

VRJ

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

WRIT PETITION NO.3757 OF 2024

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RAMESH
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Ethnic Weaves Emporium Private
Limited & Ors.

... Petitioners

V/s.

Janseva Sahakari Bank (Borivali) Ltd.
& Ors.

... Respondents

Mr. Yatin R. Shah for the petitioners.

Mr. Shreesh Oak i/by S.C. Legal for respondent No.1.

Mr. S. D. Rayrikar, AGP for the State/respondent Nos.3
and 4.

CORAM : AMIT BORKAR, J.

DATED : MARCH 18, 2024

P.C.:

1. The petitioners-borrowers are challenging an order passed by the District Magistrate in exercise of power under Rule 107(11) (D-1)(vi) of the Maharashtra Cooperative Societies Rules, 1961 in relation to property owned by the petitioners.

2. According to the petitioners, in addition to the property in relation to which impugned proceedings have been taken out, one more property which would satisfy the creditors debts has been attached and, therefore, there is no requirement of taking action under Rule 107(11)(D-1) of the Maharashtra Cooperative Societies Rules, 1961. According to the petitioners, no opportunity of

hearing is given by the District Magistrate while passing the impugned order and, therefore, they challenging order passed by the District Magistrate by a present writ petition.

3. Considering the scheme of Rule 107 of the Maharashtra Cooperative Societies Rules, 1961, it is evident that the Special Recovery Officer is the person appointed in exercise of power under section 156 of the Maharashtra Cooperative Societies Act, 1960. The Special Recovery Officer is under obligation to recover cooperative society's dues by following procedure under Rule 107 of the Maharashtra Cooperative Societies Rules, 1961. Sub-rule (11) of Rule 107 of the Rules confers power of Special Recovery Officer to attach the property of borrowers or guarantors for recovery of creditor's dues. Such exercise of power under Rule 107 of the Maharashtra Cooperative Societies Rules, 1961, is in addition to the power conferred on the creditor under the Securitisation and Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002. It is always open for the creditor to adopt procedure under Rule 107 of the Maharashtra Cooperative Societies Rules, 1961, in addition to power under the provisions of the Securitisation and Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002.

4. While exercising power under Clause (D-1)(vi) of Sub-rule (11) of Rule 107 of the Maharashtra Cooperative Societies Rules 1961, the District Collector needs to perform executionary act of taking possession. No element of quasi-judicial function is involved. Such power under Clause (D-1) of Sub-Rule (11) of Rule 107 of the Rules is analogous to the unamended section 14 of the

Securitisation and Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002.

5. Therefore, the procedure which the District Magistrate unamended clause of section 14 of the Securitisation and Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002, need to be followed. There is no question of giving opportunity of hearing to the aggrieved person as strictly exercise of such power is not a quasi-judicial power. Hence, the impugned order need not be interfered. There is no legal infirmity.

6. The writ petition is dismissed. No costs.

(AMIT BORKAR, J.)