

Shabnoor

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.3002 OF 2024

Gunwant Ananda Shinde ... Petitioner
V/s.
Tejnath Pandurang Suraywanshi
Special Recovery Officer & Ors ... Respondents

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Mr. Prashant P. Kulkarni, for Petitioner.

Mrs. V. S. Nimbalkar, AGP for State/Respondent Nos.3
& 4.

Ms. Madhavi Nalawade, for Respondent No.2.

CORAM : AMIT BORKAR, J.

DATED : APRIL 15, 2024

P.C.:

1. The petitioner (borrower) is challenging action on the part of the Special Recovery Officer to take possession of the property bearing Room No.111, Mahatma Jyotibha Phulenagar, Priyadarshni, Sion-Chunabhatti, Mumbai – 400 022 without following procedure contemplated under Rule 107(11) (d) (iv) of the Maharashtra Cooperative Societies Rules, 1961.

2. According to the Cooperative Credit Society, the petitioner's occupant had voluntarily handed over possession of the premises to the Special Recovery Officer. However, according to the petitioner, the Special Recovery Officer has taken possession of the said

premises from the petitioner's occupant.

3. Once, the law requires possession to be taken by the creditor after following procedure under Rule 107(11) (d) (iv). It was obligatory on the Special Recovery Officer to take possession only after following such procedure. Therefore, the Special Recovery Officer is directed to re-deliver possession of the aforesaid premises to the petitioner within two days from today.

4. It shall be open for the Special Recovery Officer to apply before the Chief Metropolitan Magistrate for delivery of possession as per Rule 107(11)(d)(i) of the Maharashtra Cooperative Societies Rules, 1961. If such application is filed, the Chief Metropolitan Magistrate shall decide such application within three weeks from filing of such application.

5. The petitioner is at liberty to file fresh petition in relation to challenge arising out of proceeding under Section 101 of the Maharashtra Cooperative Societies Act, 1960.

6. With this modification, the writ petition stands disposed of. No costs.

(AMIT BORKAR, J.)