

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.12796 OF 2023

Digitally signed
by RAMESHWAR
LAXMAN
DILWALE
Date: 2024.03.14
14:25:56 +0530

1.

M/s. Bonafide Packers
Proprietary concern of Mr. Yogesh
Trambaklal Shah, Age :68 years,
Occupation : Business, having address at
Gala Nos.4 & 5, Dadoba Compound,
Near Pritesh Complex, Anjurphata
Bhiwandi, Thane 421 302

}
2.

Mrs. Neela Yogesh Shah
Age: 66 years, Occupation :Housewife
Residing at A/504, 5th floor, Maitri
Residency-2 CHS Ltd, Opp. Poisar
Gymkhana, Mahavir Nagar,
Kandivali (West), Mumbai 400067

}
- }

.. Petitioners

Vs.

1.

The State of Maharashtra
(High Court of Bombay)

}
2.

The Joint Divisional Registrar,
Co-operative Societies, having office at
Bhandari Bank Building, 2nd floor
Kale Guruji Marg, Dadar (West)
Mumbai 400028

}
3.

The Malad Sahakari Bank Ltd.
Central Administrative Office,
6, Sujata Rani Sati Marg, Malad (East)
Mumbai 400097

}
4.

The Recovery Officers
attached to The Malad Sahakari Bank Ltd.
Central Administrative Office,
6, Sujata Rani Sati Marg, Malad (East)
Mumbai 400097

}
5.

Union Bank of India
having office at 56, Karim Building,
Mohammedali Road Branch,
Masjid Bunder, Mumbai 400003

}
- }

.. Respondents

...

Mr. Rishikesh Soni i/by Ms. Raveena S. Yadav for the Petitioners.
Ms. Reshma Nandilath a/w Mr. Prafull Chipte i/by Mr. Sanjay

Anabhawane for Respondent Nos.3 to 4.

Mr. N. C. Walimbe, Addl. GP a/w Mr. A. R. Deolekar, AGP for Respondent-State.

Mr. Tabish Jamdar i/by Mr. Navin Arora for Respondent No.5.

...
**CORAM : A.S. CHANDURKAR &
JITENDRA JAIN, JJ**

DATE : 6th MARCH 2024.

JUDGMENT : (PER : A. S. CHANDURKAR)

1. Rule. Rule made returnable forthwith and heard learned counsel for the parties.

2. In proceedings under Section 101 of the Maharashtra Co-operative Societies Act 1960 recovery certificate came to be issued on 26/02/2022 for an amount of Rs.1,99,06,960/-. The petitioners had approached this Court raising a challenge to the said recovery certificate. By the order dated 22/12/2021 passed in Writ Petition No.9400 of 2021 (*Mrs. Neela Yogesh Shah & Anr. Vs. The Recovery Officer attached to Malad Sahakari Bank Ltd. & Ors.*) liberty was granted to the petitioners to approach the Divisional Joint Registrar under Section 154 of the said Act. Accordingly, the petitioners have preferred such revision application. However, since 50% of the amount in terms of Section 154 (2A) of the said Act has not been deposited, the revision application was not entertained. In this backdrop the petitioners have approached this Court.

3. From the affidavit in reply filed by the creditor-Respondent Nos.3 and 4, it is an admitted position that two of the mortgaged properties

were handed over to the creditor on 21/12/2021. The same was sold for amount of Rs. 1,09,89,000/- and Rs.10,75,000/- respectively. The aforesaid fact makes it clear that in response to the recovery certificate for an amount of Rs.1,99,06,960/-, the amount of Rs.1,20,00,000/- and odd has been received by the creditor.

4. In these facts of the case, we find that since two of the mortgaged properties have been sold and amount to the extent of Rs.1,20,00,000/- had already been received by the creditor, this is a fit case to direct the Divisional Joint Registrar to entertain the revision application and decide the same on its own merits in accordance with law. While doing so, the requirement of depositing of 50% amount of the recovery certificate in terms of Section shall not be insisted upon since two of the mortgaged property have already been sold. In the peculiar facts of this case, the following order is passed:-

- i) The Divisional Joint Register shall entertain the revision application preferred by the petitioners and decide the same in accordance with law after hearing all parties within a period of eight weeks of receiving copy of this order.

5. All points raised on merits are kept open. The Writ Petition is disposed of in aforesaid terms. Rule accordingly. No costs.

[JITENDRA JAIN, J]

[A.S. CHANDURKAR, J.]