

AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.14725 OF 2024

Ganesh Narayan Kavade & Anr. ... Petitioners

V/s.

The Wai Urban Cooperative Bank
Limited, Wai & Ors. ... Respondents

Mr. Sangramsinh Bhosale with Mr. Mayuresh Ingale
i/by Mr. Abhishek Salian (through V.C.) for the
petitioner.

Mr. Chinmay R. Deshpande (through V.C.) for
respondent Nos.1 to 3.

Mr. N.C. Walimbe, Additional G.P. with Mr. A.A.
Alaspurkar, AGP for the State.

Digitally
signed by
ATUL
GANESH
KULKARNI
Date:
2025.09.25
18:32:57
+0530

CORAM : AMIT BORKAR, J.

DATED : SEPTEMBER 25, 2025

P.C.:

1. The present writ petition is filed under Article 227 of the Constitution of India. The petitioners are challenging the order of the Revisional Authority. The Revisional Authority has refused to exercise powers under Section 154 of the Maharashtra Cooperative Societies Act, 1960 (for short "MCS Act") on the ground that the petitioners have not complied with Section 154(2A) of the MCS Act.

2. Learned Advocate for the petitioners has advanced two submissions. First, he contends that the recovery certificate under Section 101 was obtained by practicing fraud. Therefore, the

petition deserves to be entertained without insisting upon compliance with Section 154(2A) of the MCS Act. For this proposition, he relies upon the judgment of the Hon'ble Supreme Court in *State of Tripura vs. Manoranjan Chakraborty & Others*, (2001) 10 SCC 740. His second submission is that in exercise of powers under Rule 107(11) of the Maharashtra Cooperative Societies Rules, 1961 (for short "MCS Rules"), property worth Rs.2.43 crore has already been attached against the recovery certificate of Rs.1.95 crore. Hence, according to him, the requirement under Section 154(2A) does not arise.

3. In my view, the controversy raised by the petitioners is already settled by the judgment of the Hon'ble Supreme Court in *Arun B. Khanjire vs. Ichalkaranji Urban Co-operative Bank*, 2009 (2) SCC 187. In that case, the Apex Court examined the true scope of Section 154 of the MCS Act, particularly the mandatory requirement of deposit under Section 154(2A). The Court held in clear words that unless the amount required under Section 154(2A) is deposited, the Revisional Authority has no jurisdiction to entertain any application under Section 154.

4. The Supreme Court also considered the submission of learned counsel that the proceedings in that case were initiated suo motu. However, the Court rejected the said contention by holding that since the petitioner had in fact submitted an application before the concerned officer, setting out all the facts of his case, the proceedings could not be treated as suo motu. The Court observed that although the application was not in the formal shape of a memorandum of appeal, in substance it amounted to an

appeal. Thus, the attempt of the petitioner to bypass the statutory requirement of depositing 50% of the recoverable dues under Section 154(2A) could not be countenanced.

5. The Court further noticed that the petitioner had resorted to an innovative method only to avoid the mandatory precondition of deposit. This interpretation by the Supreme Court leaves no room for doubt that compliance with Section 154(2A) is a condition precedent for invoking revisional jurisdiction. It is not a procedural formality but a substantive safeguard built into the statute. Therefore, any plea seeking exemption from such compliance must fail unless there is an express statutory provision to the contrary.

6. As regards the contention of the petitioners that the recovery certificate was obtained by practicing fraud, it needs to be examined carefully. Allegations of fraud are always serious in nature, but they require proof on the basis of evidence. Such issues cannot be decided merely on bare assertions. They involve a mixed question of law and facts, which requires proper adjudication before the competent authority.

7. The statutory scheme under the MCS Act is clear. Section 154(2A) lays down that before invoking revisional jurisdiction, the party must deposit fifty per cent of the recoverable dues. The law does not provide any exception even on the ground of alleged fraud. If the contention of the petitioner is accepted, it would amount to creating an exception not contemplated by the statute itself. Courts cannot dilute or bypass the express mandate of the legislature.

8. Therefore, unless the petitioners comply with the condition under Section 154(2A), their plea of fraud cannot be gone into. The allegations of fraud, being a mixed question of law and fact, can only be examined once the statutory precondition is fulfilled. In absence of such compliance, the revisional jurisdiction cannot be validly invoked.

9. The reliance placed by the petitioners on the judgment of the Supreme Court in *State of Tripura vs. Manoranjan Chakraborty* arose from the provisions of the Tripura Sales Tax Act, 1976. In that case, the Supreme Court observed that when gross injustice is shown and no valid reason exists for the Court to refuse interference, the writ court can exercise jurisdiction to do substantive justice, notwithstanding the existence of an alternate statutory remedy. The principle emphasized was that constitutional powers cannot be curtailed where grave injustice is demonstrated.

10. However, in my opinion, the ratio of the said case cannot be read in isolation. It has to be viewed in the light of the subsequent pronouncement of the Supreme Court in *Commissioner of Income Tax & Ors. vs. Chhabil Das Agarwal*, 2014 (1) SCC 603. In that case, the Supreme Court directly addressed the scope of writ jurisdiction in the face of an available alternate remedy. The Court laid down parameters broadly in line with the principles earlier stated in *Whirlpool Corporation vs. Registrar of Trade Marks*, (1998) 1 SCC 1. The observations in *Chhabil Das Agarwal* make it clear that when a statute provides a complete machinery for redressal of grievance, ordinarily the parties must exhaust such remedy before approaching the High Court. The High Court is

expected to decline jurisdiction unless exceptional circumstances such as breach of fundamental rights, violation of natural justice, or absence of jurisdiction are established.

11. Thus, the law as it stands today requires strict adherence to statutory remedies unless a clear case falling within the exceptions carved out by the Supreme Court is made out. In the present case, no such exceptional ground has been substantiated by the petitioners.

12. In the scheme of the MCS Act, this Court has repeatedly observed that the revisional powers under Section 154 were often invoked by defaulting borrowers only to stall or delay the process of recovery. Such misuse directly defeated the very object of Section 101, which was enacted to ensure speedy and effective recovery through a summary procedure. It is for this reason that the legislature introduced the safeguard of Section 154(2A), making deposit of fifty per cent of the recoverable dues a condition precedent for invoking the revisional jurisdiction.

13. This Court, in a series of judgments, has consistently held that compliance with Section 154(2A) is not an empty formality but a mandatory requirement. The condition was specifically designed to balance the rights of both the creditor society and the defaulting borrower. If such deposit is not insisted upon, the legislative purpose of Section 101 would stand frustrated, as borrowers would continue to take shelter under revision proceedings to indefinitely delay recovery.

14. In the present case, the plea of fraud raised by the petitioners undoubtedly involves questions of fact as well as law. Such issues cannot be adjudicated within the limited scope of writ jurisdiction under Article 227. They require proper examination of evidence and facts, which can only be undertaken in the appropriate statutory forum. The petitioners cannot bypass the mandatory condition of deposit by merely alleging fraud.

15. In my considered opinion, therefore, the plea of fraud raised in this petition cannot be entertained. The petitioners are at liberty to pursue their remedy of revision under Section 154 of the MCS Act, provided they first comply with the statutory mandate of Section 154(2A). Only then can the Revisional Authority be called upon to adjudicate their grievance in accordance with law.

16. As regards the contention of the petitioners that attachment of property under sub-Rule 11 of Rule 107 of the MCS Rules should be treated as equivalent to deposit of fifty per cent amount under Section 154(2A) of the MCS Act, I am unable to accept such argument. The legal position is clear that attachment of property is only a protective measure. It merely secures the property and prevents the borrower from alienating or encumbering it. Attachment by itself does not result in satisfaction of the debt nor does it amount to deposit of money by the borrower.

17. The statutory scheme under Rule 107 shows that the process is complete only when the property is brought to auction and the auction purchaser deposits the bid amount. Till that stage is reached, the creditor does not receive any money, and the

borrower cannot claim that the statutory requirement of deposit under Section 154(2A) stands complied with.

18. The only other mode available to a creditor society or a co-operative bank is under Section 100 of the MCS Act read with Rule 85 of the MCS Rules, where the property can be taken in the name of the society or bank, and the equivalent market value is adjusted by way of credit. However, even in such a case, the law is settled that ownership is not transferred to the bank merely because the property stands in its name for adjustment purposes. It is only a mode of recovery permitted by the statute and not a substitute for deposit contemplated under Section 154(2A).

19. Therefore, attachment under Rule 107 cannot, in law, be equated with deposit of fifty per cent of the recoverable dues. To hold otherwise would defeat the very object of Section 154(2A) and render the mandatory condition meaningless.

20. In light of the above discussion, I am of the clear opinion that the petitioners cannot bypass the statutory mandate of Section 154(2A) of the MCS Act. The legislature has made it obligatory that before invoking revisional jurisdiction, fifty per cent of the recoverable dues must be deposited. This requirement is neither directory nor a matter of discretion; it is a mandatory condition that ensures balance between speedy recovery under Section 101 and the right of the borrower to challenge such recovery in revision. Unless the petitioners first comply with this requirement, their grievance cannot be entertained. The only lawful course open to them is to deposit the amount as required under Section

154(2A) and then avail the revisional remedy before the competent authority.

21. For these reasons, this Court is not inclined to entertain the present writ petition under Article 227 of the Constitution of India. The writ petition, being devoid of merit, stands rejected. There shall be no order as to costs.

(AMIT BORKAR, J.)