

Vidya Amin

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

WRIT PETITION NO. 8072 OF 2021

Mrs. Ranjana wd/o. Sunil Bhegade

... Petitioner

V/s.

The Manager, Kamgar Ekta Nagari
Sahakari Patpedhi Maryadit & Ors.

... Respondents

Mr. Deepak C. Natu i/b. M/s. N. Deepak & Co. for the petitioner.
Mr. Chandrakant P. Deogirikar for respondent no. 1.
Mr. V.S. Gokhale, 'B' Panel counsel for the State/respondent no. 4.

**CORAM : G.S.KULKARNI, J.
DATE : 6 December, 2021**

P.C.:

1. Heard Mr. Natu, learned counsel for the petitioner and Mr. Deogirikar, learned counsel for respondent no. 1.

2. This petition is filed being aggrieved by the communication dated 12 July, 2021 addressed by the Special Recovery Officer for respondent no. 1 to the Branch Manager, Bank of India-respondent no. 2 attaching the bank account No. 000110110005881 held by the petitioner in Bank of India, Main Branch, Mumbai. The petitioner is a Government servant stated to be working as a peon. She was a guarantor to guarantee a loan availed by one Mr. Phoolchand Munnilal Jaiswar, who was granted loan of Rs.5,00,000/- by respondent no. 1 sometime in December 2015.

The said borrower defaulted in making repayment of the loan and the amount which is sought to be recovered by respondent no. 1 against him is about 7 lakhs.

3. Admittedly, the petitioner has not assailed the recovery certificate issued against the petitioner by the Special Recovery under the provisions of Rule 107 of the Maharashtra Cooperative Societies Rules, 1960 for which the remedy of the petitioner is to file a Revision Application under section 154 of the Maharashtra Cooperative Societies Act before the Divisional Joint Registrar. Learned counsel for respondent no. 1 has raised an objection that without substantive proceedings being filed, the petitioner could not have approached this Court exercising jurisdiction of this Court under Articles 226 and 227 of the Constitution.

4. On the said objection as raised on behalf of respondent no. 1, Mr. Natu, learned counsel for the petitioner, on instructions, states that his client is willing to file a revision application within one week from today assailing the recovery certificate. Mr. Natu, however, submits that the attachment which has been made by the Recovery officer of the salary account of the petitioner is in the teeth of the provisions of Order XXI Rule 48 r/w. Section 60(1)(i)

of the Code of Civil Procedure as also the provisions of Rule 107(6) of the Maharashtra Co-operative Societies Rules, 1961, when the attachment in execution of the decree is of a salary account of a Government servant. He submits that a wholesale attachment of the salary account is not permissible under the said provisions. According to Mr. Natu, it is for such purpose this Court needs to interfere on the attachment of the salary account as made by the Recovery Officer.

5. In my opinion, the contentions as urged by Mr. Natu appear to be of some substance considering the impugned attachment. Certainly, such attachment is required to be in the manner known to law and more particularly when Rule 106(6) itself provides attachment of salary account in a manner as prescribed under Section 60 of the Code of Civil Procedure. It appears that the recovery officer has overlooked such provisions in issuing the impugned attachment.

6. Be that as it may, it would be appropriate that the present petition is not taken forward as in my opinion, the contention as urged by the learned counsel for the petitioner can be raised by filing an interim application before the revisional authority. The writ petition hence disposed of by the following order:

(i) The petitioner shall file revision application assailing the recovery certificate dated 9 June, 2017 by taking recourse to the provisions of Section 154 of the Maharashtra Cooperative Societies Act. The petitioner is also permitted to file applications for condonation of delay and for interim reliefs on the attachment of the petitioner's bank account.

(ii) In the meantime, till the interim proceedings as may be filed by the petitioner as observed in paragraph (i) above are decided, impugned communication dated 12 July, 2021 issued by Special Recovery Officer to respondent no. 2-Branch Manager, Bank of India shall not be acted upon.

(iii) All contentions of the parties on the recovery proceedings as also the proposed proceedings which are required to be initiated by the petitioner are expressly kept open.

7. Disposed of in the above terms. No costs.
8. Parties to act on authenticated copy of this order.

(G.S.KULKARNI, J.)