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

WRIT PETITION NO.8973 OF 2023

Udaylal s/o Ganeshlalji Jain ...Petitioner

V/s.

The State of Maharashtra ...Respondents
& Ors.

Mr. Shrivallabh S. Panchpor a/w Mr. Swapnil R.
Chopade for Petitioner.

Mr. S.D. Rayrikar, AGP for State-Respondent No.1

Mr. B.H. Goswami for Respondent Nos. 2 and 3.

CORAM: MADHAV J. JAMDAR, J.
DATE: 5th December 2023

P.C.:

1. Heard Mr. Panchpor, learned Counsel appearing for the Petitioner, Mr. Goswami, learned Counsel appearing for Respondent Nos.2 and 3 and Mr. Rayrikar, learned AGP for Respondent No.1- State.

2. The Petitioner challenges legality and validity of the order dated 24th March 2023 passed by learned Chief Judicial Magistrate, Thane below Exhibit 1 in Criminal M.A. No. 479 of 2023. The said application was filed under Rule 107 (11) (d-

1) (vi)(a) of the Maharashtra Co-operative Societies Rules, 1961 for taking possession of the attached property.

3. The perusal of the record shows that the Assistant Registrar, Co-operative Societies, Ambernath has issued Recovery Certificate on 3rd December 2021 for an amount of Rs.20,39,837/- and further directed that from 31st March 2021, the interest be also recovered at the rate of 13.50 percent per annum on the principal amount of Rs.17,33,896/-. The record further shows that the Petitioner has paid an amount of Rs.13,65,296/- on 12th August 2021 and further an amount of Rs.1,00,000/- on 11th December 2021, making aggregate payment of amount of Rs.14,65,296/-. The said payments are not taken into consideration while issuing the Recovery Certificate.

4. In any case, the factual position clearly shows that the recovery certificate has been issued for an amount of Rs.20,39,837/- and the Petitioner has deposited more than 50% i.e. Rs.14,65,296/-. It is also admitted position that the Revision challenging the said Recovery Certificate is pending before the Divisional Joint Registrar of Co-operative Societies at Belapur, Navi Mumbai. Accordingly, in view of this position,

as the Revision is pending and as the Petitioner has complied with mandatory provisions of Section 154 2(A) of the said Act, at this stage, the order under Rule 107 could not have been issued. Accordingly the Writ Petition is disposed of by passing following order:

ORDER

(i) The order dated 24th March 2023 passed by learned Chief Judicial Magistrate, Thane below Exhibit 1 in Criminal M.A. No. 479 of 2023 is quashed and set aside.

(ii) The Divisional Joint Registrar of Co-operative Societies, CBD Belapur, Navi Mumbai is requested to dispose of the Revision challenging the legality and validity of the Recovery Certificate dated 3rd December 2021 expeditiously.

5. It is clarified that this Court has not considered the merits regarding said Revision and all contentions of the parties on merits are expressly kept open.

6. The Writ Petition is disposed of in above terms with no order as to costs.

(MADHAV J. JAMDAR, J.)