

Arjun

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

WRIT PETITION NO.14267 OF 2023

R B Technocrats and Reclaimers Pvt. Ltd. ...Petitioner
Through its Authorized Signatory
Indrajeet Dushyant Malage

V/s.

The Ichalkaranji Urban Co-op. Bank Ltd. ...Respondent
Ichalkaranji [Liquidation]
Through Liquidator & Ors.

**WITH
WRIT PETITION NO.14268 OF 2023**

R B Technocrats and Reclaimers Pvt. Ltd. ...Petitioner
Through its Authorized Signatory
Indrajeet Dushyant Malage

V/s.

The Ichalkaranji Urban Co-op. Bank Ltd. ...Respondent
Ichalkaranji [Liquidation]
Through Liquidator & Ors.

**WITH
WRIT PETITION NO.14288 OF 2023**

R B Technocrats and Reclaimers Pvt. Ltd. ...Petitioner
Through its Authorized Signatory
Indrajeet Dushyant Malage

V/s.

The Ichalkaranji Urban Co-op. Bank Ltd. ...Respondent
Ichalkaranji [Liquidation]
Through Liquidator & Ors.

**WITH
WRIT PETITION NO.14289 OF 2023**

R B Technocrats and Reclaimers Pvt. Ltd. ...Petitioner
Through its Authorized Signatory
Indrajeet Dushyant Malage

V/s.

The Ichalkaranji Urban Co-op. Bank Ltd. ...Respondent
Ichalkaranji [Liquidation]
Through Liquidator & Ors.

Mr. Surel S. Shah a/w Manoj A. Patil, for the Petitioner in all the Writ Petitions.

Mr. Sudhir Prabhu, for Respondent No.1 in all the Writ Petitions.

Mr. S. D. Rayrikar, AGP, for the Respondent-State in WP/14267/2023.

Mr. P. G. Sawant, AGP, for the Respondent-State in WP/14268/2023.

Mr. A. B. Chate, Addl. GP, for the Respondent-State in WP/14288/2023.

Mr. P. V. Nelson Rajan, AGP, for the Respondent-State in WP/14289/2023.

CORAM : MADHAV J. JAMDAR, J.
DATED : DECEMBER 19, 2023

ORAL JUDGMENT

1. The Petitioner in the present Writ Petitions has impugned the Order passed by the learned Divisional Joint Registrar, Co-operative Societies, Kolhapur Division, Kolhapur in respective Revision Applications. However, perusal of the record shows that the Revision Applications were proceeded without compliance of 50% of recoverable dues under Sub-Section (2A) of Section 154 of the

Maharashtra Co-operative Societies Act, 1960 ("**said Act**"). Although the Divisional Joint Registrar has dismissed the Revisions on some other ground, however, as far as the aspect of compliance of Sub-Section (2A) of Section 154 of the said Act, it is stated as the Applicant is not the borrower, guarantor or consentor, the non compliance of the said mandatory requirement is not relevant.

2. However, perusal of Section 154(2A) of the said Act shows that, it is specifically provided that, no application for revision shall be entertained against the recovery certificate issued by the Registrar under section 101 unless the applicant deposits with the concerned society, fifty percent, amount of the total amount of recoverable dues. Thus, it is clear that for the purpose of compliance of mandatory requirement of Sub-Section 2A of Section 154 of the said Act, the aspect whether the Petitioner is the borrower, guarantor or consentor, is not at all relevant. It is required to be noted that unless the said 50% amount is deposited as per the mandatory requirement of Sub-Section 2A of Section 154, the Revisional Authority will not get jurisdiction to deal with the merits of the case.

3. In the respective Revision Applications, relief is

sought that no further action be taken pursuant to the Recovery Certificate issued under Section 101 of the said Act. Therefore, it is the contention of the Petitioner that as the Recovery Certificate is not challenged, the mandatory requirement of deposit of 50% as contemplated under Sub-Section 2A of Section 154 is not applicable.

4. However, a learned Single Judge in the case of *Greater Bombay Co-operative Bank Ltd., Mumbai & Anr. v. Dhillon P. Shah & Ors.*¹ has held that the rigours of sub-section (2A) would take within its sweep revision application filed by a person “against whom” recovery certificate under section 101 of the Act has been issued, challenging the recovery certificate itself or any attempt by him to interdict the process of recovery of the dues founded on such recovery certificate, by ostensibly challenging only the derivative action in relation to the recovery certificate so issued and has become final.

5. In this case, it is the contention of learned Counsel appearing for the Petitioner that Petitioner is the subsequent purchaser. However, as the subsequent purchasers have entered into the shoes of the original

1 2003 SCC OnLine Bom 953 : (2004) 1 Mah LJ 996

borrower, the rigours of Sub-Section 2A of Section 154 would equally apply to such subsequent purchaser.

6. At this stage, learned Counsel appearing for the Petitioner states that on the basis of the instructions of the Petitioner, he is making statement that 50% of recoverable dues will be deposited with the Respondent-Bank on or before 18th January 2024. The said 50% recoverable dues are as follows :-

W. P. No.	Rev. No.	100% Recoverable	50% amount
14267/23	108/23	4,75,572/-	2,37,786/-
14268/23	112/23	21,85,957/-	10,92,979/-
14288/23	109/23	17,13,947/-	8,56,974/-
14289/23	110/23	16,66,007/-	8,33,004/-

7. Accordingly, the Writ Petitions are disposed of by passing the following Order :-

(1) The impugned Orders dated 11th October 2023 passed in the respective Revision Applications by the Divisional Joint Registrar, Co-operative Societies, Kolhapur Division, Kolhapur are set aside on the condition that the Petitioner deposits with the Respondent No.1-Bank 50% amount in respective Revision Applications as per the above chart on or before 18th January 2024.

(2) It is further made clear that, if the Petitioner fails to

deposit the said 50% amount on or before 18th January 2024, then the said Order dated 11th October 2023 passed in respective Revision Applications shall stand revived.

- (3) The said amount as per above chart, if deposited shall be kept in separate account.
- (4) If the deposit of said 50% is made as per the above particulars, then the impugned Order is set aside and the Revision Applications shall stand restored to the file of the Divisional Joint Registrar, Co-operative Societies, Kolhapur Division, Kolhapur.
- (5) The Divisional Joint Registrar, Kolhapur Division, Kolhapur is requested to pass the fresh Order after hearing the Petitioner and the Respondent-Bank on or before 30th April 2024.

8. It is clarified that this Court has not considered the merits and all the contentions on merits are expressly kept open.

9. The Writ Petitions are disposed of in the above terms with no order as to costs.

[MADHAV J. JAMDAR, J.]