

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

WRIT PETITION NO.3699 OF 2023

Alka Bajirao Kadam and anotherPetitioners
Versus
The Janakalyan Sahakari Bank Ltd.
and others Respondents

Mr. Vivek V. Salunke, Advocate for the Petitioners.
Mr. Bhupesh V. Samant, Advocate for the Respondent No.1.
Mr. P.G. Sawant, AGP for the Respondent Nos.2, 3 & 4.

CORAM : SARANG V. KOTWAL, J.

DATE : 27th MARCH, 2023

P.C. :

1. Heard Shri Vivek Salunke, learned counsel for the Petitioners, Shri Bhupesh Samant, learned counsel for the Respondent No.1 and Shri P.G. Sawant, learned AGP for the Respondent Nos.2, 3 & 4. Learned counsel for the Petitioners states that the Respondent Nos.5 & 6 are the formal parties.

2. With consent of both parties, this Petition is disposed of at the admission stage.

3. The Petitioners have challenged the order dated 16.7.2016 passed by the Respondent No.2. They have also challenged the notices dated 12.1.2023 and 17.2.2023 passed consequent to the order dated 16.7.2016.

4. The Petitioners are the legal heirs of Bajirao Kadam. The claim of the Respondent No.1 is that said Bajirao Kadam was one of the defaulters and they have obtained an award under Section 91 of the Maharashtra Co-operative Societies Act for recovery of the dues. The execution proceedings were still in progress and the order dated 16.7.2016 was passed by the Respondent No.2 directing the Tahsildar to take possession of the attached property mentioned as residential flat No.B-3/7/4-4, Angarika Apartment, Sector-4, Vashi, Navi Mumbai. It was further mentioned that the Tahsildar shall take and such steps and use such force as necessary. After this order was passed, it was not executed. In the meantime, the original

alleged defaulter passed away on 26.8.2022. The Petitioners claimed to be his legal heirs/representatives.

5. Learned counsel for the Petitioners relied on Sub-Rule (23) of Rule 107 of the Maharashtra Co-operative Societies Rules, 1961 (for short, 'M.C.S. Rules') to contend that after death of the original defaulter the Respondent No.1 and the authorities will have to proceed pursuant to said sub-rule (23) of Rule 107 of the M.C.S. Rules.

6. Learned counsel for the Respondent No.1 submitted that though the order was passed by the Respondent No.2 on 16.7.2016, the original defaulter tried to buy time by submitting proposal for settlement which ultimately could not be adhered to. He, therefore, submitted that there was no fault on the part of the Respondent No.1 or even on the part of the authorities in not completing the execution proceedings at the earliest. Be that as it may, sub-rule (23) of Rule 107 of the M.C.S. Rules reads thus :

“107. Procedure for attachment and sale of property under Section 156:-

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XXXX

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- (23) Where a defaulter dies before the decree has been fully satisfied, an application under sub-rule (i) may be made against the legal representative of the deceased and thereupon all the provisions of this rule shall, save as otherwise provided in this sub-rule, apply as if such legal representative were the defaulter. Where the decree is executed against such legal representative, he shall be liable only to the extent of the property of the deceased which has come to his hands and has not been duly disposed off; and for the purpose of ascertaining such liability, the Recovery Officer executing the decree may, of his own motion or on the application of the applicant, compel such legal representative to produce such accounts as he thinks fit.”

7. The fact remains that the order passed by the Respondent No.2 on 16.7.2016 was not complied with and was not taken to its logical end and in between the original defaulter had passed away. Therefore, now the Authorities will have to proceed in accordance with the sub-rule (23) of Rule 107 of the M.C.S. Rules.

8. In view of this, the following order is passed :

:: O R D E R ::

- i. The Petition is allowed.
- ii. The order dated 16.7.2016 passed by the Respondent No.2 is set aside. Consequently the two notices dated 12.1.2023 and 17.2.2023 issued by the Respondent No.3 are also set aside.
- iii. It is made clear that the Authorities and the Respondent No.1 are free to take steps in accordance with sub-rule (23) of Rule 107 of the M.C.S. Rules. All the questions raised in this Petition are left open.
- iv. The Authorities are free to pass fresh orders in consonance with the sub-rule (23) of Rule 107 of the M.C.S. Rules.
- v. Learned counsel for the Petitioners has fairly made a statement that for a period of one year from today, they will not create third party interest in respect of the property mentioned in the order dated 16.7.2016. The statement is accepted.
- vi. The Petition is disposed of in the aforesaid terms.

(SARANG V. KOTWAL, J.)

Digitally signed
by
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PRAKASHRAO
DESHMANE
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