



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7427 OF 2021

Shripati Laxman Patil ...Petitioner
Versus
The State of Maharashtra & Ors. ...Respondents

WITH
WRIT PETITION NO.7429 OF 2021

Ku. Deepali Shripati Patil ...Petitioner
Versus
The State of Maharashtra & Ors. ...Respondents

WITH
WRIT PETITION NO.7428 OF 2021

Smt. Rajani Shripati Patil ...Petitioner
Versus
The State of Maharashtra & Ors. ...Respondents

Mr. Amjith M. Anandhan a/w Mr. Nikhil Mallelwar i/b Mr. Sachin Pawar,
for the Petitioners in all Writ Petitions
Mr. R. M. Haridas i/b Mr. Shriram S. Redij, for Respondent No.2.
Mrs. V. S. Nimbalkar, AGP, for State-Respondent Nos.1, 3 to 5.

CORAM : MADHAV J. JAMDAR, J.
DATED : 9th OCTOBER 2023

JUDGMENT:

1. Heard Mr. Amjith M. Anandhan, learned Counsel appearing for the Petitioners, Mr. R. M. Haridas, learned Counsel appearing for Respondent No.2 and Mrs. V. S. Nimbalkar, learned AGP, appearing for Respondent Nos.1, 3 to 5.

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2. The Petitioners are challenging the legality and validity of the order dated 10th December 2020 passed by the learned Divisional Joint Registrar, Co-operative Societies, Mumbai Division, Mumbai in Revision Application Nos.444 of 2018, 445 of 2018 and 446 of 2018 (“**impugned Order**”).

3. It is the case of the Respondent No.2-Society that under Section 101 of the *Maharashtra Co-operative Societies Act, 1960* (“**said Act**”), three Recovery Certificates have been issued. The details of the same are set out in tabular format in the impugned Order and the same is reproduced herein below:-

Sr. No.	Revision Application No.	Recovery Certificate amount
1.	R. A. No.444/2018	Rs.9,28,829/-
2.	R. A. No.445/2018	Rs.2,86,117/-
3.	R. A. No.446/2018	Rs.1,43,486/-

The aforesaid Recovery Certificates were issued under Section 101 of the said Act on 29th March 2004 and have attained finality as the same were never challenged.

4. Thereafter, Demand Notice dated 12th June 2014 was issued by the Special Recovery Officer under Rule 107 of the *Maharashtra Co-*

operative Societies Rules, 1961 (“said Rules”). The Petitioners filed Revision Application No.357 of 2014 and the operative Order dated 20th September 2014 which is passed on the said Revision, is reproduced herein below:-

“ORDER

- 1. The delay in filing the present case is condoned.*
- 2. The Revision Application No.357/2014 is disposed of.*
- 3. The impugned letter/order dated 12/06/2014 issued by Respondent Special Recovery & Sale Officer is set aside.*
- 4. The case is remanded back to the Respondent SRO for afresh consideration. The Respondent SRO is hereby directed to decide the Application filed by the Applicant herein u/r 107 of the M.C.S. Rules 1961 on merits and in accordance with law after giving a proper and fair opportunity to the concerned parties of being heard.*
- 5. The Respondent Bank and SRO are hereby by directed not proceed with the impugned recovery proceeding/execution against the Applicant herein till disposal of the aforesaid Application u/r 107 of the M.C.S. Rule 1961.*
- 6. No order as to cost.”*

(Emphasis added)

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5. Thus, it is clear that by Order dated 20th September 2014, the learned Divisional Joint Registrar, Co-operative Societies, Mumbai Division, Mumbai remanded the matter back to the Special Recovery Officer directing the Special Recovery Officer to decide the Application filed by the Petitioners under Rule 107 of the said Rules. The Petitioners have filed Application under Rule 107(19) of the said Rules. However, it appears that after remand when the matter was scheduled to be heard on 31st December 2014, an Application has been filed before the Special Recovery Officer stating that Petitioners are intending to pay the outstanding amount and that they wanted to settle the matter by making payment under the 'One Time Settlement' ("OTS") Scheme and time was sought, as Application of OTS was pending with the bank. Learned Counsel appearing for the Petitioners states that the said Application for OTS was dismissed by the bank and the Writ Petition challenging that dismissal has also been rejected. Thereafter, Special Recovery Officer has issued a fresh Demand Notice dated 12th August 2020 and the said Demand Notice has been challenged by filing three separate Revision Applications as set out herein above.

6. It is the main contention of Mr. Amjith Anandhan, learned

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Counsel appearing for the Petitioners that the demand raised is beyond 12 years which is the limitation period for execution of the Recovery Certificate. He submitted that the Recovery Certificate has been issued on 29th March 2004 and the fresh Demand Notice is of 20th August 2018 and therefore, the same is barred by limitation. He further submitted that the original loan itself was not disbursed and documents showing disbursal of the original loan amount has not been produced by the Respondent-Bank.

7. Mr. Haridas, learned Counsel appearing for the Respondent No.2 submitted that raising of objection in the year 2014 under Rule 107(19) by the Petitioners clearly shows that the execution has been initiated at least in the year 2014 i.e. before completion of 12 years period as the Recovery Certificates are of the year 2004. He further submitted that the limitation is not applicable to the execution of Recovery Certificate issued under Section 101 of the said Act. He submitted that Recovery Certificates have attained finality and therefore, the same cannot be reopened.

8. As far as the contention that the original loan itself was not disbursed and documents showing disbursal of the original loan amount has not been produced by the Respondent-Bank, it is to be

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noted that the Recovery Certificates are already issued and the same have attained finality. Therefore, there is no substance in the said contention.

9. As far as the contention that the Demand Notice dated 20th August 2018 is barred by limitation as the Recovery Certificates have been issued on 29th March 2004, it is to be noted that the Petitioners by letter dated 17th January 2012 sought extension of time to make the said payment due to financial difficulties. Thereafter, the Demand Notice dated 12th June 2014 has been issued. The said Demand Notice was challenged by filing Revision Applications and in the said Revision Applications, again the matter was remanded back to the Special Recovery Officer by specifically directing the Special Recovery Officer to decide the objection filed by the Petitioners under Rule 107 of the said Rules. The Petitioners have filed objection under Sub Rule 19 of Rule 107 in the year 2014. The same clearly shows that the execution of the Recovery Certificate has commenced at least in the year 2014.

10. It is further significant to note that after remand of the matter to the Special Recovery Officer in terms of order dated 20th September 2014 passed by the learned Divisional Joint Registrar, Co-

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operative Societies, Mumbai, it was represented to the Special Recovery Officer by the Petitioners that they are ready to repay the said outstanding amount and for that purpose they have filed the Application under the OTS scheme. It is also an admitted position that the said application was dismissed and the Writ Petition challenging the same was also dismissed.

11. Learned Counsel appearing for the Petitioners, relies on Section 18(1) of the *Limitation Act, 1963* which provides that where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgement of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgement was so signed. It is the contention of the Petitioners that Explanation (c) to Section 18 of the *Limitation Act, 1963* specifies that such an acknowledgement will not apply to the execution Application and the Demand Notice. However, it is to be noted that the Petitioners have filed objection under Rule 107(19) in the year 2014. Thus, it is clear that execution of the Recovery

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Certificate issued in the year 2004, has commenced at least in the year 2014. Thus, there is no substance in the contention that the execution is barred by limitation.

12. The Petitioners by letter dated 17th January 2012 sought extension of time to make the said payment due to financial difficulties. Therefore, the said period is extended. Thereafter, the Demand Notice dated 12th June 2014 has been issued. The said Demand Notice was challenged by filing Revision Applications and in the said Revision Applications, again the matter was remanded back to the Special Recovery Officer by specifically directing the Special Recovery Officer to decide the objection filed by the Petitioners under Rule 107 of the said Rules. The Petitioners have filed objection under Sub Rule 19 of Rule 107 in the year 2014. The same clearly shows that the execution of the Recovery Certificates of the year 2004 has commenced in the year 2014.

13. It is the contention of the Petitioners that the said Demand Notice dated 12th June 2014 has been set aside. However, it is to be seen that the Divisional Joint Registrar, Co-operative Societies has remanded the matter back to the Special Recovery Officer to specifically consider the objection filed by the Petitioners in the year

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2014 under Rule 107 of the said Rules. Said fact itself makes it clear that the execution of Recovery Certificate has started prior to that. It is further significant to note that the Petitioners have specifically made representation to the Special Recovery Officer after remand that the Petitioners are ready to pay the outstanding amount as per OTS proposal and they have not proceeded with the matter before the Special Recovery Officer.

14. In view of the facts and circumstances of this case, the Respondent No.2-Credit Society is right in issuing fresh Demand Notice dated 20th August 2018, which is in continuation of earlier action taken for executing the Recovery Certificate. Thus, in the facts and circumstances of this case, it cannot be held that the Demand Notice is barred by limitation.

15. Mr. Haridas, learned counsel appearing for Respondent No.2 has submitted that no limitation period is applicable for the recovery proceedings concerning certificates issued under Section 101 of the said Act. However, as held hereinabove, the execution proceedings in this case are initiated in the year 2014 for execution of Recovery Certificate issued in the year 2004 and therefore, the said submission need not be considered.

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16. Accordingly, there is no substance in the Writ Petitions and the same are dismissed however, with no order as to costs.

[MADHAV J. JAMDAR, J.]