

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

WRIT PETITION NO. 3053 of 2022

Shri Balaji Nagri Sahakari Patsanstha
Maryadit, Ichalkaranji

...Petitioner

Versus

Kusum Raghunath Bhosale & ors.

...Respondents

Mr. Manoj Patil, for the Petitioner.

Mr. Kalpesh Patil, for Respondent Nos.5-a to 5-d.

Mrs. V. S. Nimbalkar, AGP for the State.

CORAM: N. J. JAMADAR, J.

DATED : 5th JULY, 2023

Order:

1. Heard the learned Counsel for the parties.
2. The challenge in this petition is to an order dated 19th October, 2020 passed by the learned Divisional Joint Registrar, Cooperative Societies, Kolhapur Division, Kolhapur in Revision Application No.67 of 2019, whereby the revision preferred by the petitioner Society came to be dismissed affirming the order passed by the Deputy Registrar on 1st March, 2019 directing the petitioner not to execute the recovery certificate issued under Section 101 of the Maharashtra Co-operative Societies Act, 1960 ("the Act, 1960") against the legal representatives of Mr. Pradeep Dinkar Laykar, who was one of the guarantors to the loan

availed by Mrs. Kusum Raghunath Bhosale, the principal borrower.

3. The Deputy Registrar had issued recovery certificate by an order dated 18th June, 2018. In execution of the said recovery certificate, the immovable property of respondent Nos.5-a to 5-d came to be attached. In the intervening period, the issue as to whether respondent Nos.5-a to 5-d were made the members of the petitioner Society, after the demise of their predecessor in title Pradeep Dinkar Laykar, seems to have been raised.

4. By an order dated 1st March, 2019, the Deputy Registrar directed that recovery certificate be not executed against respondent Nos.5-a to 5-d as the record indicated that respondent Nos.5-a to 5-d were not made the members of the petitioner Society and the said fact was not brought to the notice of the competent authority while issuing the recovery certificate.

5. Mr. Manoj Patil, the learned Counsel for the petitioner, submitted that respondent Nos.5-a to 5-d had in fact participated in the proceedings in which the recovery certificate came to be granted and raised all the contentions. Moreover, the order dated 1st March, 2019 came to be passed without providing an opportunity of hearing to the petitioner Society.

6. Mr. Kalpesh Patil, the learned Counsel for respondent Nos.5-a to 5-d would submit that a recovery certificate can not be enforced against the person, who is not the member of the Society. The authorities below recorded a finding that the petitioner Society had not placed any material on record to demonstrate that respondent Nos.5-a to 5-d were made the members of the petitioner Society. It was further submitted that the petitioner Society has not been proceeding against the principal borrower and only respondent Nos.5-a to 5-d are being unjustifiably proceeded against by the petitioners.

7. Evidently, respondent Nos.5-a to 5-d participated in the proceedings in which the certificate under Section 101 of the Act, 1960 came to be granted. The question as to whether the certificate could have been executed against respondent Nos.5-a to 5-d on the ground that they were not the members of the petitioner Society, could have been lawfully decided after providing an opportunity to the petitioner Society. The question as to whether respondent Nos.5-a to 5-d were the members of the petitioner Society is essentially one of fact. The Deputy Registrar thus could not have decided the same without giving an opportunity of hearing to the petitioner.

8. For the forgoing reasons, the matter is required to be remitted back to the Deputy Registrar, Co-operative Societies, Hatkanangale, for afresh decision on the question of the executability of the recovery certificate qua respondent Nos.5-a to 5-d after providing an effective opportunity of hearing to the parties.

9. The petition thus stands allowed.

10. The matter stands remitted to the Deputy Registrar, Cooperative Society, Hatkanangale, for afresh decision on the question of executability of the recovery certificate under Section 101 of the Act, 1960 qua respondent Nos.5-a to 5-d after providing an effective opportunity of hearing to the parties.

11. In the meanwhile, till the decision in the said matter, the recovery certificate be not executed against respondent Nos.5-a to 5-d.

12. Respondent Nos.5-a to 5-d shall also not create any third party interest in the attached property till the said decision.

13. It is hereby made clear that this Court has not entered into the merits of the matter and all issues are kept open for consideration by the Deputy Registrar.

14. The parties shall appear before the Deputy Registrar on 24th July, 2023.

15. In view of disposal of the petition, interim application(s), if any, shall stand(s) disposed.

[N. J. JAMADAR, J.]