IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1281 OF 2024

Santosh Bishanram Tamata ...Petitioner
Versus
The Special Recovery And Sales Officer
Attached To Jana Seva Sahakari
Bank (Borivali) Ltd. ...Respondent

Mr. Ashish Dubey, a/w. Mr. Rahul Tripathi, *for the Petitioner.*

Mr. Tejaswi Nanche, i/b. Mr. Sanjay Anabhawane, f*or Respondent No.2.*

Mr. Mohit Jadhav, *Addl. GP for State, Respondent No.3.*

CORAM : SANDEEP V. MARNE, J.

Dated : 1 April 2024.

P.C. :

Challenge in the present petition is to the Order dated 4 October 2023 passed by the District Deputy Registrar, Co-operative Societies (IV), Mumbai rejecting Revision Petition of the Petitioner challenging the recovery certificate issued by the Assistant Registrar. It appears that for enforcement of the recovery certificate, attachment notice was issued by the Special Recovery and Sales Officer of the Respondent Bank to the borrower as well as to Petitioner, who was a guarantor to the credit facilities availed by the borrower from the bank. It is the grievance of the Petitioner that, in pursuance of the attachment notice, his bank as well as dmat accounts were frozen and the recovery officer recovered an amount of Rs.4.6 Lakhs from those accounts. The Petitioner has filed this petition complaining that the bank was deliberately not taking steps for auctioning the properties of the borrower and was unnecessarily recovered amounts from Petitioner-guarantor.

2. It appears that during pendency of the present petition, the bank entered into One Time Settlement (**OTS**) with the borrower and in view of the amount decided mutually in the OTS, the borrower has paid the said amount to the bank and accordingly the loan account has been closed.

3. Now the grievance of the Petitioner, as is sought to be espoused by his learned counsel, is that the borrower has settled loan account behind back of the Petitioner and the amount recovered from his account of Rs.4.6 Lakhs must be repaid to him. On the contrary, it is the contention of the learned counsel appearing for Respondent-Bank that while arriving at the amount under OTS, the amount recovered from Petitioner's account was factored in by the bank. Be that as it may. Petitioner-guarantor also had liability to repay the amounts due and payable under the credit facilities availed by the borrower. If any amount is recovered from the Petitioner in his capacity as guarantor,

which was actually payable by the borrower, the Petitioner will have to adopt appropriate remedies against the borrower for recovery of such amount. This Court cannot direct the bank to repay the amount recovered from the Petitioner's account.

4. The learned counsel appearing for Petitioner would submit that so far as the Recovery Officer has not issued the necessary communications to his bank for de-freezing of his bank as well as demat accounts. He would submit that despite interim Order passed by this Court on 1 December 2023 directing de-freezing of the accounts, the Recovery Officer has failed to issue necessary communication for de-freezing of the accounts. The learned counsel appearing for Bank would submit that since the loan account itself is closed, the Bank has no objection for de-freezing of the accounts of the Petitioner. In that view of the matter, the Bank shall issue necessary communications for de-freezing of all accounts of the Petitioner on or before 10 April 2024.

5. Beyond this, no other relief can be granted to the Petitioner in the present petition. Leaving open all the remedies to the Petitioner to pursue his claims against the borrower for recovery of any amount recovered from his account, the Writ Petition is **disposed of**.

SANDEEP V. MARNE, J.

KISHOR VISHNU KAMBLE
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Date: 2024.04.03 11:31:11 +0530