Shabnoor

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

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WRIT PETITION NO.5304 OF 2025
WITH
WRIT PETITION NO.5468 OF 2025
WITH
WRIT PETITION NO.5469 OF 2025
WITH
WRIT PETITION NO.5471 OF 2025
WITH
WRIT PETITION NO.5473 OF 2025
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WRIT PETITION NO.5089 OF 2025
WITH
WRIT PETITION NO.5091 OF 2025
WITH
WRIT PETITION NO.5123 OF 2025

Nitin Marutrao Kale & Anr.
Through Power of Attorney … Petitioners

V/s.

The Recovery Officer
Ashadevi Mahila Nagari Sahakari
Patsansthan & Ors. … Respondents

Mr. Sushant Sudhakar Prabhune for Petitioners.

Mr. O. A. Chandurkar, Addl. Government Pleader with Mr. M. M. Pable, AGP for State – respondent in WP Nos.5304/2025, 5468/2025, 5469/2025, 5471/2025 and 5473/2025.

Mr. O. A. Chandurkar, Addl. Government Pleader with Mrs. V. R. Raje, AGP for State – respondent in WP Nos.5483/2025, 5483/2025, 5484/2025, 5485/2025 and 5488/2025.

Mr. S. D. Vyas, Addl. Government Pleader with Smt. P.M.J. Deshpande, AGP for State – respondent in WP Nos.5489/2025, 5490/2025, 5491/2025, 5492/2025, 5493/2025 and 5495/2025.

Mr. S. D. Vyas, Addl. Government Pleader with P. V. Nelson Rajan, AGP for State – respondent in WP Nos.5492/2025 and 5598/2025.

Mr. O. A. Chandurkar, Addl. Government Pleader with Mr. Hamid Mulla, AGP for State – respondent in WP Nos.5496/2025, 5498/2025, 5499/2025, 5589/2025 and 5590/2025.

Mr. O. A. Chandurkar, Addl. Government Pleader with Smt. M. P. Thakur, AGP for State – respondent in WP Nos.5499/2025, and 5614/2025.

Mr. O. A. Chandurkar, Addl. Government Pleader with Mr. S. P. Kamble, AGP for State – respondent in WP Nos.5591/2025, 5598/2025 and 5599/2025.

Mr. O. A. Chandurkar, Addl. Government Pleader with Mr. Y. D. Patil, AGP for State – respondent in WP Nos.5601/2025, 5602/2025, and 5603/2025.

Mr. O. A. Chandurkar, Addl. Government Pleader with Mr. J. P. Patil, AGP for State – respondent in WP No.5614/2025.

Mr. S. D. Vyas, Addl. Government Pleader with Smt. P. J. Gavhane, AGP for State – respondent in WP Nos.5615/2025, 5616/2025, 5619/2025, and 5620/2025.

Mr. S. D. Vyas, Addl. Government Pleader with Smt. S. D. Chipade, AGP for State – respondent in WP No.5621/2025.

Mr. O. A. Chandurkar, Addl. Government Pleader with Mr. R. S. Pawar, AGP for State – respondent in WP Nos.5622/2025, 5632/2025, 5633/2025, 5634/2025, and 5654/2025.

Mr. Hamid Mulla, AGP for State – respondent in WP No.5083/2025.

Mr. J. P. Patil a/w Mr. S. D. Rayrikar, AGP for State – respondent in WP No. 5089/2025.

Mr. P. V. Nelson Rajan, AGP for State – respondent in WP No. 5091/2025.

Mr. S. L. Babar, AGP for State – respondent in WP No.5123/2025.

CORAM : AMIT BORKAR, J.

DATED : APRIL 28, 2025

P.C.:

1. Since all these writ petitions raise a common issue for consideration, it would be appropriate to decide all the petitions together by a common order, to avoid multiplicity of proceedings and to maintain consistency in the view taken.

2. It appears from the record that the Assistant Registrar, in exercise of powers conferred under Section 101 of the Maharashtra Co-operative Societies Act, 1960 (for short, "the MCS Act"), has issued recovery certificates against the borrowers and the petitioners, who are guarantors for the said borrowers.

3. It further emerges that the National Company Law Tribunal ("NCLT") in Company Petition No. 925/ND/2025 has admitted the claim of the corporate debtor, namely, the Bank of Maharashtra, for recovery of a sum of ₹12,97,17,659/- against the petitioners. Pursuant to such admission, the financial creditor has also issued notices to the petitioners, treating them as personal guarantors, in accordance with Rule 7(1) of the Maharashtra Cooperative Societies Rules, 1961 ("the MCS Rules"). It is also on record that the insolvency resolution process initiated by the financial creditor against the petitioners has been admitted by the NCLT by its order dated 24th September 2024.

4. According to the petitioners, by operation of the moratorium imposed under Section 14 of the Insolvency and Bankruptcy Code, 2016, pursuant to the said order, no proceedings for recovery, including proceedings under the MCS Act or the Rules made thereunder, can be continued against them. Despite this,

proceedings for recovery of dues based on certificates issued under Section 101 of the MCS Act are being carried forward under Rule 107 of the MCS Rules, and the Special Recovery Officer has scheduled auction of the petitioners' properties.

5. Upon careful perusal of the record, it is noticed that the petitioners have not raised any specific objection before the Special Recovery Officer regarding the impact of the moratorium imposed by the NCLT order dated 24th September 2024. The orders challenged in these petitions pertain only to the fixation of the upset price by the District Deputy Registrar. It appears that, the Special Recovery Officer is not called upon to examine objections relating to the enforceability or executability of the recovery certificate. Therefore, it is open to the petitioners to raise a formal objection before the Special Recovery Officer, bringing to his attention the factum of moratorium imposed by the NCLT. If such objection is raised by the petitioners, it shall be the duty of the Special Recovery Officer to consider and decide such objection, strictly in accordance with law, well before the date fixed for holding the auction of the properties.

6. With the aforesaid clarification, all the writ petitions stand disposed of. There shall be no order as to costs.

(AMIT BORKAR, J.)