

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.3141/2020

Pushpendrakumar S/o Kesarilalji Sharma

...Versus...

Special Recovery & Sales Officer, Vidarbha Urban Co-operative Bank, Akola and
another

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Shri H.R. Gadhia, Advocate for petitioner
Shri Ram Karode, Advocate for respondents

CORAM : AVINASH G. GHAROTE, J.

DATE : 03/10/2022

1. Heard Shri Gadhia, learned counsel for the petitioner and Shri Karode, learned counsel for the respondents. The present petition challenges the order dated 18/11/2020 (pg.33) rejecting the objections raised by the petitioner that he did not have any assets of the deceased borrower Surendra Kesrilalji Sharma and therefore was not liable under Rule 107 (23) of the Maharashtra Co-operative Societies Rules, 1961 (for short “the MCS Rules” hereinafter) and the order dated 18/11/2020 rejecting a similar application.

2. It is not disputed that one Atul Rameshwar Sharma was the original borrower having secured a loan from

the Vidarbha Urban Co-operative Bank, Akola to which Surendra Kesrilalji Sharma and Rajesh Ramgir Gosawi were guarantors. Proceedings were initiated under Section 105 r/w 98 (a) of the Maharashtra Co-operative Societies Act, 1960 (for short, “the MCS Act” hereinafter) resulting into issuance of a recovery certificate dated 30/12/2019 (pg.27), against Surendra Kesrilalji Sharma, who, even in the said certificate was shown to have expired. Thereafter, in the recovery proceedings, the present petitioner has been added as a legal heir of Surendra Kesrilalji Sharma on account of the petitioner being the brother of the deceased Surendra Kesrilalji Sharma, in pursuance to which notice before attachment dated 22/10/2020 (pg.30) was issued to the petitioner. Upon receipt thereof, application was given on 09/11/2020, stating that the petitioner was not a Class-I legal heir of deceased Surendra Kesrilalji Sharma and had not inherited any property from Surendra Kesrilalji Sharma, and also the objections on 16/11/2020 (pg.40) which have been rejected by the impugned order.

3. Shri Karode, learned counsel for the respondents does not dispute that there has been no enquiry regarding whether any property of Surendra Kesrilalji Sharma has been inherited or has come in the hands of the petitioner, in view of which position, since this is a basic requirement of Rule 107 (23) of the MCS Rules for proceeding against the petitioner,

the impugned orders of rejection cannot be sustained and the same are hereby quashed and set aside. The objections are remanded back to the respondent no.1 to render a finding as per the requirement of Rule 107 (23) of the MCS Rules and only in case a finding is rendered regarding any property of Surendra Keshrilalji Sharma has come into the hands of the present petitioner, the petitioner can be made responsible regarding the amount claimed in the recovery certificate and not otherwise.

4. The writ petition is allowed in the above terms.
No order as to costs.

(AVINASH G. GHAROTE, J.)

Wadkar