Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10838 of 2025
WITH
INTERIM APPLICATION NO. 31227 OF 2025
IN
WRIT PETITION NO. 10838 of 2025

Avinash Rajaram Gawde, ...**Petitioner**
(Org. Appellant)

~ versus ~

1. **The Cosmos Cooperative Bank Ltd,**
   1st Floor, Horizon Bldg.,
   Gokhale Road, Dadar (West),
   Mumbai 400 028

2. **The Special Recovery Officer (SRO),**
   Mr Devadatta H Sawant,
   C/o The Cosmos Cooperative Bank Ltd.,
   1st Floor, Horizon Bldg.,
   Gokhale Road, Dadar (West),
   Mumbai 400 028

3. **M/s GK Industries (HPLN 1321), Joint,**
   15, Surwe Industrial Estate Sonawala Cross Lane No. 1, Goregaon (East),
   Mumbai 400 063

4. **M/s GK Microtech (HPLN 784) Sole,**
   15, Surwe Industrial Estate Sonawala Cross Lane No. 1, Goregaon (East),
   Mumbai 400 063

5. **Mrs Rasika kishor Gawde,**
   As Partner of M/s. GK Industries and as legal heir of Late Mr Kishor Shivram

Gawde, having address at:
P.O.Box 775, 2020 Horns Point Road,
Cambridge, MD 21613,
United States of America
Email: rgawde@umces.edu
Phone 410-221-8337

6. **Mr Saurabh Kishore Gawde,**
As legal heir of Late Mr Kishore Gawde
Having address at:
733, Ne 14th St. Apt 9
Okalhoma City, OK 73104
United States of America
Email: saurabh-gawde@ouhsc.edu
Phone: 405-271-2085

7. **Mrs Ketki Kishore Gawde**
W/o of Late Mr Kishore Gawde
1, Pandey Mishra Chawl, Gogate Wadi
Aarey Road, Goregaon (East),
Mumbai 400 063. **…Respondents**

APPEARANCES

For the Petitioner	**Mr Anil K Lulla**, with Suchitra Singh, Riddhi Gupta & Pravin Palhade, i/b Jenny A Karakasia.
For Respondents Nos. 1 & 2	**Mr Vishal G Ghosalkar.**

CORAM : SUMAN SHYAM & MANJUSHA DESHPANDE, JJ

RESERVED ON : 19th SEPTEMBER 2025.
PRONOUNCED ON : 25th SEPTEMBER 2025.

JUDGMENT (*Per Suman Shyam, J*):-

1. The Petitioner herein stood as a guarantor in respect of a loan availed by the borrower from Respondent No. 1, i.e., The Cosmos Cooperative Bank Ltd. After the loan account had turned into an NPA ("Non Performing Asset"), proceedings were initiated to make recovery of the amount by attaching properties of the borrower as well as the guarantor. Consequently, the possession of the shop premises owned by the Petitioner was also sought to be taken over by Respondent No. 1-Bank. At that stage, the Petitioner had approached this Court by filing Writ Petition No. 10838 of 2025 *inter alia* offering to settle the amount with the Bank and also to deposit a sum of Rs. 10 lakhs by 13th August 2023. By taking note of such projection made by the learned counsel appearing for the Petitioner, on instructions from his client, this Court (Coram: MS Karnik and NR Borkar, JJ) had passed an order dated 6th August 2025 granting time to the Petitioner to deposit the sum of Rs. 20 lakhs, out of which Rs. 10 lakhs was to be deposited by 13th August 2025 and the balance amount within four weeks from the date of that order.

2. Taking note of the submissions made by the learned counsel for the Petitioner, by order dated 6th August 2025, this Court had restrained the Respondents from dispossessing the Petitioner, subject, however, to the deposit of the amount. The matter was fixed again on 21st August 2025. On that date, the Petitioner sought extension of time to deposit the amount. By order dated 21st August 2025 (Coram: Suman Shyam & Shyam C Chandak, JJ), time for depositing the amount was accordingly extended till 19th September 2025.

3. Today, when the matter is called up, it is pointed out that not even a single penny has been deposited by the Petitioner in terms of the assurance given to the Court. On the contrary, by filing the Interim Application, the Petitioner/Applicant has sought interim directions, alleging suppression of facts on the part of the Respondent Nos. 1 and 2.

4. What would be significant to note herein that the Petitioner has not denied that he was one of the guarantor to the loan nor has he challenged the Certificate of recovery. Notwithstanding same, the Petitioner is resisting the recovery proceedings by taking one plea or the other.

5. During the course of arguments Mr Lulla, learned counsel appearing on behalf of the Petitioner submits that the Respondent No. 1-Bank should be directed to first proceed against the property of the borrower and also one of the active partners of the firm and if any amount remains due and payable even thereafter, only in that case, the Bank should be permitted to proceed against the property of the Petitioner.

6. The said submission of the Petitioner's counsel has been strongly opposed by Mr Ghosalkar, learned counsel appearing for Respondents Nos. 1 and 2 who submits that law is firmly settled that the liability of a guarantor /surety is co-extensive with that of the debtor and, therefore, it is open for the Bank to proceed against the mortgaged property, including the property belonging to the Petitioner. In support of his above arguments, Mr Ghosalkar has referred to the decision of of the Supreme Court in the case of ***Ram Kishun & Ors vs State of UP & Ors***[1] and ***Central Bank of India vs CL Vimla & Ors***[2].

1 AIR 2012 SC 2288.

2 AIR 2015 SC 2280.

7. As has been noted hereinabove, there is no dispute about the fact that the Writ Petitioner was a guarantor in respect of the loan, which had turned into an NPA. It is also not denied that the certificate issued under Section 101 of the Maharashtra Cooperative Societies Act, 1960 has not been challenged by any of the parties till today.

8. The Petitioner has also failed to abide by his undertaking given to the Court while obtaining the interim orders as noted above.

9. In the case of ***Ram Kishun & Ors vs State of UP & Ors*** (Supra), the Supreme Court has observed as follows:

> "5. We have considered the rival submissions made by learned counsel for the parties and perused the record.
>
> There can be no dispute to the settled legal proposition of law that in view of the provisions of Section 128 of the Indian Contract Act, 1872 (hereinafter called the 'Contract Act), the liability of the guarantor/surety is co-extensive with that of the debtor. Therefore, the creditor has a right to obtain a decree against the surety and the principal debtor. The surety has no right to restrain execution of the decree against him until the creditor has exhausted his remedy against the principal debtor for the reason that it is the business of the surety/guarantor to see whether the principal debtor has paid or not. The surety does not have a right to dictate terms to the creditor as how he should make the recovery and pursue his remedies against the principal debtor at his instance.

> (Vide: The Bank of Bihar Ltd. v. Dr. Damodar Prasad and Anr., AIR 1969 SC 297; Maharashtra State Electricity Board, Bombay v. The Official Liquidator, High Court, Emakulam and Anr., AIR 1982 SC 1497; Union Bank of India v. Manku Narayana, AIR 1987 SC 1078; and State Bank of India v. Messrs. Indexport Registered and Ors., AIR 1992 SC 1740)."

10. From the aforementioned decision of the Hon'ble Supreme Court, it is apparent that the liability of the guarantor is coextensive with the debtor. Therefore, both would stand on equal footing when it comes to proceeding for recovery of the amount. If that be so, we do not find any force in the submission of the learned counsel appearing for the Petitioner that the Bank must be directed to first proceed against the properties of the partner of the firm and the borrower and only thereafter, proceed against the Petitioner's property.

11. For the reasons cited hereinabove, we do not find any good ground to entertain the Writ Petition. The same is accordingly dismissed.

12. Consequently, the Interim Application stands disposed of.

(MANJUSHA DESHPANDE, J.) **(SUMAN SHYAM, J.)**