AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.17563 OF 2025

Sumeet G. Bachewar … Petitioner

V/s.

Shivkrupa Sahakari Patpedhi Limited & Ors. … Respondents

ATUL GANESH KULKARNI
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Date: 2025.12.24 13:47:57 +0530

Mr. Kishore Patil with Ajay S. Patil, Akash V. Ovhal and Akshada Nagale for the petitioner.

Mrs. D.S. Deshmukh, AGP for respondent Nos.2 and 5-State.

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 24, 2025

P.C.:

1. The writ petition challenges an inaction by special recovery officer in failing to adjudicate petitionser's lawful grievance. The challenge is raised by a person who is neither a borrower nor a guarantor of the society. His case is simple. He purchased the property before any recovery action. On the date of his purchase, the property was not mortgaged to the society. No attachment order existed. No charge or right in favour of the bank or any other person was created. These facts are supported by the record placed before the Court. On this basis, he filed an objection on 14 July 2025 before the Special Recovery Officer.

2. Despite the petitioner not being a borrower or guarantor, his property was still attached. This prompted him to formally object

to the attachment by filing an application dated 14 July 2025. The objection bears the acknowledgment of the Special Recovery Officer. This shows that the authority had notice of the objection. However, instead of deciding it, the Special Recovery Officer kept it pending. During this period, he moved the Chief Judicial Magistrate seeking delivery of possession. Acting on that request, the Chief Judicial Magistrate passed an order for possession. The sequence of events is clear from the record and is not disputed.

3. When a person asserts, with supporting material, that he is neither a borrower nor a guarantor, and further shows that he purchased the property before any attachment, the law requires the authority to first examine that claim. The Recovery Officer cannot ignore such an objection. Taking possession without deciding the objection would cause serious prejudice. Rule 107 itself contemplates consideration of objections before coercive steps are taken. Therefore, unless the objection is adjudicated and rejected, the Recovery Officer has no authority to take possession of the property.

4. For these reasons, the objection filed by the petitioner cannot remain undecided. The Special Recovery Officer must apply his mind and pass a reasoned order on it. Until that decision is taken, possession cannot be disturbed. Hence, the Special Recovery Officer is directed to decide the petitioner's objection within two weeks from the date a copy of this order is produced. Till such decision is rendered, the petitioner's possession of the property shall not be taken.

5. The writ petition is disposed of in the above terms. No order as to costs.

(AMIT BORKAR, J.)