

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

928 WRIT PETITION NO.9280 OF 2021

M/S SHREE ANNAPURNA CATERERS THROUGH ITS PARTNER SWAPNIL
DULICAND JAIN

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioners : Mr. S.D. Kaldate & Mr. S.G. Dodya

AGP for Respondents 1 and 2 : Mr. G.O. Wattamwar

Advocate for Respondents 3 & 4 : Mr. K.B. Deshpande & Mr. N.T. Tribhuwan

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CORAM : ARUN R. PEDNEKER, J.

DATED : NOVEMBER 23rd, 2022.

PER COURT :

1. The petitioner challenges the recovery certificate issued under section 101 of the Maharashtra Cooperative Societies Act by the District Deputy Registrar, Co-operative Societies (Perseva), Aurangabad by an order dated 5.5.2021 for an amount of Rs.1,95,95,094/-. This Court by order dated 25.3.2022 had asked the learned counsel for the petitioner to deposit 100% amount under recovery certificate and the petition would be entertained subject to deposit of 100% amount. On 5.5.2022, the learned counsel for the petitioner submitted before this Court that the petitioner was unable to deposit 100% amount due to financial difficulties. He had not even made any attempt to deposit 50% amount in this Court. At the outset, the learned counsel for the petitioner was asked whether the petitioner is willing to deposit 50% of the amount under the recovery certificate so as to enable this Court to entertain the petition. The petitioner declined to deposit 50% of amount under the recovery certificate.

2. The learned counsel for the respondent bank pointed out that

alternate remedy is provided against the order passed under section 101 and revision petition can be filed under section 154 of the Maharashtra Co-operative Societies Act. Revision petition under section 154 of the Act is maintainable only on the deposit of 50% of the amount of recovery certificate. Instead of moving the revisional authority under section 154, the learned counsel for the petitioner approached this Court invoking the writ jurisdiction, in order to avoid the deposit of 50% amount. This Court made it clear to the petitioner that this Court would consider the claim of the petitioner only when the petitioner deposits 50% amount under the recovery certificate. However, the petitioner expressed his inability to deposit the same.

3. The learned counsel for the petitioner submits that due procedure was not followed by the respondent No. 2, therefore, the present writ petition is filed. If there are any procedural lapses, the petitioner can challenge the same in the proceeding under section 154.

4. The learned counsel for the petitioner relied upon the judgment of the Hon'ble Supreme Court in the case of **MGMT of M/s. Devi Theatre Vs. Vishwanath Raju**, reported in **AIR 2004 SC 3325**, wherein Hon'ble Supreme Court has held that admission of the appeal, subject to condition of deposit of some given amount, is not envisaged in the provision as contained under section 94 r/w. Order 41, Rule 11 of Civil Procedure Code and the deposit of money would have no connection with the merits of the case. On perusal of the aforesaid judgment (supra) of Hon'ble Supreme Court, I find that the said judgment (supra) does not prohibit the exercise of writ jurisdiction of this Court on the condition of deposit of 50% of claim amount. Moreso when the alternate remedy under section 154 of the

Maharashtra Co-operative Societies Act can be invoked only after depositing 50% amount under recovery certificate.

5. The writ petition is, thus, dismissed with liberty to the petitioner to avail the remedy provided under section 154 of the Maharashtra Cooperative Societies Act. However, in the interest of justice, any period spend before this Court in this petition would be exempted under section 14 of the Limitation Act for condonation of delay.

[ARUN R. PEDNEKER J.]

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