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

WRIT PETITION NO.6887 OF 2014

Shri Mumbadevi Zilla Sahakari
Pat Sanstha Maryadit, Kopargaon,
Through its Manager,
At Shivaji Putala, Kopargaon,
Dist. Ahmednagar

....PETITIONER

VERSUS

1. The Divisional Joint Registrar,
Co-operative Societies, Nashik,
Division Nashik, 3rd Floor,
Gruha Nirman Bhavan,
Gadkari Chowk, Nashik
2. Shri. Sushant Hiranman Wadile,
The Recovery and Sale Officer,
Shri. Mumbadevi Zilla Sahakari
Pat Sanstha Maryadit, Kopargaon,
Tq. Kopargaon, Dist. Ahmednagar
3. Vijay s/o Shamrao Bhokare,
Age: 56 years, Occu: Service,
R/o. Shradha Nagari, Indirapath,
Tq. Kopargaon, Dist. Ahmednagar
4. Sanjay s/o Shamrao Bhokare,
Age: 54 years, Occu: Service,
R/o. Bhokare Building, Parvati Sadan,
Tq. Kopargaon, Dist. Ahmednagar
5. Satish s/o Shamrao Bhokare,
Age: 52 years, Occu: Service,
R/o. Shrushti Apt., Vivekanandnagar,
Tq. Kopargaon, Dist. Ahmednagar

....RESPONDENTS

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(2)

Mr S. V. Adwant, Advocate for petitioner
Ms A. S. Mantri, A.G.P. for respondent No.1
Mr C. V. Korhalkar, Advocate for respondent No.2
Mr Sanket S. Kulkarni, Advocate for respondent Nos.3 to 5

**AND
WRIT PETITION NO.9663 OF 2014**

- 1) Vijay s/o Shamrao Bhokare,
Age: 56 years, Occu: Agriculture,
R/o. Shradha Nagari, Indirapath,
Tq. Kopargaon, Dist. Ahmednagar
4. Sanjay s/o Shamrao Bhokare,
Age: 54 years, Occu: Agriculture,
R/o. Bhokare Building, Parvati Sadan,
Tq. Kopargaon, Dist. Ahmednagar
5. Satish s/o Shamrao Bhokare,
Age: 52 years, Occu: Service,
R/o. Shruti Apt., Vivekanand nagar,
Tq. Kopargaon, Dist. Ahmednagar

....PETITIONERS

VERSUS

- 1) Shri Mumbadevi Zilla Sahakari
Pat Sanstha Maryadit, Kopargaon,
Through its Manager,
At Shivaji Putala, Kopargaon,
Dist. Ahmednagar
- 2) Special Recovery Officer,
Through Shri. Sushant V. Wadile,
R/o : Shri. Mumbadevi Jilha Nagari
Sahakari Pat Sanstha, At Kopargaon,
Tq. Kopargaon, Dist. Ahmednagar
- 3) Divisional Joint Registrar,
Co-operative Societies,
Nashik Division, Nashik

....RESPONDENTS

(3)

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Mr Sanket S. Kulkarni, Advocate for petitioners
Mr S. V. Adwant, Advocate for respondent No.1
Mr C. V. Korhalkar, Advocate for respondent No.2
Ms A. S. Mantri, A.G.P. for respondent No.3

CORAM : PRAFULLA S. KHUBALKAR, J.

RESERVED ON : 30th April, 2025

PRONOUNCED ON : 18th July, 2025

JUDGMENT :-

1. Heard. Rule. Rule made returnable forthwith. Heard finally by consent of the parties.

2. The petitioner in Writ Petition No.6887/2014 has raised challenge to the order dated 20/05/2014, passed by respondent No.1/ Divisional Joint Registrar, Co-operative Societies Nasik and the same order is the subject matter of challenge in Writ Petition No.9663/2014 to the extent of challenge to the direction of payment of 'surcharge' of Rs.2,46,000/- to the respondent/Society. The entire controversy involved in these two petitions is with respect to the recovery proceedings initiated by Shri Mumbadevi Zilla Sahakari Patsanstha Maryadit, Kopargaon, Dist. Ahmednagar (hereafter referred to as the Society) against the borrowers who are the legal representatives of one late Smt. Indumati Shamrao Bhokare. Since both these petitions arise

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out of same factual backgrounds, although raising challenge to the impugned order from different perspectives, the petitions are decided by way of a common judgment and order.

3. The factual background leading to the filing of the instant petitions is briefly stated as under :-

- (i) On 25/02/2003, one Smt. Indumati Shamrao Bhokare had availed loan of Rs.6,00,000/- from the Society against security of her property bearing land Survey No.57/21 by way of registered mortgage executed in favour of the said Society.
- (ii) On 12/09/2005, original borrower Indumati died leaving behind Vijay Shamrao Bhokare, Sanjay Shamrao Bhokare and Satish Shamrao Bhokare, who are arrayed as respondent Nos.3 to 5 in Writ Petition No.6887/2014 (and are petitioners in Writ Petition No.9663/2014) and also one daughter who is not arrayed as a party.
- (iii) The Society initiated proceedings under Section 101 of the Maharashtra Co-operative Societies Act, 1960 (for short 'the MCS Act') for recovery of amount of Rs.11,79,631/-.

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- (iv) On 10/09/2007, the Assistant Registrar, Co-operative Societies, Kopargaon issued a recovery certificate in favour of the Society and against the legal representatives of the borrower.
- (v) In the year 2007, the said legal representatives filed Special Civil Suit No.112/2007 before the Civil Judge Junior Division, Kopargaon, seeking declaration and injunction. On 13/02/2007, the Trial Court granted temporary injunction and restrained the Society from executing the recovery certificate. Feeling aggrieved by this, the Society preferred Writ Petition No.1356/2008 before this Court, wherein by order dated 25/11/2008, the special civil suit was ordered to be disposed of and the Assistant Registrar, Co-operative Societies was directed to decide the matter afresh.
- (vi) On 18/02/2009, the Assistant Registrar, Co-operative Societies, Kopargaon issued a fresh recovery certificate in favour of the Society.
- (vii) The legal representatives of the borrower thereafter filed Dispute No.163/2009 before the Co-operative Court,

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Kopargaon, raising challenge to the recovery certificate. On 07/04/2009, the Cooperative Court, Kopargaon granted interim injunction, restraining the Society from recovering loan amount.

(viii) The Society then filed Writ Petition No.2776/2009 before this Court, which came to be allowed. Simultaneously, the legal representatives of the borrower had filed a separate writ petition bearing Writ Petition No.3457/2009, which was summarily dismissed on 18/09/2009.

(ix) The legal representatives of the borrower then filed Letters Patent Appeal No.194/2009 before this Court, which came to be dismissed by order dated 11/03/2010.

(x) In this background, Mrs Vaishali Gharge, who is one of the legal representatives of the borrower (sister of respondent Nos.3 to 5 in Writ Petition No.6887/2014) filed a suit bearing Special Civil Suit No.98/2010 seeking a share in the mortgaged property and for partition and separate possession of her share, in which the Society was impleaded as a party defendant. An injunction application filed in this suit was

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rejected by order dated 03/12/2010. In this background, the mortgaged property was put to auction, which was challenged by the legal representatives of the borrower vide Writ Petition No.85/2011 and by orders passed by this Court, the Society was allowed to recover an amount of Rs.24,45,778/-. The Society thereafter filed Letters Patent Appeal No.219/2011 which was allowed by the Division Bench of this Court by order dated 03/08/2011. Thereafter, on 07/02/2012, the recovery officer conducted plot-wise sale of the mortgaged property.

- (xi) Raising challenge to the reserve price of the mortgaged property, the legal representatives of the borrower filed Writ Petition No.1348/2012 which was later on withdrawn by them seeking liberty to file proceedings under Rule 107 (13) of the Maharashtra Co-operative Societies Rules 1961 (for short 'the MCS Rules').
- (xii) On 16/07/2012, an order came to be passed by the Assistant Registrar rejecting the objection of the legal representatives of the borrower for sale of plot Nos.16 and 18.

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- (xiii) On 27/11/2012, the legal representatives of the borrower then filed a Revision Application No.163/2012 before the Divisional Joint Registrar, Co-operative Societies, Nashik/respondent No.1, which came to be partly allowed by order dated 15/10/2013 and the matter was remanded to respondent No.2/Recovery Officer.
- (xiv) Feeling aggrieved by the order passed by the Divisional Joint Registrar, the Society filed Writ Petition No.10259/2013 which was disposed of, by which the order of remand was set aside and the Divisional Joint Registrar was directed to decide the matter finally after considering all the claims.
- (xv) After remand, the Divisional Joint Registrar passed final order dated 20/05/2014, by which, the revision application filed by the legal representatives of the borrower came to be allowed. By this order the proclamation of re-auction sale of the mortgaged property issued by the Special Recovery Officer of the Society came to be set aside and the legal representatives of the borrower were directed to pay an amount of Rs.2,46,000/- as 'surcharge' to the Society.

(xvi) Feeling aggrieved by this order, the Society has filed instant Writ Petition No.6887/2014 and the legal representatives of the borrower (Vijay Shamrao Bhokare, Sanjay Shamrao Bhokare and Satish Shamrao Bhokare) filed Writ Petition No.9663/2014 raising challenge to the direction for payment of 'surcharge'.

4. In the backdrop of this factual setup, the controversy about challenge to the order passed by the Divisional Joint Registrar, falls for consideration of this Court.

5. The Society has filed **Writ Petition No.6887/2014** on 28/07/2014, in which the following **prayer clauses** are put forth :-

“[A] Writ Petition may kindly be allowed by making the rule absolute

[B] By issuing an appropriate writ, order and direction, the order dated 20.5.2014 passed by the respondent No.1 in Revision Application No.163/2012 be quashed and set aside and the revision filed be dismissed.

[C] During the pendency of this writ petition, further proceedings the operation and implementation of the order dated 20.5.2014 passed by the respondent No.1 in Revision Application No.163/2012, be kindly stayed.

[D] Any other relief to which the petitioner is entitled in the circumstances of the case be granted and oblige.”

6. The legal representatives of the borrower have filed **Writ Petition No.9663/2014** on 22/09/2014, in which following **prayers** are put forth :

“A) Call record and proceedings of the matter.

B) By issuing appropriate writ order, direction, quash and set aside the order dated 20.05.2014 to the extent directing payment of surcharge of Rs. 2,46,000/- to the respondent society passed by the learned Divisional Joint Registrar, Co-Operative Society Nashik, Division Nashik by way of surcharge.

C) By issuing appropriate writ, order, direction, the respondent no.1 & 2 may kindly be directed to release the land of the petitioner i.e. Survey no.57(1A+2A)/2 admeasuring 9057.5 square meters at Jeur Patoda, Taluka Kopargaon from attachment as the petitioner has paid the entire amount under award alongwith the costs and interest.

D) By issuing appropriate writ, order, direction, it may be declared that as per the judgment of the Hon’ble Division Bench in LPA No.219/2009, the petitioner has paid the entire amount as per the recovery certificate and the respondent no.1 society has no right to recover any further amount.

E) Pending hearing & final disposal of the writ petition the respondent no.1 & 2 may kindly be directed to release the land of the petitioner i.e. Survey no.57(1A+2A)/2 admeasuring 9057.5 square meters at Jeur Patoda, Taluka Kopargaon from attachment.

F) Pending hearing & final disposal of the writ petition stay to the order dated 20.05.2014 to the extent directing payment of surcharge of Rs. 2,46,000/- to the respondent society

passed by the learned Divisional Joint Registrar Co-Operative Society Nashik, Division Nashik.

G) Grant ad-interim relief in terms of prayer clause "E" & "F" as above.

(H) Award cost to the petitioner.

I) And pass any other order this court fits deem and proper in the peculiar facts and circumstances of the case."

7. It has to be noted that the impugned order is passed by the Divisional Joint Registrar after elaborately considering the contentions raised by the Society as well as the legal representatives of the borrower, wherein the Society raised claim for recovery of all the expenses incurred by it in the entire process of recovering the amounts through the series of litigations, whereas the legal representatives of the borrower raised contentions refuting the claim of the Society for recovery of any additional amount and took a specific stand that the entire outstanding loan amount was already paid from time to time and the claims for other ancillary amounts cannot be raised vide proceedings under Section 101 of the MCS Act. On giving elaborate consideration to all these aspects, the Divisional Joint Registrar directed the legal representatives of the borrower to pay only the amount of surcharge.

8. It is significant to note that the Divisional Joint Registrar, after referring to all the contentions of the parties has specifically inferred that the claims sought to be raised by the Society are not part and parcel of the recovery and the Society was never agitated before the Assistant Registrar, Co-operative Society earlier, specifically observing that the Society has recovered all the money as per the recovery certificate and still the society has shown an amount of Rs.13,00,000/-to be recovered by way of expenses. In this regard, it is ultimately concluded that, if at all the Society wants to recover this amount, it can approach appropriate forum/Court. These inferences are found in paragraph No.54 of the impugned order, which is reproduced below :-

“54. Except the surcharge RS. 2, 24, 843/-, the above expenses shown are not included in recovery certificate. These are all new issues can not be decided under section 154 of the Maharashtra Cooperative Societies Act, 1960 before me as these are not at all part & parcel of recovery certificate issued and they never agitated these issues before Assistant Registrar, Cooperative Societies, Kopargaon, Taluka Kopargaon, District Ahmednagar. As per the recovery certificate, the respondent No. 1 society has recovered all the money. The society has shown RS. 13, 00, 000/- lakh to be recovered is all expenses shown above which is not included in recovery certificate. And if at all society want to recover this amount they can approach the appropriate forum/Court. It is further observed that while issuing letter dated 16/07/2012 respondent No. 1 has not scrupulously followed the provisions of Rule 107 (13) (i) (a) (b),

(ii) and Rule 107 (15) of the Maharashtra Cooperative Societies Rules, 1961. In this view of the aforesaid discussions, the other contentions as raised by respondents during the course of hearing in the present matter can not be accepted and considered, since respondents have not properly justified the same. Therefore, I think it proper to interfere with the letter dated 16/07/2012 issued by respondent No. 2 Special Recovery Officer of respondent No. 1 cooperative credit society.”

9. As such, it is clear that, all the claims raised by the Society on the pretext of expenses towards litigation/travelling/auction were not claimed before the Assistant Registrar, Co-operative Societies, and there is no justification of the quantified amounts. It is pertinent to note that, in view of the claims being admitted to be raised before the Divisional Joint Registrar for the first time, which were found to be unjustified, the Divisional Joint Registrar has kept open the claims by observing that, if at all Society wants to recover this amount, then it can approach the appropriate forum/Court. Under this background, the Society has filed writ petition (Writ Petition No.6887/2014), thereby raising challenge only to the impugned order, without mentioning any prayer for award of compensation, much less by paying any Court fees for alleged claim for recovery for money.

10. Pertinent to note that, in the petition filed by the Society (Writ Petition No.6887/2014), a challenge is raised to the impugned

order dated 20/05/2014 vide prayer clause (B), with a prayer to quash and set aside the said order. While narrating the factual aspects, the Society has elaborately stated certain amounts, alleged to have been spent at various stages during the process of recovery proceedings and by categorically mentioning certain figures, it is stated that the Society has spent total amount of Rs.39,62,755/- and after recovery of various amounts from time to time, the net recovery as on 02/04/2013 is Rs.16,12,755/-. It is pertinent to note that the petition simply raises a challenge to the impugned order and there is no prayer for recovery of any amount, much less, the alleged amount of Rs.16,12,755/-.

11. Advocate Mr Adwant, learned counsel for the Society (petitioner in Writ Petition No.6887/2014 and respondent No.1 in Writ Petition No.9663/2014) made elaborate submissions to demonstrate that the Society was required to spend huge amount from time to time in the series of litigations for recovering its own dues. He invited attention of the Court to the entire sequence of events narrating the details of each of the litigations and submitted that the Society is entitled for recovery of all the costs, expenses, court fees, travelling expenses, advocate's fees, auction expenses alongwith interest, surcharge and commission, since the Society was compelled to spend

all these amounts, as it was compelled to contest these litigations. In support of his submissions that the society is entitled to recover all these expenses in the proceedings under Section 101 of the MCS Act, he invited attention of the Court to various provisions of MCS Act, Code of Civil Procedure, Civil Manual, etc., particularly Sections 103, 131, 133, 135, 138, 155, 156 and 165 of MCS Act and provisions of Sections 35, 35-A, 35-B, Order XX Rule 6(2) and 6(3), Order XX-A of the Code of Civil Procedure alongwith clause 283 and 284 of the Civil Manual.

12. Apart from referring to these provisions, he has referred to the commentaries of various authorities on the subject of concept of costs as stated in Black's Law Dictionary, commentaries by P. Ramanatha Aiyar's the Major Law Lexicon and a few judgments of the Canadian Court of Appeal and Halsbury's Law of England, which are also mentioned in the notes for consideration dated 04/04/2025, submitted by him.

13. Although learned counsel for the Society has referred to the above mentioned provisions and the judicial trends on the subject of imposition of costs, it has to be noted that the controversy involved in the petition is with respect to entitlement of the Society for award of

costs/expenses of litigation/travelling allowance, etc in the proceedings under Section 101 of the MCS Act.

14. Advocate Mr Adwant, learned counsel for the Society vehemently argued that there is an utter non compliance with Sub Rule 13 of Rule 107 of the MCS Rules 1961 and the Society was deprived from recovering its dues. He further submitted that the Society is empowered according to its bye-laws to recover each and every amounts towards its dues and there is no restriction to recover only principal amounts. He vehemently submitted that the borrowers utilized the loan amounts and the Society was compelled to spend huge amounts only for the purpose of recovery of its dues, which undisputedly involved huge expenses towards litigation costs, travelling expenses, expenses for conducting auction and many other ancillary amounts. Referring to the bye-laws of the Society, he has submitted that the Society is empowered and the borrowers are duty bound to compensate all the expenses. He also submitted that the legal representatives of the original borrower who have inherited the property are under a pious obligation to repay the debts of original borrower i.e. late Smt. Indumati Shamrao Bhokare.

15. In order to highlight his submissions on the entitlement of the Society to recover additional amounts by way of costs, compensatory costs, travelling allowance, litigation expenses, etc., he has relied upon the following case laws, and while referring to few paragraphs from these judgments, he has submitted that the Society was required to spend huge amount for recovering its own dues and therefore, by applying the analogy of the principles laid down in the judgments, the additional amounts in the nature of compensatory costs and other expenses need to be awarded to the Society. He has relied on the following judgments :-

(I) Akar Plastics Vs. Rajgurunagar Sahakari Bank Ltd. & others, (2003) 105 BOMLR 339

(II) Shri. Dilipkumar Hirachand Jain Vs. Dena Bank, WP/1787/2008 Bombay High Court, Bench at Aurangabad

(III) Dnyandeo Sabaji Naik and Anr. Vs. Pradnya Prakash Khadekar and others, (2017) 5 SCC 496

(IV) Union of India and others Vs. Pirthwi Singh and others, (2018) 16 SCC 363

(V) Charu Kishore Mehta Vs. Prakash Patel and others, 2022 SCC OnLine SC 1962

(VI) *Vijay Shivaji Kokate Vs. Divisional Joint Registrar, Co-operative Societies, Nashik and others*, 2007 SCC OnLine Bom 27

(VII) *Shiv Kumar Sharma Vs. Santosh Kumari*, (2007) 8 SCC 600

(VIII) *Salem Advocate Bar Association T.N. Vs. Union Of India*, (2005) 6 SCC 344

(IX) *Ashok Kumar Mittal Vs. Ramkumar Gupta*, (2009) 2 SCC 656

(X) *Vinod Seth Vs. Devinder Bajaj and anr.* (2010)8 SCC 1

(XI) *Sanjeev Kumar Jain Vs. Raghubir Saran Charitable Trust and others*, (2012) 1 SCC 455

(XII) *Ramrameshwari Devi and others Vs. Nirmala Devi and others*, (2011) 8 SCC 249

(XIII) *National Textile Corporation Limited Vs. Kunj Bihari Lal*, 2010 (118) DRJ 543.

These judgments deal with various situations in which the Courts have awarded costs in the facts of those cases and some of the judgments also deal with the factors which need to be considered while awarding costs. However, the issue involved in these petitions is with respect to claim for costs/compensation on account of the series of

litigations contested by the parties with respect to recovery certificate under Section 101 of the MCS Act. The general principles of law laid down in these judgments are not disputed, however, in view of the peculiar facts of the case in hand and in view of the prayers of these petitioners, the citations relied upon are of no assistance to the petitioner/Society.

16. As regards Writ Petition No.9663/2014, which is filed by the legal representatives of the original borrower challenging the award of surcharge, Advocate Mr Adwant appearing for the Society made vehement submissions to oppose the petition. He submitted that the petitioners have failed to raise any substantial ground demonstrating any illegality in the order directing payment of surcharge of Rs.2,46,000/-. He submitted that the Society is entitled for award of the amount of surcharge in accordance with various Government Resolutions and Circulars and in particular, he relied upon the Government Resolution dated 06/11/1985, which has provided that, a Society is empowered to recover outstanding amount of loan and additionally in accordance with Section 156 of the MCS Act, the Society is empowered to recover the amount for execution of the award. While referring to this Government Resolution, he submitted that the Society is entitled for surcharge at different rates

depending upon the stages at which the amount is recovered. In order to justify the direction for grant of surcharge, he also relied on other Government Resolutions including Government Resolution dated 18/07/1985 and 27/02/1992, which are tendered across the bar. He, therefore, submitted that the direction to grant surcharge @ 6% on the actual recovered amount is absolutely justified.

17. Advocate Mr Sanket Kulkarni, learned counsel for the legal representatives of the original borrower (petitioners in Writ Petition No.9663/2014 and respondent Nos.3 to 5 in Writ Petition No.6887/2014) strongly opposed the contentions raised by learned counsel for the Society. His primary contention for opposing the petition filed by the Society (Writ Petition No.6887/2014) is that, when the impugned order passed by the Divisional Joint Registrar records categorical findings about irregularity/illegality in the auction sale, there is no question of ordering any other recovery against the legal representatives of the borrower. He has vehemently submitted that the borrowers have paid the entire amount of outstanding dues and the proclamation of re-auction sale dated 27/12/2012 is itself set aside by the Divisional Joint Registrar and therefore, there is no question of even directing payment of surcharge. He has submitted that, although the impugned order observes that the Society is entitled to approach

the appropriate forum/Court for seeking recovery of all the additional amounts in the nature of costs, litigation expenses, travelling expenses and other amounts, the same cannot be recovered by way of instant petition. By inviting attention to the prayer clause in Writ Petition No.6887/2014, he vehemently submitted that there is no prayer for recovery of any amounts in this petition and the only prayer is to quash and set aside the order dated 20/05/2014, passed by the Divisional Joint Registrar. He, therefore, would submit that this petition under Article 227 of the Constitution of India cannot be treated to be in the nature of civil suit for recovery and the Society cannot claim any relief beyond scope of Article 227 of the Constitution of India.

18. As regards the contentions of the learned counsel for the Society to claim amounts over and above the amounts of recovery certificate, Advocate Kulkarni, counsel for borrowers relied on the Government Circular in the nature of order under Section 156 read with Rule 107 of the 1961 Rules, dated 06/04/2018 and submitted that the maximum amount that could be claimed by way of costs of process is quantified at Rs.1,50,000/- and in no case the Society can claim any amount over and above this. He thus submitted that, if at all the Society can establish its entitlement to claim an amount towards costs of process, this Circular dated 06/04/2018 can serve as a guidelines in

the proceedings initiated by the Society before appropriate forum/Court. He submitted that, although the Divisional Joint Registrar has observed that the Society is entitled to recover the costs by way of appropriate proceedings, the same cannot at all be claimed by way writ petition under Article 227 of the Constitution of India.

19. As regards Writ Petition No.9663/2014, which is filed by the legal representatives of the borrower, primary contention of Advocate Mr Sanket Kulkarni is that the Society is not entitled for award of any surcharge, since the auction sale itself has been set aside by the Divisional Joint Registrar. He submitted that the impugned order is passed in the revision application which was filed by the borrower and the Society is not entitled to claim any relief in those proceedings and the award of surcharge by way of the impugned order is beyond jurisdiction of the Divisional Joint Registrar. This apart, he submitted that the impugned order does not mention any provision of law on the basis of which the surcharges were to be paid. On the strength of these submissions, he submitted that, in view of the payment of entire dues of the Society, which is not disputed, respondent Nos.1 and 2 in Writ Petition No.9663/2014 i.e. Shri. Mumbadevi Zilla Sahakari Patsanstha Maryadit, Kopargaon and the Special Recovery Officer need to be directed to release the land of the

petitioners i.e. Survey No.57(1 Acre + 2 Acre)/2 admeasuring 9057.5 sq. mtrs. at Jeur Patoda, Tq. Kopargaon from attachment. He submitted that, in absence of any entitlement of the Society to recover any additional amount, there is no impediment to release this land of the petitioners.

20. In support of his submissions, Advocate Mr Sanket Kulkarni relies upon the judgments in the matters of **Satguru Construction Co. Pvt. Ltd. and others Vs. Greater Bombay Co-operative Bank Ltd., 2007 (5) BCR 810** and **Kranti Associates Private Limited and another Vs. Masood Ahmed Khan and others, (2010) 9 SCC 496.**

21. In the light of above mentioned submissions advanced by the learned counsel for the Society and learned counsel for the legal representatives of the borrower, the controversy now falls for my consideration.

22. Although the parties have advanced their elaborated arguments, the controversy revolves around the entitlement of the Society to claim any amount over and above the recovery certificate. It is pertinent to note that the Society has claimed its entitlement for amount for costs/litigation expenses, future interest, travelling

expenses, etc. as stated in paragraph No.29 of Writ Petition No.6887/2014, however, the prayer clause contains prayer about challenge to the impugned order only. There is no prayer seeking award of any amounts towards compensation or costs or litigation expenses as orally claimed.

23. While narrating the sequence of events and the background facts of the instant petitions, it is pointed out that the Society and the legal representatives of the borrower have contested a series of litigations involving challenge to the recovery certificate under Section 101 of the MCS Act, auction sale, maintainability of proceedings, etc. It cannot be forgotten that the proceedings were contested by both the sides. The orders passed in these litigations also show that there were certain irregularities and illegalities on the part of both the sides, and accordingly, the orders were passed in favour of either of the parties at various stages. The recovery certificate issued against borrowers were found to be erroneous and the legal representatives were required to initiate proceedings and the Society was also required to contest the litigations for recovering its own debts. In these petitions under Article 227 of the Constitution of India, the illegality of the impugned order passed by the Divisional Joint

Registrar is required to be examined. Even the challenge in Writ Petition No. 9663/2014 is limited to the direction to pay surcharge and consequent direction for release of the land. As such, the scope of these writ petitions is limited to examine the challenge to the impugned award and need not be enhanced to delve deep into area of calculating the amount of compensation or costs to be awarded. It is pertinent to note that, although learned counsel for the Society has referred to various provisions on various Statutes dealing with award of costs in MCS Act, CPC and Civil Manual, however, apart from the chart mentioned in paragraph No.29 in Writ Petition No.6887/2014, there is no material in the nature of evidence to establish these entitlements. Although it may be true that the Society was required to contest series of litigations for the purposes of recovering its own dues, most crucial issue arises, as to whether while entertaining the petition under Article 227 of the Constitution of India, claim for costs, which is not even prayed, need to be granted. Although the learned counsel for the Society has relied upon various case laws as mentioned above, however, none of the judgments deal precisely with the issue of award of costs, litigation expenses for recovery under Section 107 of the MCS Act, while deciding the petition under Article 227 of the Constitution of India. The judgments relied upon by the learned

counsel for the Society deal with general principles of law with respect to award of costs, however, it has to be noted that principles related to award of general damages while deciding the civil suit need not be applied while deciding the petition under Article 227 of the Constitution of India, which raises challenge only to the impugned order. It is also crucial to note that the provisions with respect to award of costs can be invoked by successful party at any given case. In the instant cases, the impugned order is passed in the revision application which is filed by the legal representatives of the borrower, which is allowed and while raising challenge to this order, the Society has claimed entitlement for award of costs. In the peculiar facts of the instant cases, and considering the entire contentions, I am of the considered view that the claim raised by the Society for award of costs, litigation expenses, travelling expenses, etc, is unsustainable.

24. Although the Divisional Joint Registrar has observed that the Society is entitled to raise the claim for these amounts before appropriate forum/Court, I am of the considered view that the claim raised by the Society in Writ Petition No.6887/2014, when considered in the light of the prayers made by the Society, cannot at all be granted. The Society can have independent cause of action to raise claim for

costs or compensation, however, in this petition, raising challenge to the order passed by the Divisional Joint Registrar, the requests for award of costs, without any prayer in the petition cannot be entertained.

25. Although Circular dated 06/04/2018 issued by the Commissioner of Co-operative Societies and Registrar of Co-operative Societies, Maharashtra providing for outer limit of Rs.1,50,000/- is placed on record, it is pertinent to note that this can be a guiding factor in case where the claim is raised by the Society by way of civil suit or similar such proceedings. The Society has not even raised any claim on the basis of this Circular in its petition and as such, this circular is of no assistance in the peculiar facts of this case.

26. The issue about entitlement of the Society for claiming of the amounts spent towards litigation expenses, costs, travelling expenses and other ancillary amounts is indeed of vital importance, since the Society is required to spend these amounts for recovery of its own dues and the litigations are required to be contested on account of failure of the borrower to pay the loan amounts. However, this issue will have to be decided on the basis of pleadings and evidence in an appropriate case, either in a civil suit or in similar such proceedings.

The case in hand being the writ petitions under Article 227 of the Constitution of India, cannot be considered to be appropriate forum to award costs, expenses, that too, in absence of any prayer in that regard. As such, the entitlement of the Society for raising of these claims is though not disputed, the same cannot be granted in this petition.

27. As regards Writ Petition no.9663/2014 is concerned, it is pertinent to note that, by this petition, the legal representatives of the borrower have challenged the impugned order to the extent of directing payment of surcharge of Rs.2,46,000/- to the Society. As regards the claim for surcharge is concerned, it has to be noted that the policy of the Government is reflected in various Government Resolutions, including Government Resolution dated 06/11/1985, which provides the percentage of surcharge according to the stages at which it can be claimed. This Government Resolution and similar such resolutions are purported to have been issued in accordance with provisions of Section 156 of the MCS Act. Pertinent to note that, as regards the order of granting surcharge, there is a foundation in the nature of Government Resolution based on a provision of law. It provides for award of surcharge at the specific rates. It has to be noted that this amount by way of surcharge is over and above the amount

claimed by way of recovery of loan and while considering the claims raised by the Society, the Divisional Joint Registrar has consequently awarded surcharge @ 6% on actual recovered amount. The petitioners (borrowers) have raised challenge to the direction to pay the amount of surcharge, however, the grounds mentioned in the petition are general in nature, simply questioning the provisions of law on the basis of which surcharge is directed to be paid. The impugned order records that the surcharge is directed to be paid in accordance with the Government Resolution in force, which is issued in tune with the policy of the Government. As such, the challenge to the award of surcharge is not substantiated.

28. In the light of above mentioned factual and legal aspects, I am of the considered opinion that the petitioner/Society has failed to establish its entitlement for claiming the additional amount by way of costs, litigation expenses, travelling expenses and other ancillary charges in the petition under Article 227 of the constitution of India vide Writ Petition No.6887/2014 and the petition is liable to be dismissed.

29. Having regard to the submissions with respect to challenge to the award of surcharge, it has to be inferred that the

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petitioners in Writ Petition No.9663/2014 have also failed to demonstrate any illegality and therefore, their petition also needs to be dismissed. However, in view of the fact that the amount recoverable pursuant to recovery certificate under section 101 of MCS Act is already recovered by the Society as a consequence thereof, the legal representatives of the borrower (petitioners in Writ Petition No.9663/2014) are entitled for release of their property, if it is under attachment, by way of appropriate proceedings.

30. In the light of above, Writ Petition No.6887/2014 is dismissed. Pending civil application also stands disposed of. No order as to costs.

31. Similarly, Writ Petition No.9663/2014 is dismissed. No order as to costs.

32. Rule is discharged.

(PRAFULLA S. KHUBALKAR, J.)

sjk