

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.720 OF 2020

WITH

WRIT PETITION NO.721 OF 2020

Shri. Dilip Jijaba Thorat

...Petitioner

Versus

Vasantdada Patil Nagri Sahakari

Pathasanstha Ltd. Thr. Chairaman & Ors. ... Respondents

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Mr. T. D. Deshmukh, a/w. Mr. Harish Chandra Chavan for Petitioner in both petitions.

Mr. Milind Deshmukh, for Respondent No.1.

Mr. A. P. Vanarase, AGP for Respondent Nos.4 & 5.

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CORAM : SANDEEP V. MARNE, J.

DATED : 11 DECEMBER 2023.

P.C. :

The present petitions are filed by the Petitioner challenging Orders passed by the Divisional Joint Registrar on 02 July 2019 entertaining the Revision filed by the Respondent-Society against the Order of the Assistant Registrar rejecting Application for issuance of recovery certificate under Section 101 of the Maharashtra Cooperative Societies Act, 1960 (**MCS Act**). It is Petitioners case that the Revision filed by Society is not maintainable under provisions of Section 101 of the MCS Act. The Society is

also aggrieved by the liberty granted by the Divisional Joint Registrar to the Society to file a fresh application for recovery after reconciliation of accounts.

2. Mr. Deshmukh, the learned counsel appearing for Petitioner would submit that during pendency of the present petition, the Respondent-Society acted in pursuance of the impugned Order dated 02 July 2019 and proceeded to file fresh recovery application without carrying out the exercise of reconciliation. It appears that in fresh Application instituted by the Respondent-Society, the Assistant Registrar has issued recovery certificate dated 01 October 2019. It also appears that Petitioner has filed Revision under provisions of Section 154 of the MCS Act against the fresh recovery certificate dated 01 October 2019. Simultaneously Petitioner has amended present petition to challenge the fresh recovery certificate dated 01 October 2019.

3. In my view, Petitioner cannot exercise the multiple remedies in respect of same cause of action. Since the Petitioner has already filed Revision against fresh recovery certificate dated 01 October 2019, same cannot be questioned in the present petition.

4. The contentions of the Petitioner that Respondent-Society has failed to carry out exercise of reconciliation, can be taken into consideration and decided by the Divisional Joint Registrar.

5. Mr. Deshmukh would submit that after entertainment of the Revision Petition filed challenging fresh certificate, Divisional Joint Registrar would insist for deposit of 50% amount. He would submit that Petitioners have already deposited amount of Rs.10 Lakh in each of the petitions to show their bonifides.

6. In that view of the matter, Respondent-Society can be permitted to withdraw the amount deposited in this Court alongwith interest. The difference between the amount withdrawn by Respondent-Society and the amount representing 50% of the amount under the recovery certificate can be paid by the Petitioner to the Society so that his Revision Petitions are considered on merits by the Divisional Joint Registrar.

7. I accordingly proceed to pass following order :-

- i) The Respondent-Bank is permitted to withdraw the amount deposited by the Petitioner in the present petition alongwith interest accrued thereof.
- ii) Petitioner shall pay only the difference between the amount withdrawn by the Respondent-Society and amount representing 50% of the dues reflected in the recovery certificate.
- iii) Immediately after withdrawal of the amount by the Respondent-Bank, it shall give intimation to the Petitioner about the amount payable by him towards difference between amount withdrawn and 50% amount due I the recovery certificate. Upon receipt of such intimation Petitioner shall pay said amount of difference within a period of 02 weeks from the date of receipt of intimation.
- iv) Once such amount of difference is paid by the Petitioner, the Divisional Joint Registrar shall proceed to decide the Revision filed by the Petitioner on merits. It shall take into consideration Petitioner's grievance that the Respondent-Society has filed fresh recovery proceedings without undertaking the

exercise of conciliation as per the directions in the Order dated 02 July 2019.

v) Till decision of Revision filed by the Petitioner by the Divisional Joint Registrar, Respondent-Society shall not take any coercive steps against Petitioners for recovery of amount under the recovery certificate.

vi) Needless to say if the Divisional Joint Registrar arrives at a conclusion upon reconciliation of the accounts, Petitioner has paid / deposited any extra amount, the Respondent-Society shall be directed to refund the same to the Petitioner.

8. With the above directions both the Writ Petitions are disposed of.

SANDEEP V. MARNE, J.

**KISHOR
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