

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

WRIT PETITION NO. 14220 OF 2021

Bhanudas s/o. Narayan Bhagwat .. Petitioner
Age. 79 years, Occ. Business,
R/o. 29/8/8, Sanjay Auto Parts,
near Smita Medical, in front of Bhagyoday
Society Khardevnagar N.G. Acharya Marg,
Chembur, Mumbai – 400 071.

Versus

1. The State of Maharashtra .. Respondents
Through its Secretary,
Co-operative Department,
Mantralaya, Mumbai – 32.
2. The District Deputy Registrar,
Co-operative Societies, Ahmednagar.
3. The Assistant Registrar,
Co-operative Societies, Parner,
Tq. Parner, Dist. Ahmednagar.
4. The Special Recovery Officer,
Sampada Nagri Sahakari Patsanstha
Maryadit, Ahmednagar.
5. Sampada Nagri Sahakari Patsanstha
Maryadit, Ahmednagar,
Through its Liquidator.

Mr.Satyajit S. Bora, Advocate for the petitioner.
Mr.K.B. Jadhavar, AGP for respondent Nos.1 to 3.
Mr.VH. Dighe, AGP for the respondent Nos.4 and 5.

CORAM : KISHORE C. SANT, J.
RESERVED ON : 17.08.2023
PRONOUNCED ON : 12.10.2023

ORDER :-

01. The order passed by the District Dy. Registrar, Co-operative Societies, Ahmednagar dated 05.07.2021 is impugned in this petition. By way of the impugned order, confirmation is given to sale of property of the petitioner and the same is directed to be appropriated towards loan account of the petitioner. The order is passed under Rule 107(14)(v) of the Maharashtra Co-operative Societies Rules, 1961 [“Rules” for short].

02. The petitioner is original debtor, who had availed loan facility from respondent No. 5 – Patsanstha. Same was not repaid and therefore action was taken. There is no challenge to the recovery certificate issued by the Assistant Registrar.

03. The facts in short are that the petitioner applied for loan from respondent No.5 – Patsanstha of Rs.5,50,000/- by executing all necessary

documents. The petitioner, however, thereafter failed to repay the amount of loan and therefore action was taken by respondent Nos.4 and 5. The loan was obtained on 31.03.2007. An application was made for recovery and notice was issued. In spite of certificate under section 101 of the Maharashtra Co-operative Societies Act, 1960 [“Act” for short], as no amount was paid, the property of the petitioner bearing Gat No.1778 admeasuring 93 R came to be attached by following procedure by the Patsanstha. The proposal was submitted to office of the District Dy. Registrar, Co-operative Societies for fixing upset price. In that proceeding also notice was issued, however, he did not appear. It is, thereafter, the notice was published even in news-paper dated 21.11.2019. On 12.03.2020 the property was put to auction. One Balu Rambhau Gund offered amount of Rs.22 lakhs in an auction. The said order went unchallenged. A petition was filed for confirmation of auction sale and thereafter the District Dy. Registrar passed the order. Thus, now the petition is filed before this Court.

04. It is argued by the learned Advocate Mr. S.S. Bora for the petitioner that the petitioner never applied for loan. For the first time he came across auction notice published in the news-paper dated 12.03.2020, on

which he got knowledge about the proceeding. He tried to get documents of the loan papers. However, same were refused initially. After approaching the authorities, the respondent-Patsanstha gave copies of the documents. The petitioner, thereafter, realized that the documents submitted were forged documents. The signatures of the petitioner were also forged on the loan documents. He found that he is cheated. It is further contended that in the 101 proceeding also no notice was served upon him. By creating false record of service of notice, the certificate is issued. About the impugned order, it is case of the petitioner that his reply is not considered by respondent No.2. Therefore, it is submitted that all the orders are illegal. It is, thus, submitted that the impugned action as well as notice dated 12.03.2020 and order dated 05.07.2021 confirming the same needs to be quashed and set aside.

05. Learned AGP supports the impugned passed by the authorities and prays for dismissal of the petition.

06. Learned Advocate Mr.V.H. Dighe for respondent Nos.4 and 5 vehemently opposes the petition by filing reply. It is submitted that the petitioner had availed loan. However, he did not repay the loan inspite of

notice and therefore the Patsanstha was constrained to file proceeding for recovery under section 101 of the Co-operative Societies Act. All the procedure is duly followed and it is only thereafter the orders are passed by the authorities. He has produced on record the papers in respect of the proceedings before the authorities showing that the petitioner had knowledge of the proceeding before the authorities. In spite of having knowledge, he did not participate in the proceeding. It is clear from the conduct of the petitioner that he is not coming to the Court with clean hands and suppressed some material facts. It was necessary for the petitioner to challenge issuance of the 101 certificate. The petitioner has not filed revision, so as to avoid depositing 50% of the amount of the dues. Thus, the learned Advocate for respondent Nos.4 and 5 prays for dismissal of the petition.

07. On going through the record of the case, it is seen that the daughter of the petitioner, namely, Sanjivani had filed application before the Divisional Joint Registrar, Nashik on 27.12.2021 stating that she has filed a criminal complaint against respondent Nos.4 and 5 for creating forged and fabricated documents. So far as contention of the petitioner that he was not residing at his native place and therefore he was not aware of the proceeding

is found to be not correct. Though he has shown that he is residing at Mumbai, there are documents showing that he has executed sale-deed in respect of lands at his native place. The petitioner could not show as to how the order is illegal except saying that the documents are false and fabricated. This Court further finds that there is substance in the submission of learned Advocate Mr. Dighe that at every stage remedy is provided, however, the petitioner has never availed any remedy. The petitioner allowed the proceedings to go on. Even after getting documents from the respondent-Patsanstha on 29.01.2020, the petitioner has not taken any step to challenge the recovery certificate and the impugned order and the petition is filed in July, 2021. It is further seen from the record that there was application for loan. There are documents executed for loan. Though the complaint was filed by daughter of the petitioner to the police station, except FIR, noting is shown about the progress in the said case.

08. This Court after considering all the above, does not find substance in the case of the petitioner. The petition, therefore, deserves to be dismissed. Even considering the allegations in the petition, this Court finds that all the questions are the questions of facts, which this Court need not entertain in

writ jurisdiction. For all these reasons, this Court finds that no case is made out to call for interference. The petition, therefore, is dismissed with no order as to costs.

[KISHORE C. SANT, J.]