

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2088 OF 2025

Kalyani Ajinkya Shinde Nee
Kalyani Sanjay Kumbhar & Anr.

...Petitioners

Vs.

Recovery Officer, Kalyan Janta Sahakari
Bank Ltd. & Ors.

...Respondents

Mr. Praful Shah a/w Ronak Shah, Harshvardhan Melanta and Yogesh Mane
i/by M/s. K. Akshar & Co. for the Petitioners.
Mr. Prakash Punjabi for Respondent No.1.
Mr. O. A. Chandurkar, Addl.GP a/w Tejas J. Kapre, AGP for Respondent
No.8.

CORAM : ALOK ARADHE, CJ. &
ARIF S. DOCTOR, J.

DATE : 17TH FEBRUARY, 2025

P.C.:-

1. The Petitioner has in the captioned Writ Petition, sought
the following reliefs, viz.

“a) This Hon’ble Court may be pleased to issue a Writ of
Certiorari or any other similar writ and quash and set aside
Order dated 22nd October, 2024 for reasons mentioned above;

b) This Hon’ble Court may be pleased to issue a Writ of
Certiorari or any other similar Writ and quash and set aside
order dated 18th June, 2014 passed in Application bearing No.
101/960/2013/2014 by Special Officer, Pune for reasons
mentioned above;

c) This Hon’ble Court may be pleased to issue a Writ of
Certiorari or a Writ of Mandamus, or any other similar writ

and quash and set aside Order dated 20th October, 2022, passed in Application No. Co-op/SR No.803/2022 by Hon'ble District Magistrate, Pune for reasons mentioned above;

d) That pending hearing and final disposal of the present petition, this Hon'ble Court be pleased to restrain the Respondent Bank from taking any further coercive measures towards the subject matter properties for reasons mentioned thereof"

2. Shorn of unnecessary details, the relevant facts as set out in the Petition are as follows, viz.

- i. Petitioner No. 1 is the daughter of the late Mr. Sanjay Kumbhar (the late Sanjay) and Petitioner No. 2 is the son of the late Mr. Rajendra Kumbhar (the late Rajendra) respectively. Both the late Sanjay and the late Rajendra passed away when the Petitioners were minors, leaving each of their wives, namely Respondent Nos. 6 and 7 as the legal guardians of each of the Petitioners respectively.
- ii. The late Sanjay, the late Rajendra and Respondent No. 5 were brothers who had jointly purchased a plot of land admeasuring 40 acres situated at Hinjewadi, Mulshi, Pune ("the said land"). Thus each of the brothers had a 1/3rd

share in the said land. It is the Petitioners' case that on the death of their respective fathers, their fathers' 1/3rd share in the said land devolved upon them in accordance with the provisions of the Hindu Succession Act, 1956.

iii. Respondent No. 5 thereafter is stated to have acquired development rights over a plot of land which was adjacent to the said land by registered development agreement dated 18th November 2010. The said land was thus stated to have been amalgamated with the land subsequently purchased by Respondent No. 5. It is stated that the amalgamated land thus had a common entrance and exit on which there exists a house in which the Petitioners presently reside and claim to have a 1/6th share.

iv. In the year 2011, Respondent Nos. 6 and 7 as the legal guardians of the Petitioner approached the District Court at Pune, seeking leave of the Court to mortgage the 1/3rd share of each of the Petitioners in the said land for a loan to be taken by Respondent No. 2 (Company) from

Respondent No. 1. Pertinently, Respondent Nos. 3 to 5 are the directors of Respondent No. 2 (Company).

- v. The District Court vide Order dated 22nd August 2011 allowed the application of Respondent Nos. 6 and 7 by imposing certain conditions *inter alia* that without the permission of the Court, (i) the Respondents would not sell the 1/6th share of the Petitioners (ii) the Petitioners will not be responsible to repay the loan and it would be repaid by the Respondent No.2-Company and (iii) the share of the Petitioners would not be subject matter of attachment for the repayment of the loan availed by the Respondent No.2. Thereafter, Respondent No.1 and Respondent No.2 entered into a registered Deed of Mortgage dated 15th November 2011.
- vi. Since Respondent No. 2 (Company) failed to repay the said loan which resulted in Respondent No.1, initiating recovery proceedings against the Respondent No. 2 under the provisions of the Securitisation and Reconstruction of

Financial Asset and Enforcement of Security Interest Act, 2002 (SARFAESI Act) as also the Maharashtra Co-operative Societies Act, 1960 (Co-operative Societies Act).

vii. Respondent No.1 thereafter in the course of the recovery proceedings, obtained an Order dated 18th June 2014 under Section 101 of Co-operative Societies Act to appoint a Special Recovery Officer. Respondent No. 1 also vide an Order dated 9th January 2014 issued notice under Section 13(4) of SARFAESI Act and thereafter obtained an Order dated 20th October 2022 from District Magistrate, Pune under Section 156 of Co-operative Societies Act directing Tehsildar at Mulshi to take possession of the said land on 23rd October 2024. The Tehsildar at Mulshi then issued a notice dated 4th October 2024 to Respondent Nos. 2 to 7 for recovery of possession of said land.

viii. The Petitioners then filed an Application before District Court, Pune to obtain stay of the Order dated 20th October

2022 which was rejected vide Order dated 22nd October 2024.

ix. The Tehsildar Mulshi then once again sent a notice dated 4th December 2024 to the Petitioners and Respondent Nos. 4 to 7 for recovery of possession of said land and it is thus the present Petition has been filed.

3. We have heard Mr. Shah Learned Counsel appearing for the Petitioner. The sum and substance of the submission of Mr. Shah was that Respondent No. 1 (Bank) had proceeded to take possession of the said land illegally and in violation of the Order dated 22nd August 2011. He pointed out that the said Order specifically provided that “*share of the minors will not be subject matter of attachment for the repayment of the loan obtained by the company for development of the said plot from the bank, without permission of the Court*” despite which Respondent No. 1 had proceeded to take steps to take possession of the said land, which would affect the Petitioners. He thus submitted that it was incumbent upon Respondent No. 1 to have, before taking steps to take possession of the said land, in which the

Petitioners had a 1/6th share, to have first obtained the leave of the District Court, Pune.

4. After having heard Learned Counsel at length, and having perused the Writ Petition and its annexures, we find that the same is thoroughly misconceived and deserves to be dismissed for the following reasons (i) there is today no dispute to the fact that the said mortgages had been legally and validly created (ii) the Petitioners have neither disputed nor have impugned that the said mortgages despite attaining majority [we are told in the year 2018] (iii) the Petitioners have a statutory remedy to impugn the said Orders under the provisions of both the SARFAESI Act as also the Co-operative Societies Act and (iv) the Petitioner have infact approached the District Court, Pune with an application to obtain injunction against recovery proceedings, which was rejected vide a reasoned order.

5. Thus what we find is that the present Writ Petition is nothing more than a veiled attempt to bypass the statutory remedies available to the Petitioners. The Writ Petition is in our view thoroughly lacking in bonafides. Thus even assuming there has been

any infraction on the part of Respondent No. 1, we find no case made out for us to exercise our discretionary jurisdiction.

6. The Writ Petition is thus dismissed with liberty to the Petitioners to avail of their statutory remedies as maybe available to them in law.

(ARIF S. DOCTOR, J.)

(CHIEF JUSTICE)