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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 14347 OF 2022

Santosh Rajaram Kelkar & Anr. ... Petitioners.

Versus

Kanchangauri Mahila Sahakari Pat Pedhi
Limited & Ors. ... Respondents.

Mr. Vikram N. Walawalkar, Advocate a/w. Mr Virendrasinh Tapkir
& Mr. Amey C. Sawat, Advocates, i/by Mr. Suraj Ganpatye
for the Petitioners.

Mr. Chetan R. Shah, Advocate a/w. Ms. Jayashree Mahadik for
the Respondent No.1.

Mr. Atul P. Vanarase, AGP for the State-Respondent Nos. 2 & 3.
Ms. Swarada Tikekar, Bank Officer, is present in court.

CORAM : R.D. DHANUKA & S.G. DIGE, JJ.

DATE : NOVEMBER 29, 2022.

P.C. :-

1. Rule. Heard the learned counsel for the Petitioners and
the learned counsel for the Respondent No.1, who waives
service. Learned AGP waives service on behalf of the State -
Respondent Nos. 2 and 3. Rule is made returnable forthwith,
by consent of the parties.

2. By this petition filed under Article 226 & 227 of the Constitution of India, the Petitioners seek writ of certiorari for quashing and setting the recovery certificate dated 10.03.2021 issued u/s. 101 of MCS Act, 1960 by the Respondent No. 2-learned Dy. Registrar Cooperative Society Taluka Kalyan and for alternative reliefs. The Petitioners have challenged the said recovery certificate on various grounds. The learned counsel appearing for Petitioners and the Respondents state that there is no need for recording the reasons by the court to dispose of this petition. Statement accepted.

3. The learned counsel for the petitioners, on instructions, states that his client will deposit Rs. Five lakhs within one week from today and another Rs. Five lakhs within four weeks from today with the Respondent No.1 Bank without prejudice to the rights and contentions of the Petitioners towards the alleged dues of the Respondent No.1. Learned counsel for the Respondent No.1, on instructions, also agrees to accept the said amount without prejudice to the rights and contentions of Respondent No.1. Statement accepted.

4. The learned counsel appearing for both the parties jointly

state that if the amount of Rs. Ten lakhs is deposited by the Petitioners with Respondent No.1-Bank within the stipulated time prescribed, the recovery certificated dated 10.03.2021 issued by the Respondent No. 2 shall stand set aside and the matter would be remanded back to the Respondent No. 2 for deciding the application for recovery filed by the Respondent No.1 afresh in accordance with law. Statements are accepted.

5. It is made clear that the impugned recovery certificate dated 10.03.2021 to stand set aside upon the Petitioners' depositing the sum of Rs. Ten lakhs including the instalment, as referred above. If the Petitioners commit any default in payment of any of the two instalments, the recovery certificate dated 10.03.2021 issued by the Respondent No.2 shall stand operative; to be executed by the Respondent No. 2 forthwith. The grievance application made by the respondent no.1 to stand restored before the Respondent No. 2. Petitioners would be at liberty to file reply to the said application for seeking recovery certificate afresh within three weeks from the date of the Petitioners' depositing the aforesaid amount with the Respondent No. 1 without fail alongwith the documents which

they seek to rely upon in support of their rival contentions. Copy of the entire set of such documents shall be served upon the learned counsel for the respondent no. 2.

6. Respondent No.2 shall decide the application for recovery certificate after hearing both the parties and after considering the application made by the respondent no. 2 and the reply that would be filed by the petitioners and shall pass a fresh order without being influenced by the observations made and the conclusion drawn in the recovery certificate dated 10.03.2021 within eight weeks from the date of granting personal hearing to both the parties. If the application filed by respondent no. 2 is decided in favour of the petitioners, the respondent no. 2 shall refund the said amount to the petitioners that would be deposited by the petitioners and the if the same is decided against the petitioners, the amount of Rs. Ten lakhs that would be deposited by the petitioners, shall be adjusted against the dues that would be certified by the respondent no.2.

7. If the order is adverse against the petitioners, no coercive

steps shall be taken by the respondent no. 2 against the petitioners for a period of two weeks from the date of communication of such an order.

8. Learned counsel for the petitioners on instructions states that during the pendency of the proceedings before the Dy. Registrar and for a period of three weeks from the date of communication of the order, the Petitioners will not create any third party rights and will not part with the possession of Flat No. 501, A-wing, 5th Floor, "Sai Balaji Sankul", Atali Tal. Kalyan Dist. Thane -421 102. Statement accepted.

9. The Writ Petition is allowed in the aforesaid terms. Rule is made absolute accordingly.

10. It is made clear that this court has not expressed any view on the merits of the case. The contentions raised by both the parties are kept open.

11. It is made clear that the respondents shall not take any coercive steps to execute the amount of recovery certificate in view of the aforesaid arrangement arrived at between the

parties during the pendency of the application for recovery certificate before the Deputy Registrar and for a period of two weeks thereafter. It is further made clear that if the petitioners commits any default in making payment of any instalment, the respondent no. 2 will be at liberty to execute the recovery certificate.

12. At this stage, we are informed by the learned Advocates that another petition i.e. Writ Petition (St.) No. 6836 of 2022 is also filed against the same Society for the same reliefs. In view of the arrangement arrived at, as recorded in the earlier paragraphs of this order, we direct the postponement of hearing of that writ petition for a period of four months from today. Parties are at liberty to apply for early date of hearing in that petition, depending on the outcome of the present proceedings which are directed to be decided by the Dy. Registrar, as observed in the earlier paragraphs of this order.

(S. G. DIGE, J.)

(R.D. DHANUKA, J.)

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