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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4578 OF 2021**

RR Constructions

...Petitioner

Versus

State of Maharashtra & Ors

...Respondents

Mr Nikhil Waje, i/b Kisan Dhamale, for the Petitioner.

Mr Satish A Sarang, for the Respondent.

Mr PG Sawant, AGP, for the Respondent-State.

**CORAM G.S. Patel &
 Madhav J. Jamdar, JJ.**

DATED: 24th March 2022

PC:-

1. The Petitioner wants us to restrain the Respondents from taking possession of an immovable property. That property was security for the repayment of loans that the Petitioner and others took from the 6th Respondent bank. The 6th Respondent obtained recovery certificates. Those are unchallenged. Then the 6th Respondent moved to enforce the recovery certificates. On 24th March 2021, the District Collector passed an order under Section 156 of the Maharashtra Cooperative Societies Act, 1960 read with Rule 107. He directed possession be taken of one of several mortgaged properties. This order is assailed before us.

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2. The Petitioner is one of several borrowers from the 6th Respondent bank. There were two loan proposals in the amount of Rs.14 lacs and Rs.25 lacs. The Petitioner admits in paragraph 2 at page 4 that there was default and this led to the 6th Respondent bank initiating recovery proceedings. It is also admitted that various properties were mortgaged to the bank as security for repayment of these loans. Some details are available. From page 19 there is a list of 15 properties with full descriptions. The six mortgagors created a mortgage in favour of the 6th Respondent bank over all these properties.

3. The bank proceeded in recovery for the two loans separately. Notices were admittedly issued to the Petitioner. Section 101 Recovery Certificates came to be issued on 13th February 2014 and 2nd May 2014.

4. It is significant that the Recovery Certificates are not challenged and have not been challenged at any time. These have therefore attained finality. The only challenge is to the Rule 107/Section 156 order for enforcement or execution of the recovery certificates.

5. According to the Petitioner, the Sub-Registrar of the Cooperative Societies granted an order in favour of the bank but only against the Petitioner and not other co-borrowers. The bank went in Revision No. 210 of 2014 before Respondent No.4, the Divisional Joint Registrar. This proceeding is being completely misconstrued by the Petitioner to say that the bank challenged its

own Recovery Certificates in Revision. Nothing could be further from the truth. What the bank did to was to assail the order of the Sub-Registrar that *declined* to make an order against the other co-borrowers. The bank insisted that the recovery certificates be issued jointly and severally against all co-borrowers in accordance with the terms of the loan transactions.

6. Whether are not those Revision proceedings are pending is thus not material. The Petitioner submits, and in our view with no basis whatsoever, that the bank must proceed “equally” against all co-borrowers and against all mortgaged properties. This not the law. Where there is joint and several liability, the creditor may proceed against each and against all. The fact that it proceeds against one does not invalidate the proceeding. There is also no requirement that the bank must proceed against all properties at the same time. Indeed, it is not even clear what this submission is supposed to mean.

7. The prayer in the Petition is to quash and set aside the Rule 107/Section 156 order of 24th March 2021. In the factual background summarized above, we find no ground for interference in exercise of our discretionary writ jurisdiction.

8. The amount due today from the Respondent is roughly a little over Rs.82 lacs. The Petitioner is not in a position to pay any part of this debt.

9. There is no substance in the Petition. It is rejected. There will be no order as to costs.

(Madhav J. Jamdar, J)

(G. S. Patel, J)