

Vidya Amin

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

WRIT PETITION NO. 5275 OF 2021

Najim Khalil Shaikh & Ors. **... Petitioners**
V/s.

Nashik Zilla Girna Sahakari Bank Co-op.
Bank Ltd., Nashik & Ors. **... Respondents**

Mr. Pramod N. Joshi a/w. Ms Vrushali Raje for the petitioners.
Mr. S.H. Kankal, AGP for the State.
Mr. Tejesh Dande a/w. Mr. Bharat Gadhavi, Vishal Navale and Mr.
Aniket Aghade i/b. Tejesh Dande & Associates for respondent nos. 1 &
4.

CORAM : G.S.KULKARNI, J.
DATE : 14 September, 2021.

PC.:

Heard Mr. Joshi, learned counsel for the petitioners, Mr. Dande, learned counsel for respondent nos. 1 and 4 and Mr. Kankal, learned AGP for respondent nos. 2, 3 and 5. By consent of the parties and at their request, this petition is heard finally.

2. The challenge in this petition is to the judgment and order dated 4 March, 2021 passed by the Divisional Joint Registrar, Cooperative Societies, Nashik Division, Nashik. By the impugned order, the Revision Application filed by the petitioners under the provisions of Section 154 of the Maharashtra Cooperative Societies Act, 1960 (for short “**MCS Act**”) has been rejected only on the ground of non-compliance of the

requirement of a pre-deposit as provided for under section 154(2)(A) of the MCS Act.

3. Mr. Joshi has drawn my attention to an order dated 2 July, 2015 passed by a co-ordinate Bench of this Court on a Writ Petition filed by petitioner no. 2. The said writ petition was sought to be withdrawn by petitioner no. 2 with liberty to file appropriate proceedings under the MCS Act including a Revision Application to be filed under section 154 of the MCS Act. By such order, this Court allowed the Writ Petition to be withdrawn with liberty to adopt appropriate proceedings. The Court observed that the amount which was deposited in this Court pursuance of an earlier order dated 5 January, 2015 would continue to remain deposited, with liberty to the said petitioner to withdraw the amount in the event he was required to make a statutory compliance by way of pre-deposit while filing a Revision Application. Today, it is this observation which is pressed into service by Mr. Joshi.

Mr. Joshi has submitted that after the above order was passed by this Court, the petitioners moved a Revision Application No. R-106 of 2015 before the Divisional Joint Registrar, Cooperative Societies, Nashik Division, Nashik under section 154 of the MCS Act, which came to be partly allowed by an order dated 17 May, 2016 whereby the

impugned recovery certificate dated 16 January, 2014 issued by the Deputy Registrar, Cooperative Societies, attached to Nashik Jilha Nagari Sahakari Banks Association Maryadit, Nashik, in case no. 1315 of 2013 against the applicants under section 101 of the MCS Act was quashed and set aside, with an order that the subject matter was remanded back for a fresh hearing and trial before the Deputy Registrar Cooperative Societies; Another Revision Application No. R-107 of 2015 filed by the petitioner no. 2 was also partly allowed directing that the sale certificate dated 17 September, 2014 executed and registered by respondent nos. 1 and 3, namely, Nashik Zilla Girna Sahakari Bank Ltd. and the Special Recovery & Sale Officer, Nashik Zilla Girna Sahakari Bank Ltd. in favour of respondent no. 6-Bapusaheb Ganpat Gavali (the auction purchaser) qua the property of the revision applicant (petitioner no. 2) was quashed and set aside. Thereafter, a fresh recovery certificate no. 857 of 2016 dated 27 January, 2017 was issued by Deputy Registrar.

The petitioners being aggrieved by such recovery certificate, approached the Divisional Joint Registrar in a fresh Revision Application under section 154 of the MCS Act which came to be filed on 14 March, 2017. This Revision Application has been rejected by the impugned order dated 4 March, 2021 for want of pre-deposit.

4. As noted above, in pursuance of the order dated 5 January, 2015 passed by this Court in Writ Petition No. 8987 of 2014 till date the amount continues to remain deposited in this Court, despite the fact that the Revision Application which was filed in pursuance of the liberty granted by this Court in the said order itself stood disposed of by the orders as impugned above. Mr. Joshi has submitted that in view of the amounts remaining deposited in this Court, the earlier Revision Application was decided without the petitioner no. 2 being called upon to make the pre-deposit as required under the provisions of Section 154(2A) of the MCS Act. He submits that the Divisional Joint Registrar ought to have taken into consideration this aspect that a substantial amount lies deposited in this Court and which was permitted to be utilized by the said order passed by this Court for the purpose of pre-deposit which would even be a pre-deposit for the purpose of present case. It appears to be not in dispute that the amount which was deposited by the petitioner no. 3 and which according to Mr. Joshi is available to the benefit of the present petitioners also. It is also not in dispute that the amount which stands deposited, along with the accrued interest is much more than the amount being sought to be recovered under the recovery certificate.

5. Mr. Dande, learned counsel for respondent nos. 1 and 4 has also

not disputed the amount as deposited earlier in the proceedings of Writ Petition No. 8987 of 2014 continues to remain deposited in this Court. Mr. Dande fairly submits that in the peculiar situation, the amounts are available in this Court, it need not be physically pre-deposited in the account of the Revision proceedings. He states that his client would not have any objection if the Revision proceedings are heard on the assumption that the proportionate amount which stands deposited, can be considered to be a pre-deposit for the purpose of the revision application. In view of the fair stand taken by respondent no. 1, in my opinion, instead of permitting the petitioners to withdraw the amount to be deposited as a mandatory pre-deposit under section 154 of the Act, it can continue to remain deposited in this Court as pre-deposit. As consented on behalf of respondent no. 1, such deposit can be considered to be an appropriate pre-deposit for the purpose of compliance of the provisions of sub-section (2)(A) of Section 154.

6. In the above circumstances, this petition is disposed of by the following order:

ORDER

- i) The impugned order dated 4 March, 2021 stands set aside;
- ii) The Revision Application stands restored to the file of Divisional Joint Registrar, Cooperative Societies, Nashik

Division to be heard on merits, however, with a condition that the amount deposited in this Court in proceedings of Writ Petition No. 8987 of 2014 to the extent of the amount necessary for a pre-deposit, be treated as pre-deposit for the purpose of compliance of the provisions of Section 154 of the Act.

- iii) All contentions of the parties on merits of Revision Application are expressly kept open.
- iv) At the first instance, the parties are permitted to appear before the Divisional Joint Registrar Cooperative Societies, Nashik Division, Nashik on 21 September, 2021.
- v) The Divisional Joint Registrar shall make an endeavour to dispose of the Revision Application as early as possible and preferably within four months from today.

7. Needless to observe that the parties are permitted to seek withdrawal of the amounts as and when either of them become entitled to withdraw the said amount.

8. Disposed of in the above terms. No costs.

(G.S.KULKARNI, J.)