

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 15497 OF 2024

P.R. Prints & Anr.

.. Petitioners

Versus

District Deputy Registrar,
Co-operative Societies & Ors.

.. Respondents

.....

- Mr. Vishal Muglikar a/w Ms. Anaaya Dalvie & Ms. Iyanah Parbhoo i/by Meraki Chambers, Advocates for Petitioner
- Mr. S.L. Babar, AGP for Respondent Nos. 1 & 5
- Mr. Akshay Shetty i/by AVC & Associates, Advocate for Respondent No. 2
- Mr. Aditya A. Thakkar - Assisted the Court.

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CORAM : MILIND N. JADHAV, J.

DATE : JUNE 26, 2025

P. C.:

1. Heard Mr. Muglikar, learned Advocate for Petitioner; Mr. Babar, learned AGP for Respondent Nos. 1 & 5; Mr. Shetty, learned Advocate for Respondent No. 2 and Mr. Thakkar, learned Advocate who has assisted the Court in present Writ Petition.

2. Briefly stated, proprietor of Petitioner No.1 availed certain credit facilities amount to Rs.44.5 lakhs from Mogaveera Co-operative Bank for business expansion. He met with a serious accident due to which his business suffered losses as a result of which the loan account was declared as Non Performing Asset (NPA). This was in the year 2013. In October 2017, Bank filed Recovery Application seeking recovery of

Rs.80.77 lakhs and a further amount of Rs.13.28 lakhs approximately from the Petitioners.

3. On 11.01.2018, Recovery Certificates were issued by the Deputy Registrar in favour of Respondent No.3 - Bank. Objections were filed by Petitioners and on 04.06.2018 Revision Application was filed by Petitioners which raised further objections to be heard by Respondent No.2. By order dated 22.02.2021, their objections were dismissed. Against dismissal of the objections, Petitioners filed Revision Application No.154 of 2021 to challenge the order dated 22.02.2021 relating to dismissal of their objections.

4. On 07.02.2024, Respondent No.1 rejected Petitioners' Revision Application. On 01.08.2024, Petitioners received notice for fixation of market price of the property. Being aggrieved with the aforesaid action, present Writ Petition has been filed.

5. The prayer in the present Writ Petition is challenge to the legality, validity and propriety of the order dated 22.02.2021 passed in Revision Application No.126 of 2023 alongwith challenge to the order dated 07.02.2024 and steps taken thereafter. By way of amendment, Petitioners sought intervention of the Court to consider Application of the provisions of Rules 86A to 86F of the Maharashtra Co-operative Societies Rules, 1961 (for short "**the said Rules**") by the Deputy

Registrar while passing the order dated 21.12.2017 read with order dated 07.02.2024 granting Recovery Certificates under Section 101 of the Maharashtra Co-operative Societies Act, 1960 (for short "**MCS Act**") in favour of the Bank appended at page Nos.231 and 233 of the Petition.

6. Though Mr. Shetty, learned Advocate appearing on behalf of the Bank would persuade me to consider the fact that admittedly the loan account of the Petitioners was declared as NPA and liability of the Petitioners was crystallized and hence in that view of the matter even if there is any defect in granting the Recovery Certificates, Court should consider the same to be a technical defect and allow further course of action for effecting recovery.

7. Though Mr. Shetty would be right in contending that loan account of the Petitioners was declared as NPA and Petitioners admittedly could not service the loan account on time which entitled the Bank to take steps for recovery, but after having invoked recovery proceedings it was incumbent upon the Bank and the Competent Authority to follow the due process of law. That admittedly not having been done, the Court is bound to intervene. Rule of Law requires all Statutory Authorities to follow the due process of law. This is because Mr. Muglikar has persuaded me to consider the fact that the manner in which the proceedings progressed before the Deputy Registrar against

the Petitioners would show that the Competent Authority has given a complete go-by to the prescribed Recovery procedure envisaged under the provisions of Rule 86A to 86F of the said Rules and without following the same has issued the twin Recovery Certificates appended at page Nos.231 and 233 of the Petition. He would draw my attention to the recovery proceedings held before the Deputy Registrar, roznama of which is appended at page No.102 of the Petition. It is seen that proceedings were listed before the Deputy Registrar on 3 dates between 21.11.2017, 05.12.2017 and 21.12.2017 and on 21.12.2017 it was reserved for passing of orders. He would submit that as envisaged under the Rules neither notice was effected on all Petitioners nor Petitioners were heard nor proceedings were listed for passing of orders and most importantly the Deputy Registrar has not passed the mandatory reasoned judgment and order that is required to be passed under Rule 88F of the Rules. He would submit that this not having been done, issuance of Recovery Certificates appended at page Nos.231 and 233 both dated 11.01.2018 is arbitrary, illegal and deserves to be quashed and set aside. He would submit that it is all the more necessary for quasi-judicial authorities entrusted and empowered with statutory power under the provisions of the statute to follow the same and adhere to the principles of natural justice.

8. He would submit that in the instant case Petitioners were not heard nor given an opportunity to be heard and the most crucial aspect is that the Deputy Registrar has not even passed the reasoned judgment and order on the basis of which the Recovery Certificates are required to be issued. He would therefore submit that this being the omission the Petition deserves to be allowed.

9. I have heard the submissions made by learned Advocates appearing for the respective parties and with their able assistance perused the record of the case. Submissions made by the learned Advocates have received due consideration of the Court.

10. It is seen that the issue involved in the present case pertains to the challenge maintained to the Recovery Certificates dated 11.01.2018 appended at page Nos. 231-232 (Exh. H2) and page Nos. 233-234 (Exh. H2) of the Petition.

11. Present Petition is filed in the year 2014. One of the grievance made by Mr. Shetty is that there is delay of 7 years in challenging the said orders by way of amendment sought and allowed recently and therefore the case of Petitioner should not be considered. Though in the normal circumstances, Mr. Shetty would have been right as delay would have to be explained by the Petitioner after issuance of the Recovery Certificates, but in the facts and circumstances of the present

case which are delineated herein above, the said delay will have to be disregarded and condoned by the Court. The reason for adopting such stand is because both Recovery Certificates impugned in the present Petition have been issued under the provisions of Section 101 of the MCS Act seeking recovery from the Petitioners without following the prescribed procedure and in the absence of a reasoned judgment and order which is the *sine qua non* of taking steps for recovery.

12. Precursor to the issuance of the said Recovery Certificates is the newspaper publication notice dated 07.12.2017 appended at page No. 172 of the Petition and hearing of Recovery proceedings, the roznama of which is appended at page Nos. 102-103 of the Petition. It is seen that Application seeking recovery was filed by the Co-operative Bank against 4 persons i.e. Purushottam Ramakant Kambli - proprietor of M/s. P.R. Prints, Priyanka Purushottam Kambli - presumably the wife of Purushottam Kambli, Supriya Ganesh Ambre and Arvind Keshav Kadam. There is no doubt about the fact that P.R. Prints is the borrower and there is default committed by the borrower. However if recovery is to be effected by following the due process of law the same has to be done by following the principles of natural justice and the statutory procedure established by law.

13. In the present case, it is seen that pursuant to filing of the Application seeking issuance of Recovery Certificate on 21.11.2017, Registrar took cognizance of the presence of Purushottam Ramakant Kambli alone on the said date and noted that request was made for grant of time by him to deposit the outstanding amount. The matter was then adjourned to 05.12.2017. Roznama further reads that on 05.12.2017 once again representative of the Bank and Purushottam Ramakant Kambli were present whereas other 3 opponents were not present, hence notice was issued to other 3 opponents and matter was posted on 21.12.2017. On 21.12.2017 it is seen that Bank was represented by Mr. Matekar whereas it is noted that none was present on behalf of opponents. Roznama further notes that parties have been given sufficient opportunities and the Applications were closed for orders.

14. It is pleaded by Petitioners that on 21.12.2017, Petitioner No. 1 - Mr. Purushottam Kambi had reached the Bank at about 12 noon when the matter was usually called out but when he reached the Bank, he was informed that the hearing was already over.

15. That apart Mr. Muglikar has made submissions on the effect of Application of Rules 86A to 86F of the said Rules while dealing with Application seeking recovery before the Certificate is issued by the Competent Authority. He would draw my attention to the provisions

of Rules 86A to 86F of the said Rules to contend that the procedure prescribed under the said Rules is required to be scrupulously followed by the *quasi-judicial* Authority hearing the Application for issuance of Recovery Certificates.

16. It is seen that Chapter VIII-A of the said Rules pertains to rules relating to issuance of Recovery Certificate under Section 101 of the said Act. Rule 86A prescribes the procedure for filing the Application for granting Recovery Certificate which has been complied with in the present case. Rule 86B provides for scrutiny of the Application and notice to the parties which has been partly complied with in the present case. Rule 86C provides the procedure for appearance of parties and consequences of non-appearance which once again has been partly complied with in the present case. Rule 86D provides for production and inspection of documents which according to Mr. Muglikar has not been complied with at all in the present case. *Prima facie* I do agree with this submission of Mr. Muglikar when the record of the case is seen because the Recovery Certificate has been granted by the Competent Authority without there being adjudication of the Application and inspection of the documents filed by the Bank before the Recovery Officer in the present case.

17. Both the learned Advocates appearing at the bar and learned AGP agree with the fact that there is no judgment & order passed by

the Recovery Officer before the Recovery Certificates have been issued. Rule 86-E prescribes the procedure of hearing of the Application filed by Bank which has not been complied with in the present case though the roznama of 21.12.2017 states that sufficient opportunity has been given to the parties and the matter is closed for orders. The purported grant of sufficient opportunity is *prima facie* reflected from the fact that the matter was placed before the Recovery Officer on two prior occasions as has already been referred to and alluded to herein above. Rule 86E further provides the procedure and timeline and provides that Registrar should decide the Application within 3 months from the first date of hearing. First date of hearing is absent in the present case. Said Rule further prescribes that parties are required to be allowed to argue orally and thereafter the matter has to be fixed for orders. Thus Rule 86E is not complied at all. Thereafter the most significant provision i.e. Rule 86-F provides that the Authority should pass a reasoned judgment & order and thereafter issue Recovery Certificate in Form-V. There is no reasoned judgment admittedly in the present case and recovery certificates are issued without complying Rule 86F.

18. Faced with the above situation the argument of Mr. Shetty that Petitioners have realized this defect after 7 years and therefore their submissions should be rejected is in my opinion a preposterous

argument. If there is such gross transgression of the statutory procedure prescribed under the provisions of statute which is *prima facie* noticed by the Court, the Court cannot be a silent spectator merely because the party has taken up the above ground after 7 years. In the present case, it is seen that there is gross discrepancy observed, rather illegality in conducting the procedure prescribed for issuance of the twin Recovery Certificate. Recovery Certificates appended at page Nos. 231-232 and 233-234 of Petition have been issued without the Competent Authority having not followed the inquiry procedure nor having passed any reasoned order after hearing the parties. Admittedly it is seen that parties have not been heard neither there is any reasoned judgment passed by the Recovery Officer. In that view of the matter, of the Recovery Certificates cannot be upheld by the Court. Rule 86-F provides for not only passing a reasoned judgment & order after hearing the parties but it categorically states that it is only thereafter (*emphasis supplied*), the Recovery Certificate can be issued in Form-V.

19. Reliance is placed on the decision of this Court in the case of ***Sundeep Polymers Pvt. Ltd. & Ors. v. State of Maharashtra & Ors.***¹ wherein an identical situation has arisen where without following the procedure prescribed under Rules 86-A to 86-F and without a

¹ 2010 (7) Mh. L.J. 538

reasoned judgment & order having been passed, the Recovery Officer issued the Recovery Certificate. This Court while dealing with the said situation in paragraph Nos. 9 and 10 observed as under:-

"9. We perused the order passed by the learned Single Judge. The learned Single Judge rejected the Writ Petition mainly on the ground that alternate remedy is available under Section 154 of the said Act. We are of the opinion that the learned Single Judge has not considered the procedure prescribed under Rule 86-A to 86-F of the said Rules. It is crystal clear that from the Rules 86-A to 86-F that the Authorities pertains quasi judicial work. The Authorities have to follow the rules of natural justice. In the present case, the Authority without passing any Judgment issued Recovery Certificate under Section 101 of the said Act. These facts are not considered by the learned Single Judge.

10. It is mandatory for the Authorities to follow the Rules provided in Chapter VIIIA of the Maharashtra Co-operative Societies Rules 1961 while issuing Recovery Certificates. It is amply clear that in this case the Recovery Certificate has been issued without following due procedure and also without proper service of notice on the appellants and the Rules of natural justice are violated. Hence the Recovery Certificate issued must be held to be in valid and bad in law and needs to be struck down. This has resulted into unnecessary waste of time and money by the Appellants as well as the bank."

19.1. It is seen that in the present case that Recovery Certificates have been issued without following the due procedure and also without proper service of notice on the parties and compliance of principles of natural justice and without passing a reasoned judgment & order after hearing the parties, hence the impugned Recovery Certificates must be held to be invalid and bad in law and deserve to be struck down.

20. In view of the aforesaid observations and findings and basic infirmities found in issuance of Recovery Certificates without following the due procedure prescribed under the statute, both the Recovery

Certificates dated 11.01.2018 appended at page Nos. 231-232 (Exh. H2) and page Nos. 233-234 (Exh. H2) of the Petition are set aside.

21. In view of the above, Deputy Registrar, Co-operative Societies seized with hearing of the Application filed by the Respondent Bank is directed by this Court to conduct *de novo* inquiry as per the rules and after following the due procedure under the statute pass appropriate reasoned judgment & order and only thereafter proceed further in accordance with law. Needless to state that Petitioners before me who are opponents in the Application filed for issuance of Recovery Certificate shall be entitled to file their written statement / affidavit in reply to the Application before the Deputy Registrar, Co-operative Societies within a period of 4 weeks from today. No fresh service is required to be effected on all 4 opponents by the Bank. The opponents who are Petitioners before me accept service of the proceedings before the Competent Authority.

22. Petition is allowed in the aforesaid terms. Orders dated 22.02.2021, 07.02.2024 and notice dated 01.08.2024 are quashed and set aside.

23. Competent Authority shall take cognizance of this order and fix the dates for hearing the Application filed by Respondent No. 2 - Bank strictly in accordance with law fresh *de novo*. Inquiry is directed to be

completed as expeditiously as possible and in any event within a period of 6 months from today by following the prescribed procedure.

24. Writ Petition is disposed.

Amberkar

[MILIND N. JADHAV, J.]

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MOHAN
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Digitally signed
by RAVINDRA
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2025.07.01
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