

Anand

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10162 OF 2023

1. **Ramchandra Kamalakant Kamat** .Petitioners
Age : 46 yrs, Occu : Business
2. **Smt. Vidya Kamalakant Kamat**
Age : 67 yrs, Occu : Business

Both residing at House No. 565,
Mathwadi, Talawane, Tal. Sawantwadi,
District – Sindhudurg.

Vs.

1. **Janata Sahakari Bank Limited,** .Respondents
Sawantwadi Branch,
Having office at Ajinkya Plaza,
Behind Sawantwadi S. T. Bus Stand,
Chitarali, Sawantwadi, Tal. Sawantwadi,
District – Sindhudurg.
2. **The Assistant Registrar,**
Co-operative Societies, Sawantwadi,
Sai Complex, Gandhi Chowk,
Near Tara Hotel, Sawantwadi,
Tal. Sawantwadi,
District – Sindhudurg.
3. **The Recovery Officer,**
Janata Sahakari Bank Ltd., Ajara,
Tal. Ajara,
District – Kolhapur.
4. **The State of Maharashtra**

Mr. Mahesh V. Rawool, Advocate, for the Petitioners
Mr. Dheeraj Patil, Advocate, for Respondent No. 1

CORAM : MADHAV J. JAMDAR, J.

DATE : 12.12.2023

ORAL JUDGMENT

1. Heard Mr. Rawool, learned Counsel appearing for the Petitioners and Mr. Patil, learned Counsel appearing for Respondent No. 1.

2. Mr. Patil, learned Counsel appearing for Respondent No. 1 states that an alternate remedy of filing of a Revision Application exists under Section 154 of the *Maharashtra Co-operative Societies Act, 1960* (hereinafter referred to as “**MCS Act**”). It is the contention of Mr. Rawool, learned Counsel appearing for the Petitioners that what is challenged is the Demand Notice and not the Certificate issued under Section 101 of the MCS Act and therefore, this Writ Petition is maintainable.

3. The said issue is no more res-integra. A learned Single Judge of this Court in the case of *Greater Bombay Co-Operative Bank Ltd. v. Dhillon P. Shah*, reported in *2003 SCC OnLine Bom 953* has held as follows:-

“In my opinion, having regard to the purpose and the legislative intent for introducing sub-section (2A), the language of that provision would deserve liberal construction so as to encompass challenge to the derivative actions, by way of revision

application under section 154 of the Act, founded on the recovery certificate which has either not been challenged or the challenge thereto has failed. To put it differently, the rigours of sub-section (2A) would take within its sweep revision application filed by a person “against whom” recovery certificate under section 101 of the Act has been issued, challenging the recovery certificate itself or any attempt by him to interdict the process of recovery of the dues founded on such recovery certificate, by ostensibly challenging only the derivative action in relation to the recovery certificate so issued and has become final. Only such purposive construction would suppress the mischief and advance the remedy. Inasmuch as, such construction would suppress subtle inventions and evasions for continuance of the mischief, and pro privato commodo, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, pro bono publico. This principle laid down in Heydon's case has been enunciated in Craies on Statute Law 7th Edition at Page 96. It is necessary to bear in mind that subsection (2A) was inserted by amendment vide Maharashtra Act 41 of 2000 with effect from 23rd August 2000. This provision has been introduced so as to ensure speedy recovery of the dues of the Societies specified in section 101 of the Act. This provision facilitates immediate recovery of at least fifty per cent, amount of the total amount of recoverable dues of such Societies and not allow the entire amount being embroiled in a long drawn litigation.”

(Emphasis added)

4. In the present case, Demand Notice dated 01.08.2023

is in furtherance of Recovery Certificate and challenging the same amounts to interdicting the process of recovery of the dues founded on such recovery certificate, by ostensibly challenging only the derivative action in relation to the recovery certificate so issued and has become final, as held in ***Greater Bombay Co-Operative Bank Ltd. (Supra)***. Thus, the contention that Demand Notice is not liable to be challenged by filing a Revision Application under Section 154 of the MCS Act is required to be rejected. Revision challenging the Demand Notice pursuant to the Recovery Certificate is maintainable and therefore, mandatory requirement of Sub Section 2-A of Section 154 of the MCS Act will also apply to the same.

5. At this stage, Mr. Rawool, learned Counsel appearing for the Petitioners states that by Order dated 19.08.2023 passed by this Court, a sum of Rs. 10,00,000/- (Rupees Ten Lakhs Only) was directed to be deposited with the concerned Bank and the Petitioners have complied with the same. He further states that the said amount ought to be taken into consideration while calculating 50% of the deposited amount, as contemplated under Sub Section 2(A) of Section 154 of the MCS Act.

6. Accordingly, if such Revision Application under Section 154 of the MCS Act is filed, the concerned authority shall take into consideration the sum of Rs. 10,00,000/- (Rupees Ten Lakhs Only) deposited with the Respondent No. 1 - Bank pursuant to the Order dated 19.08.2023 passed by a learned Single Judge.

7. At this stage, Mr. Rawool, learned Counsel appearing for the Petitioners, on instructions, states that the Petitioners will deposit a sum of Rs. 15,00,000/- (Rupees Fifteen Lakhs Only) with Respondent No. 1 - Janata Sahakari Bank Limited on or before 19.12.2023. The said statement made by Mr. Rawool, learned Counsel appearing for the Petitioners is accepted as an undertaking of the Petitioners given to this Court. If a sum of **Rs. 15,00,000/- (Rupees Fifteen Lakhs Only)** is deposited with Respondent No. 1 - Janata Sahakari Bank Limited **on or before 19.12.2023, no coercive steps be taken against the Petitioners till 19.01.2024** for giving opportunity to the Petitioners to avail alternate remedy.

8. It is clarified that the period for which this Writ

Petition is pending in this Court be taken into consideration by the authority while considering the Delay Condonation Application in Revision Application. It is made clear that if the aforesaid amount of Rs. 15,00,000/- (Rupees Fifteen Lakhs Only) is not deposited with Respondent No. 1 - Janata Sahakari Bank Limited on or before 19.12.2023, Respondent No. 1 - Janata Sahakari Bank Limited to take appropriate steps for recovery of the outstanding amount in accordance with law.

9. It is clarified that this Court has not considered the merits and all the contentions on merits are expressly kept open.

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

(MADHAV J. JAMDAR, J.)