2025:BHC-AUG:6865

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

903 WRIT PETITION NO. 2410 OF 2025

M/S SUPERB AUTO BATTERIES THROUGH ITS PROP
MOHAMMAD HUSSAIN MAMMU SHAIKH AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY
AND OTHERS
...
Advocate for the Petitioner : Mr. Nitin Bhavar Patil LLP
Advocate And Legal Consultancy
AGP for Respondent-State : Mr. K. N. Lokhande
Advocate for Respondent Nos. 3 & 4 : Mr. N. P. Bangar
...

CORAM : KISHORE C. SANT, J.
Dated : March 04, 2025

PER COURT :-

1. Heard the parties. Taken up for final disposal at this stage.

2. A short question posed before this Court, in view of Section 98(a) of the Maharashtra Co-operative Societies Act, 1960, as to whether respondent-bank is justified in taking recourse to the recovery proceedings under Rule 107 of the Maharashtra Co-operative Societies Rules, 1960.

3. Section 98 of the Co-operative Societies Act reads as under :

"Every order passed [by the Official Assignee of a de-registered society under sub-section (3) of Section 21A or every order passed] by the Registrar or an [authorised officer] by him under section 88 or by the Registrar [or the Co-operative Court under section 95 [or by the Co-operative Court under section 96], every order passed] in appeal under the last preceeding section every order passed by a Liquidator under section 105, every order passed by the State Government in appeal against orders passed under section 105 and every order passed [by the State Government or by the Registrar in revision under section 154 or every order passed by the Registrar for recovery under this Act shall], if not carried out,-

(a) On a certificate signed by [the Official Assignee or] the Registrar [or the Co-operative Court] or a Liquidator, be deemed to be a decree of a Civil Court, and shall be executed in the same manner as a decree of such Court, or

(b) be executed according to the law and under the ruels for the time being in force for the recovery of arrears of land revenue:

***Provided** that, any application for the recovery in such manner of any such sum shall be made by the Collector, and shall be accompanied by a certificate signed by the Registrar [or Co-operative Court]. Such application shall be made within twelve years from the date fixed in the order and if no such date is fixed, from the date of the order."*

4. It is the case of the petitioners that, the respondent-bank obtained recovery certificates on 06.09.2003 under Section under Section 101 of the M.C.S. Act. By inviting attention to proviso "a" of Section 98. The learned Advocate submits that, the recovery certificates under Section 101 of the M.C.S. Act is deemed to be a decree and is to be executed in the same manner as a decree of such Court. He submits that, if it has to be taken, then the limitation applicable is

under article 136 of the Limitation Act. The respondents have now fixed upset price after limitation period has expired. He submits that, even, proviso to Section 98(b) of Co-operative Societies Act provides limitation of 12 years from the date stated in the order and if no such date is fixed, it is from the date of the order. He submits that, the present action is thus, barred by limitation as the notice itself is issued on 03.01.2025 and 13.01.2025 for taking over physical possession of the properties mortgaged with the banks. He pointed out that, earlier the petitioners had approached this Court by filing writ petition No. 3070 of 2023 challenging order fixing upset price. In the order dated 29th July, 2024, this Court, has specifically observed that the cause of action does not survive as the proposal to fix price was returned by the District Deputy Registrar as beyond limitation and no such proposal was pending on that date.

5. In view of the above, the learned Advocate submits that, the respondent-bank had accepted the said decision and it is only therefore, the petition was dismissed as there was no cause of action. He submits that, upset price is

now fixed and liberty was specifically granted to the petitioners to seek appropriate remedies. He submits that now, notices are issued on 03.01.2025 and 13.01.2025 by the Recovery Officer of the bank under Rule 107 of the M.C.S. Rules. He submits that, thus the action is clearly beyond limitation and deserves to be quashed and set aside.

5. Mr. Bangar, learned Advocate for respondent Nos. 3 and 4 pointed out from the reply that, pursuant to the recovery certificate, notice was issued by the Recovery Officer on 17.09.2008, to make final payment. The recovery proceeding is thus started within limitation. He further points out that, communication by the Recovery Officer of the Bank to the Tahsildar dated 27.04.2010 in both the cases for taking action on the same day, the Recovery Officer had also passed order attaching the properties. He thus submits that, the proceeding under Rule 107 is initiated well within limitation and no case is made out to entertain the petition.

6. The learned AGP prays for passing appropriate order.

7. The learned Advocate for the petitioners submits that, the respondent-bank has also initiated action under Securitisation Act. Once having resorted to remedy under Securitisation Act, it is not open for the petitioners to proceed under state enactment.

8. Having heard the sumbission, In view of Section 98 (a) and proviso to Section 98 (b) which provides limitation of 12 years for initiation of execution proceedings on the basis of 101 certificate. This Court finds that, the Recovery Officer had issued notice on 17.09.2008. Even, application was made to the Tahsildar by the Recovery Officer and attachment order was passed on 27.04.2010. In view of this, it cannot be said that, the execution is started beyond 12 years.

9. So far as submission in respect of central enactment and state enactment is concerned, there is no dispute that the central legislation prevails upon the state legislation. It is however only in cases where the provisions are inconsistent with each other. The Securitisation Act is central enactment where the procedure and forum are provided. It is within the power of state legislation to make act

as regards of Co-operative Societies. No case is made out to show inconsistency between these two acts. In view of all this, this Court does not find any substance in the submission of the petitioner.

10. Presently, only question is as to whether the bank has initiated execution proceeding within 12 years, it thus, appeared that the action is started within limitation. Thus, this Court finds that no ground is made out to call for interference in the impugned order. In view of the same, the writ petition deserves to be dismissed.

11. The learned Advocate for the petitioner submits that, the impugned order be stayed for six weeks. However, there was no stay granted by this Court. During the course of the argument, this Court has made it clear that, as to whether the petitioners are ready to deposit 50% amount of recovery certificate to show the bona fides. However, no readyness is shown. In view of all, this Court finds that, no case is made out to grant stay to the effect of this order. The request is therefore turned down.

(KISHORE C. SANT, J.)

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