



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 40 OF 2024

SURESH PARATE S/O RAMKISAN PARATE

Vrs.

STATE OF MAHARASHTRA AND OTHERS

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri Radhe Agrawal, Advocate for petitioner.
Shri I. J. Damle, AGP for respondent Nos.1, 3 and 4.
Shri A. A. Bansod, Advocate for respondent No.2.
Shri S. B. Bissa, Adovcate for respondent No.5.

CORAM: ANIL S. KILOR, J.

DATE : 04/01/2024.

1. The order passed by the Additional District Magistrate, Nagpur under Rule 107(11)(d-1)(vi-a) of the Maharashtra Co-operative Societies Rules, 1961 (for short, "the Maharashtra Co-operative Societies Rules") allowing the application moved by the respondent No.2 directing the Tahsildar and Executive Magistrate, Nagpur City, Nagpur permitting the respondent No.2 to take possession with the help of Tahsildar and Executive Magistrate, Nagpur City, Nagpur with the police aid is under challenge in this writ petition.

2. From the record, following facts emerge as admitted facts:

a) The petitioner is a Borrower and respondent No.2 is Co-operative Society, who had provided financial assistance to the petitioner by sanctioning

the loan amounting to Rs.75,000/- in the year 1996.

b) The petitioner failed to discharge the debt and hence, the respondent No.2 - Society initiated the recovery proceedings under Section 101 of Act of 1960.

c) Thereupon, the District Deputy Registrar issued a Recovery Certificate on 30/05/2006 for recovery of loan amount along with interest.

d) On failure to recover the loan amount as per the Recovery Certificate, a proclamation of sale was issued and the property in question owned by the petitioner was auctioned by holding auction on 22/01/2010.

e) The respondent No.5 is Auction Purchaser. The auction was confirmed in favour of respondent No.5 and symbolic possession was not handed over to him.

f) The Auction Purchaser filed proceedings before the Civil Court i.e. Regular Darkhast for execution.

g) The said execution proceeding was disposed of by allowing the objection raised by the petitioner to its tenability.

h) Thereafter, the application was moved by the respondent No.2 under Rule 107 of the Co-operative Societies Rules which came to be allowed

and the impugned order was passed which is subject matter of challenge of this writ petition.

3. I have heard learned counsel for the respective parties.

4. Shri Agrawal, learned counsel for the petitioner submits that :-

a) Application under Rule 107 of the Maharashtra Co-operative Societies Rules was itself not maintainable.

b) The impugned order was passed by the Additional District Magistrate who has no authority in view of the fact that Collector has no power to delegate his powers to any other officer.

c) The application was time barred.

5. On the other hand, learned counsel for the respondent No.2 strongly opposed the writ petition by making following submissions :-

a) The application is tenable under Rule 107 of the Co-operative Societies Rules.

b) The suit and appeal challenging the auction proceedings, was dismissed for want of jurisdiction.

6. Shri Bissa, learned counsel for respondent No.5 supports the impugned order and submits that since 2010, because of hindrance created by the petitioner, the

Auction Purchaser could not enjoy the fruits of the decree though he has paid the entire amount at the time of confirmation of auction sale in the year 2010.

7. In light of rival submissions, let us examine the sustainability of the arguments made by the petitioner, in the eyes of law.

8. The provisions made under Rule 107(11) of the Maharashtra Co-operative Societies Rules relates to attachment and sale of the immovable property, which is relevant in this matter.

9. It is evident from Rule 107(1) of the Maharashtra Co-operative Societies Rules that, where the possession of the property is required to be taken by the Recovery Officer under the provisions of the said Rule, the Recovery Officer for the purposes of taking possession may request in writing to the Chief Metropolitan Magistrate or District Magistrate as within jurisdiction the property is situated, to take possession thereof and the Chief Metropolitan Magistrate or as the case may be, the District Magistrate shall on such request being made to him to take possession of such property and forward such property to the Recovery Officer.

10. Thus, this provision authorises the District Magistrate to take possession and forward such property to such Recovery Officer, if such request is made under the said provision.

11. Therefore, I do not find merit in the submissions made by learned counsel for the petitioner that the application is not tenable.

12. Further, Section 100 of the Maharashtra Co-operative Societies Act, 1960, makes it clear that the Collector can delegate his powers to any other officer not below the rank of Assistant Registrar and Deputy Registrar. In such circumstance, I do not find merit in the submissions of learned counsel for the petitioner that the Collector has no power to delegate his powers.

13. So far as limitation is concerned, under Section 107 of the Maharashtra Co-operative Societies Rules, there is no time prescribed for handing over the possession or to make application within specified time limit. In that view of the matter, reliance on Article 134 of the Limitation Act, 1963 is misplaced.

14. Accordingly, writ petition is **dismissed**.

[ANIL S. KILOR, J.]

LATER ON :

15. At this stage, the petitioner voluntarily undertakes to handover the possession, however, he is seeking 15 days time to give vacant possession.

16. The statement is taken as an undertaking to this Court.

17. The undertaking is accepted and it is made clear that no effect will be given to the order for 15 days. However, after expiry of 15 days, the protection, granted in view of the above undertaking, shall stand vacated automatically.

[ANIL S. KILOR, J.]

Choulwar