

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5007 OF 2021

The Greater Bombay Co-operative Bank Ltd. and
Ors.

.. Petitioners

Versus

Mrs. Chhaya Bharat Zaveri and Ors.

.. Respondents

-
- Mr. Harish R. Pawar for the Petitioners
 - Mr. Alok Mishra for Respondent No.1
 - Mr. S.D. Rayrikar, AGP for the State
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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 24, 2022.

P.C.:

. Heard.

2. Perused the common order dated 05.07.2018 passed in Writ
Petition No.6888 of 2018 and Writ Petition No.6889 of 2018.

Paragraph No.3 of the order reads thus:

"3. It is made clear that if the contesting respondents do not deposit the amount in compliance with the mandatory condition of deposit of under 154(2A) on or before the next date which is 23rd July, 2018, the revision applications filed by the contesting respondents to stand dismissed without further reference to court and ad-interim order passed by the learned Divisional Joint Registrar to stand vacated."

3. After the above order was passed, the Petitioners issued fresh
notices dated 23.02.2021 and 01.03.2021 under Section 156

Maharashtra Co-operative Societies Act, 1960 read with Rule 107 of the Maharashtra Co-operative Societies Rules, 1961.

4. Respondent No.1 filed a fresh Revision Application being Revision Application No.95 of 2021 to challenge the fresh notices before the Divisional Joint Registrar, Co-operative Societies, Mumbai Division, wherein the impugned order dated 19.04.2021 has been passed.

5. It was made clear in order dated 05.07.2018 that if the Respondent No.1 does not deposit the amount in compliance with the mandatory condition of deposit of under 154(2A), the revision application filed by the contesting Respondents would stand dismissed without reference to Court and the ad-interim order passed by the Divisional Joint Registrar would stand vacated.

6. In view of the directions contained in the order dated 05.07.2018, it is surprising that a stay has been granted without directing the Respondent No.1 to make any deposit.

7. In fact, in the Affidavit-in-Reply filed by the Petitioner before the Divisional Joint Registrar, in paragraph No.3, the Petitioner - Bank has categorically opposed the stay application on the aforesaid ground.

8. Paragraph No.3 of the Affidavit-in-Reply of the Bank is reproduced as under:

"3. I submit it is pertinent to note that the action initiated by Recovery officer pursuant to notice dated 01/03/2021 is nothing but forming part and parcel of execution of proceedings of Recovery Certificates dated 15/03/2018. By the present application for stay, the Applicant has sought blanket reliefs for stay to the operation and implementation of the execution process. However in view of order dated 05/07/2018 passed by Hon'ble High Court, Bombay (Mr. R. D Dhanuka J.) in Writ Petition No. 6888 of 2018 and Writ Petition No. 6889 of 2018 filed by the Respondent No. 1 bank, at this stage the Applicant is not entitled to any reliefs as prayed in the Application for stay and the same is liable to be dismissed with costs. I state that it is pertinent to note that by the said order dated 05/07/2018, the earlier Revision Application bearing No.130 of 2018 and 131 of 2018, filed by the Applicant, principle borrower and other guarantors in respect of the same Flat No.7 and Flat No.8, were automatically came to dismissed for want of deposit of 50% amount of total amount of recoverable dues which is mandatory as per section 154(2-A) of MCS Act, 1960. Hence the present revision application itself is not maintainable and liable to be dismissed with cost. Hereto annexed and marked as **Exhibit - B** is copy of the said order dated 05/07/2021 of the Hon'ble High Court, Bombay."

9. In view of the above, the impugned order is unsustainable and is quashed and set aside.

10. The Divisional Joint Registrar is directed to finally decide the pending revision application within a period of 6 weeks from today alongwith the stay application. The Divisional Joint Registrar shall give a fresh hearing to the parties and pass a speaking order on all issues raised by the parties before it.

11. Parties shall appear before the Divisional Joint Registrar on 30.03.2022.

12. All contentions of the parties are expressly kept open.
13. In view of the above directions, Writ Petition stands disposed of.

[MILIND N. JADHAV, J.]

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