2025:BHC-AUG:30601

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

27 WRIT PETITION NO.2390 OF 2025

VIJAYSHREE TRADING COMPANY PROP RAJESH RADHESHAM AGRAWAL AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for the petitioners : Mr.S.G.Dodya
AGP for Respondent-State : Mr.M.K.Goyanka
…

CORAM : ARUN R. PEDNEKER, J.
DATE : 03.11.2025

P.C. :

1] The undisputed facts in the present case in brief are that the petitioners have taken loan from the respondent Bank and that proceedings under Section 101 of the Maharashtra Co-operatives Act were initiated against the present petitioners by the respondent Bank and 101 certificate of recovery is also issued. It is also stated before this Court that the respondent Bank has also initiated proceedings under SARFAESI Act by issuing demand notice under Section 13 (2) of the said Act for taking physical possession of the mortgaged property. The petitioners have challenged the said proceeding by filing Securitation Application No.1/2021 before the DRT and in the said proceedings, the petitioners have obtained stay to the proceeding by making some deposit. The respondent no.5-Bank has filed an application under Section 107 (11) of the Maharashtra Co-operative Societies Act before the respondent no.2 for taking physical possession of the property of the petitioners. Both the proceedings are pending.

2] The learned counsel for the petitioners submits that the respondent-Bank ought not to have been initiated the proceedings of recovery under Rule 107 (11) of the Maharashtra Co-operative Societies Act as the respondent Bank has already initiated proceedings under SARFAESI Act before the Debt Recovery Tribunal at Aurangabad and the same properties are also part of the execution of the proceedings under SARFAESI Act. He further submits that the proceedings under Rule 107 (11) of the MCS Act, so also, proceedings under the SARFAESI Act could not have been simultaneously proceeded at least for execution. It is submitted that once properties are put for sale under SARFAESI Act for execution of recovery, the same properties ought not to have put simultaneous in auction under Rule 107 (11) (d) of the Maharashtra Co-operative Societies Act, in execution of 101 certificate.

3] *Per contra*, the learned counsel for the respondent-Bank submits that recovery certificate, which is at page 40 of the Petition, is in respect of agricultural property and the same cannot be executed under the SARFAESI Act.

4] In view of statement made by the respondent-Bank, the submission of the petitioners would not survive for consideration since as of now the respondent-Bank has only proceeded against the agricultural properties of the present petitioners in execution of the recovery certificate under Section 101 of MCS Act. If the respondents proceed against the petitioners qua other properties as mentioned in recovery proceedings under the SARFAESI Act, all contentions of the petitioners are kept open.

5] With the above observations, the Writ Petition is disposed of.

6] In view of disposal of Writ Petition, Civil Application No.5627/2025 is also disposed of.

[ARUN R. PEDNEKER]
JUDGE

DDC