

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8941 OF 2024

1. Santosh Rajaram Kelkar & Anr.

....*Petitioners*

: *Versus* :

1. State of Maharashtra & Ors.

....*Respondents*

Mr. Santosh R. Kelkar, *Petitioner in person.*

Ms. Kavita N. Solunke, *AGP for Respondent Nos.1, 4 and 5-State.*

Mr. Prakash Nikam, *for Respondent No.3-SRO.*

Mr. Ram Kulkarni, Deputy Registrar, Co-operative Societies, Dombivali, District-Thane present in Court.

CORAM : SANDEEP V. MARNE, J.

Dated : 2 January 2025.

P.C. :

1) Rule. Rule made returnable forthwith. With the consent of the parties, petition is taken up for hearing and final disposal.

2) The petition challenges order dated 22 March 2024 passed by the Divisional Joint Registrar, Konkan Division, Navi Mumbai by which Revision Application filed by the Petitioners has been rejected on account of non-compliance with the provisions of Section 154(2A) of the Maharashtra Co-operative Societies Act, 1960 (**Act of 1960**).

3) I have heard Petitioner No.1 in person, Ms. Solunke, AGP for State and Mr. Nikam for Respondent No.3.

4) After having heard the Petitioner in person, as well as the learned counsel appearing for the Respondents, it appears that the Petitioners earlier instituted Writ Petition No.14347/2022 challenging the Recovery Certificate dated 10 March 2021 issued by the Deputy Registrar, Co-operative Societies, Dombivali, Taluka-Kalyan. In that petition, order dated 29 November 2022 was passed. Paras-3, 4, 5 and 6 whereof reads thus :

3. The learned counsel for the petitioners, on instructions, states that his client will deposit Rs. Five lakhs within one week from today and another Rs. Five lakhs within four weeks from today with the Respondent No.1 Bank without prejudice to the rights and contentions of the Petitioners towards the alleged dues of the Respondent No.1. Learned counsel for the Respondent No.1, on instructions, also agrees to accept the said amount without prejudice to the rights and contentions of Respondent No.1. Statement accepted.

4. The learned counsel appearing for both the parties jointly state that if the amount of Rs. Ten lakhs is deposited by the Petitioners with Respondent No.1-Bank within the stipulated time prescribed, the recovery certificated dated 10.03.2021 issued by the Respondent No. 2 shall stand set aside and the matter would be remanded back to the Respondent No. 2 for deciding the application for recovery filed by the Respondent No.1 afresh in accordance with law. Statements are accepted.

5. It is made clear that the impugned recovery certificate dated 10.03.2021 to stand set aside upon the Petitioners' depositing the sum of Rs. Ten lakhs including the instalment, as referred above. If the Petitioners commit any default in payment of any of the two instalments, the recovery certificate dated 10.03.2021 issued by the Respondent No.2 shall stand operative; to be executed by the Respondent No. 2 forthwith. The grievance application made by the respondent no.1 to stand restored before the Respondent No. 2. Petitioners would be at liberty to file reply to the said application for seeking recovery certificate afresh within three weeks from the date of the Petitioners' depositing the aforesaid amount with the

Respondent No. 1 without fail alongwith the documents which they seek to rely upon in support of their rival contentions. Copy of the entire set of such documents shall be served upon the learned counsel for the respondent no. 2.

6. Respondent No.2 shall decide the application for recovery certificate after hearing both the parties and after considering the application made by the respondent no. 2 and the reply that would be filed by the petitioners and shall pass a fresh order without being influenced by the observations made and the conclusion drawn in the recovery certificate dated 10.03.2021 within eight weeks from the date of granting personal hearing to both the parties. If the application filed by respondent no. 2 is decided in favour of the petitioners, the respondent no. 2 shall refund the said amount to the petitioners that would be deposited by the petitioners and the if the same is decided against the petitioners, the amount of Rs. Ten lakhs that would be deposited by the petitioners, shall be adjusted against the dues that would be certified by the respondent no.2.

5) It appears that in pursuance of order dated 29 November 2022, Petitioners deposited first installment of Rs.5,00,000/- with Respondent No.2 on 4th and 5 December 2022. So far as the second installment of Rs.5,00,000/- is concerned, the same was required to be deposited within a period of 4 weeks since 29 November 2022. There is no dispute to the position that by 13 January 2023, Petitioners deposited total amount of Rs.3,75,000/- in four installments as under :

(i)31 December 2022-Rs.2,25,000/-

(ii)3 January 2023-Rs.65,000/-

(iii)3 January 2023-Rs.25,000/-

(iv)13 January 2023-Rs.60,000/-

6) It appears that Petitioners had balance of Rs.1,58,124.90/- in their Account in Bank of Baroda. The said Account was apparently attached for execution of Recovery Certificate dated 10 March 2021.

Petitioners accordingly wrote both to Respondent No.2, as well as to Bank of Baroda for recovery of balance amount of Rs.1,25,000/- from the said amount lying in the Saving Bank Account with Bank of Baroda. There is no dispute to the position that the amount of Rs.1,24,000/- has indeed been recovered by Respondent No.2 from the said Account with Bank of Baroda on 31 March 2023 and balance amount of Rs.1,000/- was deposited by the Petitioners with Respondent No.2 on 31 March 2023.

7) This is how the entire amount of Rs.10,00,000/- came to be deposited by the Petitioners with Respondent No.2-Society. However, so far as the amount of Rs.1,25,000/- is concerned, there appears to be some delay on account of freeze put on operation of Account of the Petitioners with Bank of Baroda. The said freeze was imposed by the Recovery Officer of Respondent No.2-Society and in pursuance of request made by the Petitioners, it was always possible for Respondent No.2 to recover and adjust the said amount of Rs.1,25,000/- from the Account of the Petitioners with Bank of Baroda. Such adjustment is subsequently done by Respondent No.2 on 31 March 2023. In my view therefore there is substantial compliance with the order passed by the Division Bench of this Court on 29 November 2022 in Writ Petition No. 14347/2022. Since there is substantial compliance with the order passed on 29 November 2022, the Recovery Certificate dated 10 March 2021 got automatically set aside and the Recovery Application was required to be heard and decided afresh by the Deputy Registrar. Instead of doing so, it appears that Respondent No.2 proceeded ahead for attachment and sale of the mortgaged flat which led to filing of Writ Petition No.13530/2023 and Writ Petition No. 13557/2023 by the Petitioners before the Division Bench of this Court. True it is that the Division Bench, by order dated 31 October 2023 directed the Petitioners to avail alternate remedy of revision under Section 154 of the Act of 1960 by making 50% deposit

before the Divisional Joint Registrar. However, it appears that the Petitioners did not bring to the notice of the Division Bench the fact that the Recovery Certificate itself was set aside by earlier Division Bench by order dated 29 November 2022.

8) The learned counsel for Respondent No.2 would seek to highlight the position that the Petitioners did not strictly comply with the directions issued by the Division Bench for deposit of amount of Rs.10,00,000/- within the stipulated time. He would submit that the recovery of amount of Rs.1,25,000/- by Respondent No.2 from the Saving Bank Account of the Petitioners with Bank of Baroda cannot be adjusted against the request to deposit the amount of Rs.10,00,000/- as envisaged in the order of the Division Bench dated 29 November 2022. However, it appears that though the Petitioners were possessing the said amount of Rs.1,25,000/- for being deposited towards compliance with the directions issued by the Division Bench on 29 November 2022, they were precluded from depositing the said amount of Rs.1,25,000/- only on account of freeze put in by Respondent No.2 from operating the Saving Bank Account by Bank of Baroda. In that view of the matter, due credit to the Petitioners is required to be given even in respect of the said amount of Rs.1,25,000/- for construing compliance with the directions issued by the Division Bench by order dated 29 November 2022. As observed above, there has been substantial compliance with the directions issued by the Division Bench by order dated 29 November 2022 which has resulted in setting aside the Recovery Certificate dated 10 March 2021. The Divisional Joint Registrar has completely ignored the order dated 29 November 2022 passed by the Division Bench in Writ Petition No.14347/2022 and has mechanically proceeded to dismiss the Revision Application only on account of non-compliance with the provisions of Section 154(2A) of the Act of 1960. Since the Recovery

Certificate itself is set aside and is non-existent, there is no question of filing or entertaining any Revision Application challenging the Recovery Certificate dated 10 March 2021. The order passed by the Divisional Joint Registrar thus suffers from clear non-application of mind and is liable to be set aside. I accordingly proceed to pass the following order :

(i) Order dated 22 March 2024 passed by the Divisional Joint Registrar is set aside.

(ii) It is declared that the Recovery Certificate dated 10 March 2021 issued by the Deputy Registrar, Co-operative Societies, Dombivali stood set aside by operation of order dated 29 November 2022 in Writ Petition No.14347/2022.

(iii) Recovery Application filed by Respondent No.2-Society shall stand restored on the file of Deputy Registrar, Co-operative Societies, Dombivali who shall proceed to decide the same afresh on its own merits in accordance with law and as per the order passed by the Division Bench on 29 November 2022.

(iv) All actions taken by Respondent No.2 towards execution of the Recovery Certificate dated 10 March 2021 shall also stand set aside.

9) With the above directions, the Writ Petition is **allowed**. Rule is made absolute. No costs.

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[SANDEEP V. MARNE, J.]