

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

66 WRIT PETITION NO.2761 OF 2013

**MALHARI NARAYAN KOMATWAR
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

Mr. K. J. Suryawanshi, Advocate for the petitioner
Mr. S. B. Pulkundwar, AGP for the respondents/State
Mr. N. T. Tribhuwan, Advocate for the respondent Nos. 3 and 4

CORAM : KISHORE C. SANT, J.

DATE : 19th JUNE, 2023

P. C.

1. Heard the learned advocate for the petitioners, respondent Nos.3 and 4 and learned AGP for the respondents/State.

2. Respondent No.5 is the borrower and respondent No. 6 is the guarantor against whom the petition is already dismissed.

3. This petition is by one of the guarantors who stood guarantee to respondent No. 5, challenging the recovery

certificate issued by the Deputy Registrar i.e. respondent No.2. Main ground of the petitioner is that bank is seeking action only against guarantor and not against the principal borrower. Recovery certificate is issued without following principles of natural justice. He points out from the recovery certificate that on 14-12-2007 the advocate for respondent was directed to take steps to serve the borrower and the guarantor by paper proclamation and the matter was kept on 21-12-2007. He submits that there is no record to show that in fact notice was published in the news paper. He thus, submits that there is total failure in observing principles of natural justice and they are directed to approach this court. He further submits that recovery certificate was for an amount of Rs.60,000/- out of which Rs.40,000/- is already paid/deposited.

4. The learned advocate for respondent Nos.3 and 4 so also learned AGP object the petition mainly on the ground that there is alternative remedy of filing revision before the Joint Registrar Cooperative Societies. Thus, the petition is not

maintainable and pray for dismissal of the writ petition.

5. Learned advocate for the petitioner submits that instead of directing him to avail alternate remedy, it would be appropriate to remand the matter to the Deputy Registrar since the principles of natural justice were not followed. In alternative he submits that if revision is to be filed, revisional authority be directed to condone the delay caused in filing revision and secondly since he has already deposited Rs.40,000/- out of Rs.60,000/- condition of depositing the amount of 50% of the recovery certificate be relaxed in the peculiar facts of the case.

6. This court finds that since alternative remedy is available, it would be proper to dispose off the petition in view of alternative remedy by continuing stay i.e. granted by this court by order dated 04-04-2013 which is still continued.

7. The Joint Registrar to dispose off the revision, within four weeks from the date of filing of said revision. Further the

Joint Registrar for entertaining revision need not insist on the condition of deposit of 50% amount of recovery certificate since Rs.25,000/- is deducted from the salary and Rs.15,000/- was deposited in this court under the order of this court. Since the amount of Rs.15,000/- lies in this court, respondent Nos.3 and 4 are at liberty to withdraw the said amount of Rs.15,000/- with accrued interest thereon if any.

8. Needless to say that Joint Registrar shall consider the period of pendency of this case in this court while considering the application for condonation of delay that would be filed by the petitioner.

9. With this, writ petition stands disposed off.

[KISHORE C. SANT, J.]

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