



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4610 OF 2017

Shri. Suresh Maruti Shinde

...Petitioner.

Versus

Special Recovery And Sales
Officer and Another.

...Respondents.

WITH

WRIT PETITION NO. 4617 OF 2017

Vaishali Suresh Shinde

...Petitioner.

Versus

Special Recovery And Sales
Officer and Another.

...Respondents.

Mr. Sharad T. Bhosale for the Petitioner. [thr. VC].
Mr. Suhas Inamdar for the Respondents.

Coram : Sharmila U. Deshmukh, J.

Date : August 7, 2024.

P. C. :

1. By these petitions, challenge is to the order dated 29th October 2016 passed by the Divisional Joint Registrar in Revision Application No. 263 of 2015 arising out the communication dated 24th July 2015 issued by the Respondent No.2-bank. Both these petitions arise out the same order and were, therefore, heard together as common submissions were advanced.

2. Facts of the case are that the Petitioners are borrowers of the Respondent No.2 Bank. An application for recovery certificate was filed under Section 101 of the Maharashtra Co-operative Societies Act, 1961. By order dated 19th May 2015, the Deputy Registrar issued recovery certificate as against which revision was filed which came to be dismissed by order dated 29th October 2016 by the Divisional Joint Registrar.

3. Heard Mr. Sharad Bhoslae, learned counsel appearing for the Petitioner and Mr. Inamdar, learned counsel appearing for the Respondents in both the petitions.

4. Learned counsel appearing for the Petitioner would point out the recovery certificate issued and would submit that the Petitioner in Writ Petition No.4610 of 2017 was present during the hearing and had asked for documents. He would submit that despite seeking copies of documents which were produced by the Respondent No.2-bank, the same were not provided to the Petitioner. He submits that the statement of accounts which were placed on record did not reflect the correct position as deductions were made from the salary of Petitioner in connected writ petition.

5. *Per contra* learned counsel appearing for the Respondent No.2 would point out that in the present petitions there is no challenge to the recovery certificate issued on 19th May 2015 and what has in fact

been challenged is the order of attachment. He would further submit that by the revision application filed, the challenge was to the order of attachment dated 24th July 2015 on which the impugned order was passed. He would further point page 52 of the petition which is annexure to his affidavit-in-reply and submits that the entire list of documents along with documents were produced at the time of issuance of recovery certificate and it the Petitioners who failed to remain present and did not collect the documents.

6. Considered the submissions and perused the record.

7. Perusal of the recovery certificate dated 19th May 2015 discloses that the present Petitioner did not remain present despite service of summons. As far as the the Petitioner in Writ Petition No. 4610 of 2017 is concerned, the order records that an application was made for seeking documents and thereafter the documents have admittedly been filed by Respondent No.2-Bank. It was then the responsibility of the Petitioners to obtain the copies of documents. There is no say filed by the Petitioner to the recovery application filed under Section 101 of the MCS Act and learned counsel appearing for the Respondent No. 2 has rightly pointed out the list of documents filed by the Respondent No.2 at the time of seeking recovery certificate. Perusal of the said list would indicate that the statement of accounts as well as the demand notice was placed for consideration of the Deputy Registrar who has

after considering the documents on record, issued the recovery certificate. What assumes significance is that there is no challenge to the recovery certificate and what has only been challenged is the order of attachment. The reason is not far to seek. If there would been a challenge to the recovery certificate, it would have been incumbent upon the Petitioners to deposit 50% of the recoverable dues as provided under Section 154(2-A) of the MCS Act. To avoid making any payments, the Petitioners have only challenged the attachment order attaching the salary. The Divisional Joint Registrar has rightly rejected the said application and upheld the attachment order.

8. The recovery certificate has been rightly issued after taking into consideration the documents which included the statement of accounts. There was no challenge by the Petitioner to the recovery certificate and even in the present petitions, there is no challenge to the said recovery certificate.

9. In the light of above, there is no merit in the petitions and the same stand dismissed.

[Sharmila U. Deshmukh, J.]