



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**WRIT PETITION NO. 3688 OF 2021**

1. Ambadas s/o Vinayak Pisolkar,  
Age : 48 Years, Occ. Business,  
R/o. House No.5-6-47/1,  
Khadkeshwar Aurangabad.
2. Prashant s/o Raghunath Nalawade,  
Age : 47 Years, Occ. Business,  
R/o. Plot No.5, Flat No. 31,  
Vaishnavi Vastu, Meharnagar,  
Aurangabad.

**... Petitioners**

**VERSUS**

1. The State of Maharashtra,  
Through its Secretary,  
Co-operative Department, Mantralaya,  
Mumbai- 32.
2. The Divisional Joint Registrar,  
Co-operative Societies, Aurangabad.
3. The District Deputy Registrar,  
Co-operative Societies, Aurangabad.
4. The Assistant Registrar,  
Co-operative Societies, Aurangabad.
5. Ltur Urban Co.Op. Bank Ltd  
Latur Urban Co.Op. Bank Ltd  
Branch Khedkeshwar,  
Aurangabad.
6. The Recovery Officer,  
Latur Urban Co. Op., Bank Ltd  
Branch Khedkeshwar,  
Aurangabad.

7. Vinay s/o Hanmantrao Yadkikar,  
Age : Major, Occ. Business,  
R/o. Flat No.4, Vrindavan Complex,  
Khadkeshwar, Aurangabad.

.. Respondents

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*Advocate for the petitioners : Mr. S. S. Gangakhedkar*

*AGP for Respondent Nos. 1 to 4 : Mr. A. S. Shinde*

*Advocate for Respondent No.5 : Mr. G. N. Kulkarni*

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**CORAM : S. G. MEHARE, J.**

**DATE : 02.01.2024**

**PER COURT :**

1. Heard the learned counsel for the petitioners and the contesting respondent Nos.5 and 6.
2. The petitioners before this Court are the sureties of the principal borrower. Since the principal borrower failed to repay the loan, respondents Nos. 5 and 6 had applied for the recovery certificate before the District Deputy Registrar, Aurangabad, who is respondent No.3. Respondent No.3 had passed an order on 20.05.2015 granting recovery certificate under Section 101 of the Maharashtra Co-operative Societies Act.
3. The present petitioners had impugned the said order before respondent No.2, the Divisional Joint Registrar Aurangabad. However, the revision was dismissed on 01.01.2021 on the sole ground that the

petitioners did not deposit 50% of the amount due as provided under Section 154 (2A) of the Co-operative Societies Act, 1960.

4. The learned counsel for the petitioners would submit that in the meantime, the borrower's vehicle was auctioned for Rs. 4,42,000/- and the principal borrower had deposited Rs. 5,00,000/- with the Bank. Some amount has also been recovered from the account of the present petitioners. After issuance of the recovery certificate, Rs. 6,64,332/- were deposited. Therefore, on 31<sup>st</sup> March 2022, the due amount was Rs. 6,47,482/-. He also submits that the guarantor preferred an appeal, mainly on the grounds that the procedure as laid down under Rules 86A to 86F of the Maharashtra Co-operative Societies Rules was not considered, and no opportunity of being heard was granted. He was not required to comply with Section 154(2A) of the Maharashtra Co-operative Societies Act. He read over the above Rules and submitted that *prima facie*, the order issuing the recovery certificate was in contravention of those Rules. He prayed to allow this petition.

5. Per contra, the learned counsel for the respondents Nos. 5 and 6 submits that the petitioners have made a statement before this Court on 25<sup>th</sup> February 2021 that they are ready to deposit 60% of the amount due since they were bound to deposit the money. Since they

did not comply with the provisions of 154(2A) of the Co-operative Societies Act, they do not deserve any relief from this Court.

6. Per contra, the learned counsel for the petitioners would submit that the vehicle was not auctioned at that time, and the borrower did not deposit the amount. The subsequent facts may be considered. As per his calculations, the amount due is Rs. 6,27,482/-. He is ready to deposit the amount of Rupees three lakh to protect their interest.

7. The learned counsel for the respondent Nos. 5 and 6 submitted that assuming for the sake of argument after deducing the amount deposited by the principal borrower and auction of the vehicle, an amount of Rs. 6,27,482/- is due. The petitioners shall deposit the entire amount with the Bank.

8. Perused Rules 86A to 86E and the impugned order of the District Deputy Registrar Co-operative Societies Aurangabad. Respondents Nos. 5 and 6 had applied for the certificate on 3<sup>rd</sup> February 2015. The paper publication notice is also placed on record. It was issued on 25<sup>th</sup> February 2015, whereby all the parties concerned were given notice of the proceeding and called upon their appearance on 4<sup>th</sup> March 2015. On 20<sup>th</sup> May 2015, the District Deputy Registrar issued the certificate relying on the document placed before it. He relied upon the

promissory note, loan agreement and the loan account. He has also objected that the impugned order is not reasoned as required under Rule 86F of the above Rules. Reliance has also been placed on the judgment of this Court delivered in the case of *Sundeep Polymers Pvt. Ltd and Others Versus State of Maharashtra and Others 2010 (7) Mh. L. J. 538*. In this case, this Court examined Rules 86A to 86F.

Rule 86A provides for the procedure for applying for a recovery certificate. Rule 86 B is for scrutiny of the application and notice to the parties. Rule 86C pertains to the procedure for the appearances of parties and the consequences of non-appearance, whereas Rule 86D provides for the production and inspection of documents. Rule 86E deals with the procedure for hearing the application. Rule 86F specifically states that the authority should pass a reasoned judgement and order and issue a recovery certificate in form “V”.

9. The learned counsel for respondents No. 5 and 6 submitted that the notices by Registered Post A.D. were sent to the petitioners and the principal borrower. However, the service report was awaiting. Hence, a paper publication was issued.

10. Considering the paper publication notice, which was published on 25<sup>th</sup> February 2015, there appears to be substance in the submission

of the learned counsel for the petitioners that the due procedure for service of the notice, as provided under Section 86B of the Rules, was not strictly followed. There was no material before the District Deputy Register that the opponent could not be easily found. Hence, they were required to serve through the notice published in the local newspaper. In fact, the report of the notices sent by the Registered Post A.D. were awaiting. It shows that the authority was hasty in proceeding with the matter by giving go-by to the procedure laid down in the Rules. Since nobody appeared in pursuance of the paper publication notice, the ex-parte certificate was issued.

11. The ratio laid down in the Sundeep Polymer (supra) case is squarely applicable to the case at hand. Apparently, the recovery certificate was issued without following the due procedure and properly serving the notice to the petitioners. The rules of natural justice have been violated. Therefore, this is a fit case to exercise writ jurisdiction by granting the petitioners a fair opportunity of hearing. The petitioners have shown *bona fide* to deposit Rs. 3,00,000/- with respondent No.5. They being sureties their *bona fide* may be considered. In the facts and circumstances of the case, the same relief is to be sought before the revisional authority. Therefore, the following order is passed instead of remitting the matter back.

**ORDER**

- (I) The Writ Petition is allowed.
- (II) The impugned orders issuing the recovery certificate dated 20.05.2015 by the District Deputy Registrar Co-operative Societies, Aurangabad and the Divisional Joint Registrar Co-operative Society Aurangabad, dated 01.01.2021, are quashed and set aside.
- (III) The matter is remitted to the District Deputy Registrar Co-operative Societies, Aurangabad, for fresh consideration after granting an opportunity to the petitioners, on the condition that petitioners Nos.1 and 2 shall deposit Rs. 1,50,000/- each with respondent No.5 Bank within two weeks from today and the Rules 86A to 86F of the Maharashtra Co-operative Societies Act, 1960 be followed strictly.
- (IV) Both parties are to appear before the District Deputy Registrar Co-operative Societies, Aurangabad, on 30<sup>th</sup> January 2024, at 3.00 p.m.
- (V) The District Deputy Registrar Co-operative Societies, Aurangabad, shall endeavour to decide the application within three months from the date of their appearance.
- (VI) Needless to say, this order is restricted only to the petitioners.
- (VII) Civil Application, if any, stands disposed of.

**( S. G. MEHARE )**  
**JUDGE**

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