

Nikita

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

WRIT PETITION NO.5051 OF 2022

Dadaso Tukaram Darade

... Applicant

V/s.

Special Recovery Officer Ajayshri
Gramin Bigarsheti Sahakari Patsanstha
Maryadit and Ors.

... Respondents

NIKITA
KAILAS
DARADE

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Mr. Shriram S. Kulkarni i/b Devidas Jadhav for the
petitioner in WP No.5051 of 2022 and for Respondent
No.1 in CRA No.224 of 2019.

Mr. Dadaso T. Darade, Respondent No.1 is present the
Court.

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 19, 2023

P.C.:

1. The challenge in this petition is to the order passed by the Divisional Joint Registrar in exercise of power under Section 54 of the Maharashtra Cooperative Societies Act, 1960. The borrower challenging the order of attachment dated 5th January 2021 passed by Special Recovery Officer in exercise of power under Sub-rule 11 of Rule 107 of the Maharashtra Cooperative Societies Rules, 1961. It is not in dispute that certificate under Section 101 of the Maharashtra Cooperative Societies Act, 1960 was issued on 31st March 2017. The Assistant Registrar directed payment of an amount of Rs.13,67,253/- along with the interest at 15% per

annum from 1st September 2016 to be paid by borrower On the date of attachment, no challenge was raised to certificate under Section 101 of the the Maharashtra Cooperative Societies Act, 1960.

2. In a revision challenging order of attachment, the borrower contended that no amount is due from the borrower. The Joint Registrar negatived the contention by holding that borrower has not produced any document to show that entire amount as per certificate was paid. No due certificate from the society was not produced.

3. The applicant has challenged the order of Divisional Joint Registrar before this Court. The applicant made a statement before this Court that he is ready to deposit Rs.4,50,000/- out of Rs.7,76,424/-. Based on the said statement Court protected the petitioner. Thereafter, it was submitted on behalf of the petitioner that amount of Rs.7,17,000/- has been deposited and balance amount of Rs.1,44,424 would be deposited. On 16th January 2023, balance amount of Rs.1,44,424/- was deposited.

4. It is therefore, clear that on the date of attachment, the petitioner had no deposited entire amount.

5. The question, therefore, is whether the petitioner has deposited entire amount as per certificate under Section 101 of the Act. This is an issue which the Special Recovery Officer needs to adjudicate under Rule 107. The Special Recovery Officer at appropriate stage shall consider the claim of borrower that he has deposited entire amount and after considering his claim, the

Special Recovery Officer shall take further steps in accordance with Rule 107 of the Maharashtra Cooperative Societies Rules, 1961.

6. However, it is clear that on the date of attachment the petitioner had not deposited entire amount and therefore, order of attachment was validly passed.

7. It appears that the petitioner on 7th January 2023 deposited Rs.4,50,000/-. On 12th January 2023, deposited 3,11,424/- and on 16th January 2023, deposited Rs.1,44,424/-. The amount deposited is permitted to be withdrawn by the society along with accrued interest.

8. The society shall give credit of deposited amount from the date of deposit.

9. The writ petition stands dismissed. No costs.

(AMIT BORKAR, J.)