

varsha

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CIVIL APPELLATE JURISDICTION**  
**WRIT PETITION NO. 14222 OF 2023**  
**WITH**  
**INTERIM APPLICATION NO. 982 OF 2024**  
**IN**  
**WRIT PETITION NO. 14222 OF 2023**

Audumbar Nivrutti Hulge and Anr                      ... Petitioners/Applicants  
vs.  
The State of Maharashtra and Ors                      ... Respondents

Mr. Bhushan Walimbe for Petitioners/Applicants.  
Mr. Sushant S. Prabhune for Respondent.  
Mrs. S.S. Bhende, AGP for the State.

**CORAM : GAURI GODSE, J.**  
**DATED : 3<sup>rd</sup> APRIL, 2024**

**P.C. :-**

1. This petition takes an exception to the orders dated 20<sup>th</sup> January 2023, 13<sup>th</sup> March 2023 and 5<sup>th</sup> October 2023, passed by the concerned authorities under Rule 107 of the Maharashtra Cooperative Societies Rules (**MCS Rules**) for execution of recovery certificate dated 18<sup>th</sup> June 2021.
2. By order dated 10<sup>th</sup> November 2023, notice was issued after

recording submissions on behalf of petitioners. The submissions are recorded in paragraph 3 of the order. The relevant paragraphs 3 and 4 of the order read as follows:

*“3. Mr. Zade, learned Counsel for the Petitioners states that the total dues of Respondent No. 6-Society are Rs. 18,61,384/-. He states that the Petitioners are ready and willing to pay entire amount if some instalments are granted. He further states that the Petitioners will immediately deposit with Respondent No.6- Society an amount of Rs. 5,00,000/- (Rupees Five Lakhs only) on or before 15<sup>th</sup> November 2023.*

*4. In view of these submissions, issue notice to the Respondents, returnable on 6<sup>th</sup> December 2023.”*

3. In view of the submissions made on behalf of the petitioners regarding depositing total outstanding dues, this Court granted protection from taking possession of the residential premises as per the impugned order dated 20<sup>th</sup> January 2023.

4. The petitioners failed to deposit the amount of Rs. 5,00,000/- within time hence, an application was filed for an extension of time. By order dated 31<sup>st</sup> January 2024, time was extended, and in the extended period, petitioners have deposited an amount of Rs. 5,00,000/-. However, the petitioners are neither willing to file undertaking for depositing the balance amount nor ready and willing

to pay the balance outstanding amount as submitted before this court on 10<sup>th</sup> November 2023.

5. Learned counsel for respondent nos. 6 and 7 has tendered an affidavit-in-reply. The affidavit-in-reply dated 30<sup>th</sup> March 2024 filed on behalf of respondent no.7 is taken on record. He submits that the possession of the mortgaged property was already taken over by the bank in the proceedings initiated for recovery of the amount as per the recovery certificate dated 18<sup>th</sup> June 2021. He submits that though the property was in possession of respondent no.7 and the same was attached, the petitioners, by taking undue advantage of the order dated 10<sup>th</sup> November 2023, have illegally and unauthorisedly opened the seal of the attached property and entered the residential premises. Hence, a police complaint is filed on 14<sup>th</sup> February 2024. He submits that considering the petitioners' conduct, this petition may not be entertained. He also raised a preliminary objection that the petitioners have an alternate remedy for filing a revision application. However, without adopting the alternate remedy, filed this petition. He, therefore submits that the petition may not be entertained.

6. It is not in dispute that the recovery certificate is not challenged by the petitioners. It is also not disputed that the

petitioners have failed to deposit the balance amount of the outstanding amount. In view of the aforesaid, I do not see any valid reason to entertain this petition. If the recovery certificate issued by respondent no.7-bank is not disputed by the petitioners, they are required to comply with the demand made by the bank pursuant to the recovery certificate.

7. A perusal of the record indicates that the impugned orders are passed as contemplated under the provisions of Rule 107 of the MCS Rules for execution of the recovery certificate. I do not see any error or any illegality in the impugned orders. The petition is devoid of any merits. For the reasons recorded above, the petition is dismissed.

8. Interim Application No. 982 of 2024 is disposed of as infructuous.

**(GAURI GODSE, J.)**