JPP

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1002 OF 2021

Arvind Shrirang Chavan … Petitioner

V/s.

The State of Maharashtra and Ors. ... Respondents

Ms. Vrushali U. Kabare for the Petitioner
Ms. R.A. Salunkhe, AGP for Respondent No. 1
Mr. Ajit J. Kenjale with Sai R. Kadam with Azharuddin A. Khan for Respondent No.2

CORAM : NITIN JAMDAR &
MANJUSHA DESHPANDE, JJ.

DATE : 23 OCTOBER 2023

P.C. **:-**

Heard the learned Counsel for the parties.

2. This Petition is filed by the guarantor. The loan was taken by Respondent No.3 from the Respondent No.2 – Bank. The Petitioner has challenged the action of the Revenue Authorities proceeding to take possession.

3. Impugned notices were issued pursuant to a recovery certificate issued under Section 101 of the Maharashtra Co-operative

Societies Act, 1960. The order/recovery certificate list the Petitioner as one of the Respondents. Instead of taking the challenge to the recovery certificate further as provided under the Maharashtra Co-operative Societies Act and the Rules, this Writ Petition was moved citing immediate urgency that the possession is being lost, for protection. An ad-interim order was granted on 21 March 2021. At that time, the Respondent – Bank was not represented. Thereafter, this order has continued.

4. Thereafter, on 12 September 2023, the following order came to be passed :-

> *" None for the Petitioner.*
>
> *2 Recovery Certificate is issued in respect of the loan availed from the Respondent-Bank. On 25 March 2021 the papers of this Petition were produced before the Division Bench and at that time ad-interim order was passed that till the next date. The Respondent No.1 will not take physical possession of the property. At that time contesting Respondent No.2-Bank was not represented. The ad-interim order thereafter, by a common order dated 31 March 2021, was extended till 8 April 2021, whereby Petition was adjourned due to paucity of time. Thereafter, there has been no ad-interim order operating in this petition.*
>
> *3 The petition is circulated on a praecipe by the Respondent-Bank that the ad-interim order needs to be vacated. In view of the fact that the ad interim order has ceased to operate from 8 April 2021 onwards, there is no question of vacating the order as it does not exist.*

> *4 Since the Petitioner is not present, by way of indulgence, stand over to 23 October 2023 under the caption "For Dismissal"."*

We had clarified at that time that there is no ad-interim order from 8 April 2021.

5. Having heard the parties, we find no reason as to why inspite of alternate remedy being available to the Petitioner, the Petition should continue on the file of this Court. The learned Counsel for the Petitioner sought to contend that the borrower has defaulted and thereafter, has also made certain offers to the Respondent – Bank. It is because of the default of the borrower that the contract of guarantee with the Petitioner is invoked and this cannot be the ground since the Petitioner has and could have invoked the remedies under the Act.

6. Accordingly, we dispose of the Writ Petition observing that if the Petitioner has any remedy in law regarding his grievance, it is open to the Petitioner to agitate the said issue.

MANJUSHA DESHPANDE, J. ***NITIN JAMDAR, J.***