

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

906 REVIEW APPLICATION (CIVIL) NO.247 OF 2023
IN WP/8098/2023

Pradip s/o Raghunath Kulkarni,

...Applicant

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Co-Operation, Textile and Marketing
Department, Mantralaya – 32.
2. The Divisional Joint Registrar,
Co-Operative Societies, Nashik.
3. The District Deputy Registrar,
Co-Operative Societies, Jalgaon.
4. The Assistant Registrar,
Co-Operative Societies, Raver,
Tq.Raver, Dist. Jalgaon.
5. Shri Swami Samarth Urban Credit,
Society,Raver, Tq.Raver,
Dist. Jalgaon
Through its Recovery Officer.
6. Hitesh s/o Vishwas Narkhede,
Age. 45 years, Occ; Agri,
R/o; Chinawal, Tq. Raver,
Dist. Jalgaon.
At Present R/o Swami Narayan
Nagar, Savada, Tq. Raver,
District; Jalgaon.

...Respondents.

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Advocate for Applicant : Mr.Gangakhedkar Shailendra S.
AGP for Respondents/State : Mr.S.P. Tiwari
Advocate for Respondent R/5 In W.P. : Mr. Abasaheb Shinde
h/f Mr. Mr. P.B. Salunke

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CORAM : KISHORE C. SANT, J.

DATE : 13.09.2023

PER COURT :

1. Heard the parties. This application is filed seeking review of the order passed by this Court dated 11.07.2023, which reads as below :

“In view of availability of alternative remedy, this Court is not inclined to entertain the petition. Hence, the petition stands disposed off. The petitioner is at liberty to avail alternate remedy if so advised.”

2. It is the submission of the learned Advocate for the applicant that in the application there were other prayers in addition to the prayer of quashing and setting aside the recovery certificate issued under Section 101 in prayer Clause (B). The other prayer was also to quash and set aside the order dated 06.06.2023 passed in the Confirmation Case No. 9 of 2023 before respondent No. 3. There was further prayer to quash and set aside all the actions pursuant to the issuance of recovery certificate under Section 101 of the Act. It is the submission of

the learned Advocate for the applicant that this Court has not considered that the order dated 06.06.2023 and also not properly considered that no revision is maintainable against the said order and still the Court has disposed off the Writ Petition as if an alternative remedy is available and refused to entertain the Writ Petition. He relied upon the judgment in **Writ Petition No. 3718 of 2008** - Abdul Aleem Abdul Rauf and another Vs. The State of Maharashtra and Others, Another judgment reported in **2010 BCI 222 (Bom.) (Division Bench)** – Sundeep Polymers Pvt. Ltd. & Ors. Vs. The State of Maharashtra and Ors., wherein, the Court has entertained the challenge of issuance of certificate under Section 101 of the Act for recovery. He further relied upon the judgment reported in **AIR 2007 SC 1874** – M/s Shilpa Shares and Securities and Ors. Vs. National Co-Operative Bank Ltd. and Others, wherein the Hon'ble Apex Court has considered Rule 107 (11) (g) of the Maharashtra Co-Operative Rules, wherein, it is held that it is mandatory to deposit 15% of the price of the immovable property at the time of purchase and the remaining 85% amount is to be paid within 15 days (now 30 days). Since the remaining amount was not paid within the stipulated period, in that view the proceeding

was quashed and set aside the auction sale holding that the provisions of Rule 107 (11) (g) of the Act are mandatory. He then submits that in this case also an amount was paid on 31st day i.e. beyond 30 days. In view of that this Court ought to have entertain this petition.

3. The learned Advocate for the respondents Mr. Shinde vehemently opposes the review application submitting that no error on the face of the record is pointed out. This Court had passed an order after hearing the parties extensively. On merit, he submits that by now, the law is very settled, so this Court need not entertain the petition under Article 226 with Article 227 of the Constitution of India for the relief which was already prayed by filing the Revision Application under Section 26 of Section 154 of the Co-Operative Societies Act. By relying on the judgment in reported in **2023 DGLS (Bom.) 25** – Tarulata Amritlal Bava Vs. The State of Maharashtra and Ors. He further relief upon the judgment reported in **2019 DJLS (SC) 242** - Perry Kansagra Vs. Smriti Madan Kansagra, wherein it is held that the High Court had not entertained the review petition and has set aside the earlier order. The logical course in the circumstances is not to set aside the judgment and order and

permit the respondents to challenge the judgment by holding that to justify the exercise the review jurisdiction an error must be self evident. He further relied upon the judgment reported in **2022 DJLS (SC) 1178 - The State of Maharashtra and others Vs. Greatship (India) Limited**. The Hon'ble Apex Court in this judgment considered the question of entertainability of the Writ Petition against the order passed in an appeal where there were serious disputes on facts. In that case it was held that when no valid reason is shown by the petitioner to by pass the statutory remedy of appeal, the Court will not exercise jurisdiction under the constitutional provisions. In that case the order of assessment was challenged before the High Court and the High Court had considered the said reason.

4. After hearing the submissions, this Court finds that no case is made out to entertain a Review Application. An impugned order was passed after hearing the parties.

5. The parties were heard. The submissions which are made by the applicant today were not made in respect of violation of Rule 107 (11) (g) of the Act. This Court, thus, finds that if no submissions were made and if the position was not

pointed out to the Court, certainly now the same cannot be agitated under the garb of review. No error apparent on the face of the record as pointed out, nor is pleaded in the application. This Court, thus finds that no case is made out to entertain the present application and the application is therefore rejected.

(KISHORE C. SANT)
JUDGE

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