

Dusane

BHALCHANDRA
GOPAL
DUSANE

Digitally signed by
BHALCHANDRA
GOPAL DUSANE
Date: 2023.10.04
11:37:26 +0530

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

WRIT PETITION NO.9760 OF 2023

Sunil Dashrath Shinde

...Petitioner

V/s.

The State of Maharashtra, through ...Respondents
the Principal Secretary Co-op. Dept.
& Anr.

Mr. G.N. Salunkhe i/by Mr. D.N. Gondhali for
Petitioner.

Smt. M.S. Srivastava, AGP for State- Respondent
No.1.

Mr. Bhushan Walimbe i/by Preeti Walimbe for
Respondent No.2.

CORAM: MADHAV J. JAMDAR, J.
DATE: 3rd October 2023

P.C.:

1. Heard Mr. Salunkhe, learned Counsel appearing for the
Petitioner.

2. This Court, on 30th August 2023 passed following order:

"1. Heard Mr. Patil, learned Counsel appearing for
the Petitioner, Mr. Walimbe, learned Counsel appearing
for Respondent No. 2 and Mr. Mali, learned AGP for the
State.

2. By the present Writ Petition, the challenge is to
the legality and validity of the order dated 23rd March

2023 passed by the learned Chief Judicial Magistrate, Thane in Criminal M.A. No. 156 of 2023. The said application was filed by Respondent No. 2 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 admitted position on record shows that the recovery certificate is issued in favour of Respondent No.2-Credit Society for total amount of Rs.27,42,632/-.

4. Mr. Patil, learned Counsel appearing for the Petitioner states that the loan proposal has been submitted to two banks namely ICICI Bank and Bank of Maharashtra and the Petitioner is in the process of paying the amount due and payable to the Respondent No.2 by taking loan from aforesaid Banks. He states that some time will be required for sanctioning of the loan.

5. At the request of the Petitioner, stand over to **12th September 2023 at 2.30 pm.**

6. Ad-interim relief to continue till next date."

(Emphasis added)

3. Thereafter further order was passed on 12th September 2023, which reads as under:

"1. Mr. Shringare, learned counsel appearing for the Petitioner states that **the Petitioner will deposit an amount of Rs. 1,00,000/- with Respondent No. 2 by 14.09.2023.**

2. Mr. Tripathi, learned counsel appearing for Respondent No. 2 states that the **said payment will be accepted without prejudice to the rights and contentions of Respondent No. 2.**

3. Stand over to 15.09.2023 at 2.30 p. m.

4. Thereafter further order was passed on 15th September 2023, which reads as under:

"1. Mr. Shringare, learned counsel appearing for the Petitioner states that the **Petitioner has complied with the order dated 12th September 2023.**

2. **The Petitioner to file undertaking stating that he will pay entire dues of the Respondent No.2 with due interest on or before 28th October 2023, failing which he will hand over the possession of the premises in question to the Recovery Officer of the Respondent No.2.**

3. Stand over to **3rd October 2023** [fairly 'high on board'].

5. In this case, recovery certificate, which has been issued under Section 101 of the Maharashtra Co-operative Societies Act, 1960 has attained finality. The above orders were passed as it was represented before this Court that the entire due amount of Respondent No. 2- Credit Society will be paid by taking loans from other Banks.

6. Mr. Salunkhe, states that the order dated 15th September 2023 by which the Petitioner has been directed to file undertaking has not been complied with till date.

7. It is significant to note that earlier Advocate, Mr. Jaydeep A. Shringare was appearing and today Mr. G.N.

Salunkhe appears and states that the Petitioner has engaged Mr. D.N. Gondhali, the learned Advocate and he has been appointed as Counsel and seeks time to argue the matter. It is unfortunate that the interim relief has been obtained by making some representation by the Petitioner and now a new Advocate appears and seeks time, without the Petitioner complying with order dated 15th September 2023.

8. In any case, as the recovery certificate issued under Section 101 of Maharashtra Co-operative Societies Act, 1960 has attained finality, the impugned order, which has been passed by the learned Chief Judicial Magistrate, Thane in Criminal Miscellaneous Application No. 156 of 2023 under Rule 107(11) (d-1) Clause (vi-a) of the Maharashtra Co-operative Societies Rule, 1961, is in furtherance of execution of said recovery certificate. Thus there is no illegality or perversity in the impugned order.

9. Accordingly, the Writ Petition is dismissed, however, as the Petitioner has obtained a stay by mis-representation and failed to file undertaking in terms of order dated 15th September 2023 passed by this Court, the Writ Petition is dismissed with cost of Rs.10,000/-.

(MADHAV J. JAMDAR, J.)