

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH

WRIT PETITION NO. 1556 OF 2023

Kamini wd/o Pralhad Hatwar,
aged about 40 years, Occupation : Household,
R/o Aroli, Tahsil – Mouda, District – Nagpur – 441106.

...PETITIONER

Versus

1. Special Recovery and Sale Officer,
Saraswati Gramin Beger Sheti Sahakari
Pat Sanstha C/o Ashok Madankar,
Station Road, Revarail, Tahsil – Mouda,
District – Nagpur.
2. Assistant Registrar, Co-Operative Societies,
Mouda, Office at Opposite Bus Stop,
Mouda, District – Nagpur.

...RESPONDENTS

Shri M.P Dhavan, Advocate for the petitioner.
Shri P.S. Tidke, Advocate for respondent No.1.
Shri A.S. Fulzele, Additional Government Pleader for respondent
No.2/ State.

.....

**CORAM : A.S. CHANDURKAR AND
M.W. CHANDWANI, JJ.
DATE : MARCH 13, 2023.**

ORAL JUDGMENT : (PER : A.S. CHANDURKAR, J.)

Rule. Rule made returnable forthwith and heard the
learned Counsel for the parties.

2. The petitioner was subjected to proceedings under Section 101 of the Maharashtra Co-operative Societies Act, 1960. Pursuant thereto, a Recovery Certificate came to be issued by the Assistant Registrar on 30/6/2022. The Recovery Officer thereafter issued a notice dated 27/2/2023 seeking to attach the property mentioned therein. This notice having been issued under Rules 107(5)(a) and (b) of the Maharashtra Co-operative Societies Rules, 1961 (for short “Rules of 1961”), the same has been challenged by the petitioner by urging that her immovable property is sought to be attached under the said Rules.

3. Perusal of notice dated 27/2/2023 indicates that it has been issued under Rule 107(5)(a) of the Rules of 1961. As per the said Rule, it is only the movable property that is liable to be attached. The impugned notice further indicates that the immovable property in the form of Godown is sought to be attached. On reading of Rule 107(5) as well as Rule 107(11) of the Rules of 1961, it becomes clear that wherever any movable property is to be attached, recourse has to be taken under Rule 107(5) and wherever immovable property is to be attached and

sold, recourse has to be taken under Rule 107(11) of the Rules of 1961.

4. In the light of the aforesaid provisions, it is clear that the impugned notice dated 27/2/2023 having been issued under Rules 107(5)(a) and (b) of the Rules of 1961, its effect would be restricted only to the movable property of the petitioner. Under the garb of the said notice and without taking recourse to the provisions of Rule 107(11) of the Rules of 1961, any immovable property cannot be attached.

5. With the aforesaid clarification, the Writ Petition is disposed of. No costs. It would be open for the Recovery Officer to proceed in accordance with Rule 107(11) of the Rules of 1961 by following due process if any immovable property of the petitioner is to be attached.

JUDGE

JUDGE
