following order :-

a). The writ petition is made absolute in terms of prayer clauses (a) and (b). The proceedings under recovery certificates are restored to file before the Deputy Registrar, Co-operative Societies.

b). The respondent no.5 shall carry out amendment to bring the legal heirs of the said borrower within two weeks from today. Learned counsel for the petitioner undertakes to convey the names of all the legal heirs of the deceased borrower to the respondent no.5 within one week from today. The amended copy of the application for issuance of recovery certificate under section 101 of the Maharashtra Co-operative Societies Act shall be served upon all the legal heirs of the original borrower within two weeks from the date of carrying out amendment.

c). The legal heirs of the original borrower shall be at liberty to file the reply to the said application within two weeks thereafter with a copy to be served upon the respondent no.5.

d). The Deputy Registrar, Co-operative Societies shall decide the application for issuance of the recovery certificate afresh and in

accordance with law without being influenced by the observations made and the conclusion drawn in the impugned recovery certificate dated 30th November, 2017. The Deputy Registrar, Co-operative Societies to make an endeavour to dispose of the said application within four months from the date of the legal heirs to the said application filing affidavit in reply along with documents, if any.

e). Till the disposal of the said application filed by the respondent no.5 before the Deputy Registrar, Co-operative Societies, under section 101 of the MCS Act, the petitioner as well as the other legal heirs of the said deceased shall not sell, alienate, encumber, part with possession of or create any third party rights in respect of the balance mortgaged properties and for a period of two weeks from the date of communication of the order. The petitioner and other legal heirs shall convey the details about the portions of the mortgaged properties already sold by the petitioner to third parties and about the balance properties which are not sold within one week from today. The petitioner and other legal heirs shall furnish the details of the agreement for sale already executed in respect of any of the properties.

f). The writ petition is disposed of in aforesaid terms. There shall be no order as to costs.

g). It is made clear that this Court has not gone into the merits

of the recovery certificate dated 30th November, 2017.

h). All contentions of all the parties are kept open.

(V.G. BISHT, J.)

(R.D. DHANUKA, J.)