



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10655 OF 2023.

WITH

WRIT PETITION NO.10801 OF 2023.

Nanda Shivaji Mali and Anr.

...Petitioners.

Versus

Vasant Shankar Mali and Ors.

...Respondents.

Mr. Vikas Kolekar for the Petitioners.

Mr. Mahendra Deshmukh for the Respondents.

Ms. Dhruti Kapadia, AGP for the Respondent.

Coram : Sharmila U. Deshmukh, J.

Date : 27th September , 2024.

P. C. :

1. Heard.
2. By this petition the challenge is to the recovery certificate dated 15th November 2008 issued by respondent No.5 in Application No.474 of 2008.
3. The facts of the case are that respondent Nos.2 and 3 based on an alleged loan which was granted to petitioner No.1 applied for issuance of recovery certificate under Section 101 of the Maharashtra Co-operative Societies Act (for short, MCS Act) on 15th November 2008. On the very same day a recovery certificate came to be issued for a sum of Rs.8,94,539 pursuant to which the proceedings under Section

rsk

107 was initiated against the petitioners. In the petition there is specific pleading of the petitioners is that petitioner No.1 has not applied for loan and the entire transaction is bogus. It is further pleaded that petitioner have not made any application for loan and had not executed any promissory note, indemnity bond or any authority letter. It is further pleaded that loan is stated to have been applied for on 24th May 2004 and the same was sanctioned and disbursed to the account of petitioner No.1 on the same day i.e. on 24th May 2004.

4. Learned counsel appearing for the petitioners would submit that though the remedy under Section 154 is available under the MCS Act, in view of the fact that the procedure prescribed under Chapter VIII-A of the MCS Act has not been followed and there is no notice issued to the Petitioners, it is not necessary for the petitioner to be relegated to the alternate remedy. He draws support from the decision of the Division Bench of this Court in the case of **Sandeep Polymers Pvt. Ltd. vs. The State of Maharashtra**¹. He would point out that the recovery certificate has been issued on the same day on which application was made which makes it more than evident that the prescribed procedure under the Rules has not been followed.

5. *Per contra*, the submission of learned counsel appearing for the respondent No.2 and 3 is that there is delay as recovery certificate of

¹ *Letters Patent Appeal No.98 of 2008 in Writ Petition No.2490 of 2008 on 3rd September 2010*

the year 2008 has been challenged in the year 2022. To counter the said submission learned counsel for the petitioners would submit that as no notice was issued to the petitioners, the petitioners had no knowledge of the proceedings and for the first time they became aware of the same on 5th November 2022 and thereafter on 10th November 2022 the petitioners made an application for certified copy which was received on 11th November 2022 and present application came to be filed.

6. Considered the submissions and perused the record.

7. Firstly, dealing with the submission on the ground of delay, learned counsel for the petitioner has rightly pointed out that the recovery certificate itself states that respondent Nos.2 and 3 had filed an application on 15th November 2008 and on the very same day i.e. on 15th November 2008 recovery certificate has been issued. The said position would demonstrate that there was no notice which was issued to the petitioners and therefore the explanation which is tendered by the petitioner that the petitioner became aware of the said order only in November 2022 cannot be faulted with. In any event, considering that there is violation of principles of natural justice a petition against the said order was clearly maintainable as the rule of availing alternate remedy is self imposed restriction and petition can be entertained where it is pointed out that there is violation of principles of natural

justice. The decision in the case of ***Sandeep Polymers*** (supra) which has been relied upon is squarely applicable to the facts of the present case.

8. Perusal of the recovery certificate would indicate that there is non compliance with the Rules which has been prescribed under Rule 86A to 86F of the Cooperative Societies Rules which are mandatorily to be followed while issuing the recovery certificate. The very fact that recovery certificate has been issued on the same date on which application has been made would show non compliance of Rules 86A to 86F. There was no notice issued to the petitioners, no hearing which was held and there is no reasoned order which could have been passed in absence of any notice.

9. Considering that there is violation of mandatory procedure which has been prescribed while issuance of recovery certificate, the recovery certificate suffers from infirmity. As a result the impugned order dated 16th November 2008 passed by the Respondent No.5 issuing the recovery certificate is quashed and set aside. Application No.474 of 2008 is remanded to the respondent No.5 to be considered afresh. While considering the said application adequate notice to be given to the petitioners before the said application is heard. The Respondent No.5 while hearing the said application may consider the contentions of the petitioner as regards the application for loan on the same day, the sanction on the very same day as well as disbursement in

the account on the same day i.e. on 24th May 2004 which casts a doubt about the entire loan transaction.

10. In light of the above, the petition succeeds. The impugned order dated 15 November 2008 stands quashed and set aside. The Application No.474/2008 is restored to the file of respondent No.5. Respondent No.5 to follow the mandatory procedure prescribed under Rule 86A to 86F of the MCS Rules and to issue necessary notices and after hearing the parties to adjudicate the said application.

11. Petition succeeds. In view of disposal of petition, Interim/Civil Applications, if any, do not survive for consideration and stand disposed of.

[Sharmila U. Deshmukh, J.]