

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

CIVIL WRIT PETITION NO. 6050 OF 2021

Hiraben M. Patel

..Petitioner.

Versus

The State of Maharashtra & Ors.

..Respondents

Mr. V. S. Kapse i/b. Yogesh Patil for Petitioner.

Smt. V. S. Nimbalkar, A.G.P for Respondent No.1.

Mr. Harish R. Pawar for Respondent Nos.2 and 3.

CORAM : SARANG V. KOTWAL, J.

DATE : 27 MARCH 2023

PC :

1. Heard Shri. Kapse, learned counsel for the Petitioner, Smt. Nimbalkar, learned A.G.P for Respondent No.1 and Shri. Harish Pawar, learned counsel for the Respondent Nos.2 and 3. By consent, this petition is decided finally at this stage.

2. The Petitioner has challenged the attachment order dated 06/10/2016 and the order dated 31/08/2021 dismissing the objections raised by the Petitioner herein.

3. The petition pertains to the recovery proceedings. At the first instance, the certificate U/s.101 of the Maharashtra Co-

Operative Societies Act was issued on 10/12/2001 for attachment of the property of a partnership firm. The Petitioner's husband was a partner in the firm. Before that certificate was issued in the year 2001, he had already passed away on 16/10/1992. The attachment notice dated 29/03/2004 was challenged by the Petitioner in a revision application which was allowed vide order dated 04/10/2007. That particular notice for attachment was set aside. The said order passed in the revision application preferred by the Petitioner was not challenged by the Respondent bank.

4. On 06/10/2016, the Respondent bank issued second notice of attachment. It was challenged by the Petitioner by approaching this court vide Writ Petition No.8505 of 2019. The said petition was disposed of by this court on 13/08/2019 by passing the following order:

“Petition is disposed of pursuant to the statement made by Respondent Nos.2 and 3 that they will decide the objection raised by the Petitioner expeditiously and till then they will not give effect to the attachment notice issued against the Petitioner. The said statement is accepted as an undertaking to this Court.”

5. After passing of this order, the Petitioner raised objections before the Recovery Officer. The said authority vide order dated 30/11/2019 dismissed the objections as frivolous and the attachment of Flat Nos.401 and 502, 'A' wing, Plazo Landmark, Santacruz, Mumbai was not withdrawn. However, no reasons whatsoever were given in support of the said order.

6. The Petitioner thereafter again approached this court vide W.P. (ST) No.30683 of 2019. This court (Coram: M. S. Karnik, J.) vide order dated 03/02/2021 set aside the order passed by the Recovery Officer and directed the Recovery officer to consider the objections and contentions raised by the Petitioner. The said authority was directed to consider the matter afresh dealing with the objections raised by the Petitioner. All the contentions were kept open. It was also observed that, though the Respondent had submitted that there was alternate efficacious remedy available, since the order passed by the S.R.O. was not a reasoned order dealing with the contentions, the same deserved to be set aside. With these observations the said writ petition was disposed of.

7. The Petitioner again raised her objections before the same authority. However, even on this occasion, the same approach was adopted by the Recovery Officer and exactly the same order was passed on 31/08/2021. This time around also it suffers from the same vice of not giving reasons regarding objections raised by the Petitioner.

8. This approach of the Recovery Officer, Co-operative department, Mumbai is unacceptable. This is directly against the letter and spirit of the order passed by this Court on 03/02/2021 in Writ Petition Stamp No.30683 of 2019. Therefore, even this order dated 31/08/2021 and the attachment order dated 06/10/2016 needs to be set aside with the similar observations made by this Court in the order dated 03/02/2021 passed in W.P (St.) No.30683 of 2019.

9. Hence, the following order:

ORDER

- i) The impugned order is set aside.

- ii) The Recovery Officer shall follow the order of this Court passed in Writ Petition Stamp No.30683 of 2019 dated 03/02/2021. He shall consider the objections raised by the Petitioner and shall give the reasons in dealing with these objections while passing the order.
- iii) This exercise shall be done within a period of three months from today.
- iv) Till then, there shall be status-quo.
- v) In case any adverse order is passed against the Petitioner, it shall not be implemented for a further period of four weeks from the date of that order.
- vi) With these observations, the writ petition is disposed of.

(SARANG V. KOTWAL, J.)