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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8285 OF 2023**

Shraddha Shahoo Gaikwad and Anr. ... Petitioners
Vs.
The Divisional Joint Registrar ... Respondents
Co-operative Society and Others

Mr. Ankit Dhindate for the Petitioners.
Mr. S. S. Panchpor for Respondent No. 4.
Mr. S. L. Babar, AGP for the State.

CORAM : GAURI GODSE, J.

DATE : 16th FEBRUARY 2024

P.C.

1. This petition arises out of dismissal of the Revision Application filed by the petitioners challenging the notice of attachment. The notice of attachment was issued pursuant to recovery certificate dated 19th July 2017 issued in the name of Sunita S. Gaikwad for recovery of arrears of maintenance charges. The Revision Application is dismissed by Divisional Joint Registrar for want of compliance of the statutory deposit under section 154(2A) of The Maharashtra Co-operative Societies Act, 1960 ("MCS Act").

2. Learned counsel for the petitioners submits that pursuant to the leave granted by this court he has amended the petition for challenging the recovery certificate. The contention of the petitioners to challenge the recovery certificate is on the ground that the same was issued without service of demand notice upon them and without impleading them as parties to the proceedings initiated under Section 101 of the MCS Act.

3. Learned counsel for the petitioners submits that petitioner no. 1 i.e. daughter of Sunita was joint owner with respect to flat no. 6 and petitioner no. 2 was joint owner with deceased Sunita in respect of flat no. 5. He submits that Sunita expired on 4th August 2016 and recovery certificate is issued in the name of Sunita on 7th July 2017. He therefore, submits that the petitioners were never heard in the proceedings initiated by the society for issuance of the recovery certificate.

4. Learned counsel appearing for respondent no. 4 – society on instructions states that the petitioners have deposited Rs.50,000/- with the society pursuant to the order dated 6th July 2023 passed by this court. He submits that the said amount would cover the 50% amount

for compliance of the statutory deposit under section 154(2A) of the MCS Act.

5. Learned counsel for the petitioners on instructions of petitioner no. 2 who is present today states that in such circumstances petitioners be granted leave to withdraw this petition with liberty to file Revision Application for challenging the recovery certificate, if the Revision Application is filed immediately.

6. Learned counsel for respondent no. 4 on instructions states that till the revision application for challenging recovery certificate is decided, respondent no. 4 shall not proceed with the recovery proceeding initiated pursuant to the recovery certificate.

7. Hence, considering the aforesaid facts and circumstances, leave is granted to the petitioners with liberty as prayed.

8. This Writ Petition is disposed of by passing following order:

(i) Petitioners are granted leave to withdraw the petition with liberty to file appropriate Revision Application for challenging recovery certificate dated 19th July 2017 alongwith the application for delay condonation.

(ii) The petitioners will be entitled to make appropriate application for waiver of statutory deposit under section 154 (2A) of the MCS Act. If such application is made, same to be decided on its own merits.

(iii) The petitioners will be entitled to seek benefit of the period of pendency of this petition for seeking delay condonation, if the Revision Application is filed within three weeks from today.

(iv) The statement made on behalf of respondent no. 4 that the execution proceedings pursuant to the recovery certificate shall not be proceeded till the decision of the revision application is accepted, subject to petitioners filing the revision application within three weeks from today.

(v) So far as the merits of the Recovery Certificate is concerned, it is clarified that I have not examined the rival contentions of the parties on merits and hence all contentions of all parties are kept open.

(vi) Writ Petition is disposed of in the above terms.

[GAURI GODSE, J.]