IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL WRIT PETITION NO. 6059 OF 2022

SUNIL D POTE ....PETITIONER

V/s.

SPECIAL RECOVERY OFFICER DEVGIRI NAGRI SAHKARI BANK LTD. AND ORS .....RESPONDENTS

Mr. Prashant P. Kulkarni Advocate for the Petitioner
Smt. V. S. Nimbalkar AGP for Respondent no. 6

CORAM : NITIN W. SAMBRE, J.
DATE: JUNE 6, 2022.

P.C.:

1) To a loan transaction, Petitioner stood guarantor since principal defaulted in repayment. Loan recovery proceedings under Section 101 of The Maharashtra Co-operative Societies Act, 1960 (Hereinafter referred to as ‘the Act’ for the sake of brevity) has resulted into issuance of recovery certificate against the principal borrower so also guarantors i.e. present Petitioner in execution of which bank account of the Petitioner is attached.

2) Order of attachment of Petitioner’s account came to be passed on 16/11/2021 which was questioned by the Petitioner in Revisional

Jurisdiction before the Divisional Joint Registrar. Said proceedings were rejected vide order impugned dated 07/03/2022. As such, this Petition.

3) The submissions of counsel for the Petitioner are, attachment of the account may continue, however, amount may not be transferred to the account of Respondent certificate holder bank as it is for the Respondent bank to first make every endeavour to recover the amount from the principal borrower. Further contention is, as the amount is already secured by attaching the account and as such, till the recovery proceedings against the borrower are concluded, amount from the account of the Petitioner may not be permitted to be transferred to the account of Respondent bank.

4) I have appreciated said submissions.

5) While passing the order impugned, Authority was sensitive about provisions of Section 154 (2A) of the Act i.e. statutory obligation to deposit 50% of recoverable amount.

6) Fact remains that Petitioner/guarantor has not questioned recovery certificate issued under Section 101 of the Act, as a consequence, attachment of the account of the Petitioner was ordered

having regard to liability fastened against him.

7) The Authority below while dealing with the claim of the Petitioner was sensitive to the law laid down by the Apex Court in the matter of **State Bank of India V/s. Indexport Registered and Ors.**[1] so as to infer that recovery certificate holder i.e. Respondent Cooperative Bank has every authority to proceed against guarantor for recovery of amount.

Even otherwise the transfer of the amount will not result in complete satisfaction of the liability under the recovery certificate.

8) In the aforesaid background, the claim that even if attachment of the account is permitted to be continued, amount may not be permitted to be adjusted is liable to be rejected. The liability as reflected in 101 certificate cannot be fastened against the Petitioner cannot be accepted as such contentions go contrary to the very scheme of Section 101 and 154 of the Act.

9) That being so, no case for interference is made out. Petition as such fails, stands dismissed.

[NITIN W. SAMBRE, J.]

1 **AIR 1992 SC 1740**