rajshree

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3305 OF 2025

Ananda Dinkar Pachundkar & Anr.] .. Petitioners
vs.
Sharad Co-operative Bank Ltd. & Ors.] .. Respondents

Mr.Surel Shah, Senior Advocate a/w Mr.Shubham Sane, Mr.Ajinkya Udane, Mr.Rajesh Ranglani i/b Mr.Prajwal Bhalgat Adv. P. Durway for Petitioners.

Mr.Prafulla B. Shah a/w Ms.Gunjan P. Shah for Respondent No.1.

Mr.O.A. Chandurkar, Addl. GP a/w Mrs.Savita Prabhune, AGP for Respondent Nos.3, 4 and 5.

Mr.B.A. Lawate, for Respondent Nos.6 to 9.

CORAM : ALOK ARADHE, CJ &
BHARATI DANGRE, J.

DATE : 6th MARCH, 2025.

ORDER (PER BHARATI DANGRE, J) :-

1. On 03/03/2025, Writ Petition No.2527/2025 filed by Ananda Dinkar Pachundkar and Another, was permitted to be withdrawn since we expressed our view that it has not impleaded all the necessary Parties.

Invoking the liberty granted, a fresh Writ Petition is filed by the two Petitioners, by impleading the other borrowers/guarantors as Respondent Nos.6 to 10.

2. Heard the learned senior counsel Mr.Surel Shah for the Petitioners, the learned counsel Mr.Prafulla Shah for Respondent No.1, Mr.O.A. Chandurkar, Addl. GP for Respondent Nos.3, 4 and 5 and Mr.B.A. Lawate, for Respondent No.6 to 9.

3. The Petition is filed raising a challenge to the Notice dated 03/01/2025 issued by the Mandal Adhikari, Ranjangaon, for taking possession of the property, alleging that the sub-delegation of the powers by the Tahasildar was illegal.

It is urged that the Respondents be restrained from taking possession of the property of the Petitioners and the order dated 04/09/2024 passed by the District Magistrate, be set aside..

4. The facts leading to the present Petition reveal that the Petitioners availed loan of Rs.4,50,00,000/- for agricultural purposes, but since the Covid pandemic impacted their agricultural activity, the account was declared as NPA on 07/04/2022, with an outstanding amount of Rs.4,79,98,981/-.

The Respondent No.1 being a Co-operative Bank approached the Assistant Registrar Co-operative Societies who issued a Certificate under Section 101 of the Co-operative Societies Act against six persons, which include the two Petitioners before us, as well as the other borrowers, for a sum of Rs.4,79,98,981/-. Pursuant to the aforesaid order, on 23/11/2022 an attachment notice was issued stating that despite demand being raised, the amount was not repaid and as on date a sum of Rs.4,80,44,081/- including the interest was liable to be paid and since there was failure to make the payment, attachment of the immovable property was effected, indicating that if is not paid, the property shall be subjected to sale.

On 01/02/2023 the possession of the immovable property belonging to the Petitioners was obtained and on 04/09/2024 the District Magistrate passed an order for obtaining the physical possession of the property subjected to attachment. On 12/02/2025, the Mandal Adhikar issued a notice for handing over the physical possession.

5. As per the learned Senior Counsel Mr.Surel Shah, after the possession notice, the Petitioners approached the Bank and requested for one time settlement and according to him the bank agreed to severe the liability between the borrowers, with each borrower being directed to deposit his share in the account.

He has placed reliance upon the 'No Due Certificate' issued by the Bank dated 27/04/2023, in order to submit that the attachment of the property shall not be given effect to.

6. When we perused the 'No Due Certificate' dated 27/04/2023, it clearly reflect that Shri Ananda Dinkar Pachundkar, Shri Nanabhau Dinkar Pachundkar, Shri Sonba @ Sohanrao Dinkar Pachundkar, Shri Balasaheb Dinkar Pachundkar alongwith guarantors Shri Mansing Nanabhau Pachundkar and Shri Dattatray Anandrao Pachundkar, availed the loan of Rs.4,50,00,000/- for agricultural purpose.

Amongst them, there are no dues against Shri Ananda Dinkar Pachundkar and Shri Dattatray Anandrao Pachundkar.

7. Reading of the 'No Due Certificate' make it evidently clear that 'No Due Certificate' is only issued against two persons, whereas, the liability against the other borrowers and guarantors is not discharged and since the amount under the recovery certificate has not been paid

and as we can see that there is no partition in the property, in absence of the clear demarcation of the shares, the borrowers cannot be absolved of the liability to pay money under the Recovery Certificate.

The Petitioners submission that that they have been issued with 'No Due Certificate' and therefore, their share may be carved out of the property which has been attached and the remaining part of the property can be subjected for coercive action, in no way impress us.

Since the amount was borrowed by the borrowers collectively, which was guaranteed by the guarantors and the amount remained unpaid, resulting into a Recovery Certificate issued by the Competent Authority, it definitely deserve an execution at the hands of Respondent Nos.2 to 5.

By leaving it open for them to follow the pursuit available to them for recovery of the amount due and payable by the borrowers/guarantors, the Writ Petition is dismissed.

(BHARATI DANGRE, J.) **(CHIEF JUSTICE)**