Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3991 OF 2022

Sachin V Mane …Petitioner

Versus

Special Recovery Officer Mahalaxmi Nagari Coop Credit Soc Ltd & Ors …Respondents

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Mr Shrivallabh Panchpor, *with Abhineet N Pange, Dnyaneshwar Kale & Swapnil R Chopade, for the Petitioner.*
Mr Mr Vishal Patil, *with Sudhir Jagdale, for Respondents Nos. 1 & 2.*
Ms Priyanka Pai, *i/b Rupali Kharat & Sheetal Arya, for Respondent No. 3.*
Mr Ashish Mehta, *with Haaris Koradia, i/b Ethos Legal Alliance, for Union of India.*
Ms Shruti Vyas, 'B' Panel Counsel, *for the Respondent-State.*

CORAM G.S. Patel &
Madhav J. Jamdar, JJ.
DATED: 12th April 2022

PC:-

1. Rule.

2. Respondents waive service. We make rule returnable forthwith and take up the Petition for hearing and final disposal.

3. The sole prayer in the Petition reads thus:

> "A. This Hon'ble Court be pleased to issue the Writ of Mandamus or in the nature otherwise thereby directing the Respondent No.1 to unfreeze/ unhold the salary account bearing No. 0000001103037366698 with the Respondent No. 5 Bank."

4. There is no dispute that on 14th September 2018, the 2nd Respondent sanctioned a loan in the amount of Rs. 16 lakhs to the 3rd Respondent. The Petitioner stood guarantee for the repayment of the loan. On 15th June 2019, the 2nd Respondent Cooperative Credit Society issued a notice to the Petitioner and Respondents Nos. 3 and 4 saying that there was a default in repayment and claiming an amount of Rs. 1,17,053/-. Further notices followed on 30th November 2019, 16th January 2020, 5th January 2020 and 12th February 2021. Then there was a final intimation on 2nd April 2021 stating that proceedings would be initiated under Section 91 and 101 of the Cooperative Societies Act unless payment was made.

5. Ultimately, a recovery certificate was issued in the amount of Rs. 20,55,042/- to be recovered from the Petitioner and Respondents Nos. 3 and 4. Thereafter, a notice under Rule 107 of the Maharashtra Cooperative Housing Societies Rules came to be issued on 27th December 2021.

6. On 25th January 2022, the 1st Respondent attached or froze the salary account of the Petitioner bearing No. 0000001103037366698 in the Respondent No. 5 Bank. The Petitioner on 1st February 2022 wrote to the Assistant Registrar that the 3rd Respondent had already paid Rs. 14,18,000/- and requested that the account be released from freezing or attachment.

7. From that date, that is to say from January 2022, until now the Petitioner's account with the 5th Respondent bank remains frozen.

8. Mr Panchpor points out that the attachment of the salary account is completely without the sanction or authority of law. Rule 107(6) clearly provides that wherever movable property in the form of salary allowance is sought to be attached, it is subject to the provisions of Section 60 of the Code of Civil Procedure, 1908 ("**CPC**"). Now it is well settled that Section 60 of the CPC does not permit the attachment or distraint of the entire amount of the salary but only the first 1000 rupees and two-thirds of the remainder. Further, as Mr Panchpor points out, such an attachment must be served on the employer, i.e. the person or entity disbursing the salary. The attachment is to be made of the *salary* and not of the salary account or the bank account into which the salary is deposited.

9. We believe the submissions made on behalf of the Petitioner are completely correct. The 1st Respondent cannot be heard to argue that the Petitioner did not respond to the notices. That does not entitle the 1st Respondent to act in a manner contrary to law and in direct contravention of the provisions of Rule 107 and Section 60 of the CPC.

10. Consequently, Rule is made absolute in terms of prayer clause (a). The 1st Respondent will unfreeze and remove its freezing of the Petitioner's account No. 0000001103037366698 with the 5th Respondent bank. The 5th Respondent will allow the Petitioner to operate the bank account.

11. The 5th Respondent bank will act on production of an authenticated or digitally signed copy of this order and need not wait instructions or directions or communications from the 1st Respondent. The 5th Respondent will act within 24 hours of this order being served on it.

12. We make it clear that we have not, by this order, quashed the recovery certificate itself in any manner. We have also not held that the salary of the Petitioner, to the extent permitted by law, is exempt from attachment in execution. We have only said that attachment and freezing of the entire salary account of the Petitioner with the 5th Respondent bank is an action not in consonance with law.

13. Thus, all other rights and remedies of the 1st Respondent are expressly kept open to be pursued in accordance with law, including moving in or for attachment of the Petitioner's salary to the extent permitted by law and in the manner contemplated by law.

(Madhav J. Jamdar, J) **(G. S. Patel, J)**