

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

WRIT PETITION NO.3187 OF 2023

Shree Dental Specialty Hospital & Ors. Petitioners

versus

Divisional Joint Registrar,
Co-operative Societies & Ors. Respondents

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- Ms. Manjiri Parasnis, Advocate for Petitioners.
- Mr. A. P. Vanarase, AGP for Respondent Nos.1 and 2.
- Mr. Kunal Bhanage, Advocate for Respondent Nos.3 and 4.

CORAM : SARANG V. KOTWAL, J.
DATE : 25th APRIL 2023

P.C. :

1. Heard Ms. Manjiri Parasnis, learned counsel for the Petitioners and Mr. A. P. Vanarase, learned AGP for the Respondent Nos.1 and 2 and Mr. Kunal Bhanage, learned counsel for Respondent Nos.3 and 4.

2. In this Petition, the Petitioners have challenged the order dated 06/06/2022 passed by the Respondent No.1 i.e. the

Divisional Joint Registrar, Co-operative Societies, Konkan Division, Navi Mumbai, in Revision Application No.8/2022 and also the order passed in the Recovery Certificate Application No.ABN/101/70/2019 dated 04/12/2019 issued by the Respondent No.2 i.e. Deputy Registrar Co-operative Societies, Dombivali, Taluka Kalyan, directing the Petitioners to pay sum of Rs.1,10,74,408/-.

3. The impugned Recovery Certificate u/s 101 of Maharashtra Co-operative Societies Act (for short 'MCS Act') was issued on 04/12/2019 on the application made by the Chief Executive Officer of the Respondent No.3 Bank i.e. Abhinav Sahakari Bank Ltd. Learned counsel for the Petitioners submitted that the Petitioners were not given any opportunity to put forth their case by the learned Deputy Registrar Co-operative Societies, Dombivali, Taluka Kalyan, in the proceedings for granting certificate u/s 101 of MCS Act. Learned counsel for the Petitioners invited my attention to the Roznama of the said proceedings to support her contention.

4. Learned counsel for Respondent No.3 bank relied on the statements made in the order granting certificate issued u/s 101 of the MCS Act.

5. I have considered these submissions. The Roznama and the submissions in the proceedings u/s 101 of the Maharashtra Co-operative Societies Act are important. The Roznama which is annexed to this Petition at page No.161 and 162 mentions thus;

- On 16/10/2019 Mane, Chaudhary and Shirke were present on behalf of the bank. The Respondent in those proceedings i.e. the present Petitioners were absent. The next date was given as 06/11/2019 at 03.30 p.m.
- On 06/11/2019, the Petitioner No.2 herein, who was the borrower was present. The bank officers were present. On behalf of the borrower, Advocate Mr. Kedare was present and he sought time to file his Vakilpatra. The matter was kept next on 20/11/2019 at 04.00 p.m.

- The Roznama of 20/11/2019 mentions that Mane and Chaudhary were present for the bank. The Deputy Registrar had gone to Collector's office and therefore the proceedings were adjourned to the next date i.e. 27/11/2019. On this Roznama dated 20/11/2019 there were three signatures. Learned counsel accepted that one signature is that of the Petitioner No.2. The matter was adjourned to 27/11/2019.
- On 27/11/2019 the Respondents in those proceedings i.e. the Petitioners herein and their Advocate were absent. The Vakilpatra was not filed. It was noted that sufficient opportunity was given. The hearing was closed for orders.

This is the the Roznama of the proceedings.”

6. In the order passed by the Deputy Registrar Co-operative Societies, Dombivali, Taluka Kalyan, on 04/12/2019, it is mentioned in paragraphs No.5, 6 and 7 that Advocate Mr. Kedare for the borrowers.

7. Importantly, in paragraph No.7 it is recorded that Dr. Hemant More, (the Petitioner No.2 herein) had accepted the dues arising out of the loan and therefore the Recovery Certificate was being issued. It was observed in paragraph No.8 that sufficient opportunity was given to all the Respondents (i.e. the borrowers) and based on the documents, the authority was satisfied that the Recovery Certificate was required to be issued.
8. These statements in the impugned order for issuing certificate under 101 of the MCS Act are contrary to the Roznama. The Roznama nowhere records that the Petitioner No.2 herein was present except on one date i.e. 06/11/2019 and that time also the prayer was made for adjournment. His presence is next shown on 20/11/2019, but on that date, the concerned authority was not present in his office. Therefore, there was no occasion for him to accept the dues pending against him. After that, the matter was kept on 27/11/2019 when admittedly he was not present and the matter was closed for orders. After that the final order was passed. Therefore it is

quite clear that there was no occasion for the Petitioner No.2 to have accepted his dues. From the Roznama also it appears that the matter was kept within a short period of one week, from 20/11/2019, i.e. on 27/11/2019 and it was closed for orders. Therefore, I find force in the submissions of learned counsel for Petitioners that sufficient opportunity was not given to the Petitioners. There are some doubtful and incorrect observations in the impugned order dated 04/12/2019 under which the Recovery Certificate was issued regarding the Petitioner No.2's presence and acceptance of his liability.

9. In view of this discussion, the Petition deserves to be allowed. It is also necessary that the matter is remanded back to the Deputy Registrar Co-operative Societies, Dombivali, Taluka Kalyan, for fresh consideration of issuance of certificate u/s 101 of the MCS Act by following due process of law prescribed under Rules 86-A to 86-F of the MCS Rules.

10. Hence, the following order :

ORDER

- (i) The impugned Judgment and Order dated 06/06/2022 passed by the Respondent No.1 in Revision Application No.8 of 2022 as well as the impugned order in Recovery Certificate Application ABN/101/70/2019 dated 04/12/2019 issued by the Respondent No.2 are set aside.
- (ii) The Respondent No.2 i.e. the Deputy Registrar Co-operative Societies, Dombivali, Taluka Kalyan, shall conduct the proceedings for issuance of certificate u/s 101 of the MCS Act afresh after giving reasonably sufficient opportunity to both the parties and by following due process prescribed u/s 86-A to 86-F of the Maharashtra Co-operative Societies Rules.
- (iii) With these observations, the Petition is disposed of.
- (iv) The parties shall appear before the concerned authority on 04/05/2023.

(SARANG V. KOTWAL, J.)