IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 353 OF 2025

Pravin Kailashchandra Dubey
Aged about 39 years, Occupation : Driver, Indian Inhabitant of Mumbai, having address at Room No. 407, Build No. 6, Aman Adarsh Nagar, S.R.A. CHS, Near Chandarkar Road, Opp. Indian Bank Borivali (W), Mumbai 400 092 …Petitioner

Versus

1. Om Gorai Nagri Co-Operative Credit Society Ltd.,
having address at Borivali (W), Mumbai – 400 091.

2. The Special Recovery and Sales Officer, the Maharashtra Co-operative Societies Act, 1960,
Attached to Om Gorai Nagri Co-operative Credit Society Ltd.,
Having address at Borivali (W), Mumbai – 400 091. …Respondents

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Mr. Omprakash Dubey, for the Petitioner/Applicant.
Mr. Subhash Bane with Avneet Nagpal, for Respondents Nos. 1 and 2.

CORAM: SUMAN SHYAM &
MANJUSHA DESHPANDE, JJ.

DATED: 24th SEPTEMBER 2025.

Order : (Per Manjusha Deshpande, J.) :-

1. The Petitioner who is a borrower of Respondent No. 1- *Om Gorai Nagri Co-Operative Credit Society Ltd.* has challenged the notice dated 10th October 2024, issued by Respondent No. 2- the Special Recovery and Sales Officer attached to *Om Gorai Nagri Co-operative Credit Society Ltd.*, Borivali, pursuant to the order dated 13th October 2021 passed by the Assistant Registrar, Co-operative Societies, Borivali.

2. The Petitioner challenges the notice issued by Respondent No. 2, directing to handover symbolic possession of the property, which was mortgaged by him, while availing the loan from Respondent No.1 - Society.

3. Mr. Omprakash Dubey, learned counsel appearing for the Petitioner, submits that the Petitioner had applied for loan of Rs.7,00,000/- and, accordingly, after executing a memorandum of equitable mortgage on 17th May 2017 in respect of the property owned by him, i.e., Room No. 407, Building No. 6, Aman Adarsh Nagar, S.R.A. CHS, Near Chandarkar Road, Borivali (W), Mumbai, loan was sanctioned to him.

4. It is his case that he had cleared the entire loan amount. Accordingly, he has been issued a certificate by Respondent No. 1 on 4th August 2019. Respondent No. 1 has also addressed a letter to the President and Secretary of the Society on 7th August 2019, informing that the entire dues have been cleared by the Petitioner. According to him, on repaying the entire amount he has received the original documents of the property which he has again deposited for securing another loan from Janaseva Sahakari Bank (Borivali) Ltd. Therefore, when he received a communication dated 10th October 2024, directing him to handover the symbolic possession towards the total pending dues of Rs.11,41,238/-, he filed complaint with the Senior Inspector of Police, Borivali Police Station, Mumbai on 18th October 2024, complaining that though he has cleared the entire amount, and there is no outstanding dues, the Recovery Officer has issued the communication for attachment of his property. Therefore, the Petitioner is approaching this Court by challenging the notice of attachment issued against him for taking over the symbolic possession of the property.

5. The Petitioner contends that Respondent Nos. 1 and 2 who are in collusion, have cheated the Petitioner. Though they are aware that the loan sanctioned to him has been already entirely paid and documents are returned, yet they are proceeding by making misuse of the provisions of the Co-operative Societies Act, 1960, which is totally illegal and against the principles of recovery of loan. Therefore, he prays that the notice dated 10th October 2024 may be quashed and set aside.

6. Mr. Subhash Bane, learned counsel appearing for Respondent Nos. 1 and 2 submits that, he has a preliminary objection to the maintainability of the Writ Petition on the ground that the Petitioner has not availed the alternate efficacious remedy available to him under Section 107(19)(a) of the Maharashtra Co-operative Societies Rules, 1961. The second objection is as regards the documents relied upon by the Petitioner to claim that a certificate of no dues has been issued by the Bank and similar communication is addressed to the Society informing that, the Petitioner has cleared the dues. The Respondents have outrightly denied the documents to claim that they had never issued any such documents. They have already filed complaint against the Petitioner about the forged documents. These are disputed questions of fact which cannot be gone into the present Writ Petition. It is further contended that, though recovery certificate is issued against the Petitioner, he has not challenged the said certificate which has attained finality. Instead of challenging the said certificate in a Revision which requires deposit of 50% of decretal amount, by giving a goby to the remedy of filing Revision, the Petitioner has approached this Court.

7. It is further submitted that documents, i.e., Certificate dated 4th August 2019 and the letter dated 7th August 2019, are forged and fabricated documents. The Petitioner is therefore liable for action for perjury. According to learned counsel, it is undisputed fact that as on 31st December 2024, sum of Rs.11,79,072/- is due and payable by the Petitioner to Respondent No. 1.

8. The learned counsel for Respondent No. 1 submits that loan of Rs.7,00,000/- was sanctioned to the Petitioner in the month of May 2017. Though initially he had paid the monthly installments regularly, he started making default in payment from February

2018. Hence, the Demand notice was issued to him for the overdue loan on 3rd June 2018, which was received by the wife of the Petitioner. In spite of demand notice, the Petitioner did not pay the overdue amount. Respondent No. 1 once again sent a reminder demand notice on 25th September 2019, to which the Petitioner responded and sought extension of time through his lawyer, vide communication dated 27th September 2019. Though extension of time was granted to the Petitioner, he has failed to make payment of the said amount. Since the Petitioner has failed to repay the loan, vide attachment notice dated 4th January 2025, the Petitioner and his sureties were called upon to pay the loan amount. Since the Petitioner and his sureties have failed to repay the loan, the symbolic possession of the mortgaged property has been taken on 23rd January 2025. In view of the aforementioned facts and circumstances, it is prayed that the prayers made by the Petitioner does not deserve any consideration.

9. After hearing the learned counsel for the respective parties and upon going through the documents placed on record, it is not disputed that symbolic possession of the mortgaged property has been taken vide order dated 10th October 2024. The Petitioner has challenged the said notice on the ground that though he has repaid the entire amount, Respondent No. 2 has issued a notice for attachment of his property on 10th October 2024. He places reliance on the certificate dated 4th August 2019 purportedly issued in his favour by Respondent No. 1 certifying that, as a result of clearing of loan by the Petitioner his loan account has been closed. The other document is dated 7th August 2019 addressed by Respondent No. 1 to the Chairman of the Housing Society i.e. the property which is mortgaged by the Petitioner, informing that the loan of the Petitioner has been completely paid on 4th August 2019, therefore, there is no encumbrance on the said property. These two documents have been disputed by the Respondents contending that, no such document has ever been issued by Respondent No. 1 and the same are forged and fabricated. Accordingly, the Respondents have also filed a complaint.

10. Over and above, the complaint filed by the Respondent-Bank with the Senior Inspector of Police on 18th June 2022 about fabricated documents, the communication addressed by the Petitioner to the Respondent-Bank dated 27th September 2019, requesting to grant extension of time to make payment of loan in installments itself is contrary to the averments made by the Petitioner in the Writ Petition that he has already cleared the loan and certificate to that effect has been issued to him by the Society. The no dues certificate as well as the communication addressed by the Bank to the Society creates doubt about its genuineness. The communication sent through the Advocate of the Petitioner dated 27th September 2019 is clearly sent after the no dues certificate was purportedly issued on 4th August 2019. This very document falsifies the claim of the Petitioner.

11. Even otherwise, the Petitioner has failed to challenge the recovery certificate issued against him and has directly approached this Court against the notice for taking the symbolic possession. The Petitioner is having a statutory remedy available to him under Rule 107(19)(a) of the Maharashtra Co-operative Societies Rules, 1961. Hence, in view of the disputed questions of fact raised by the Petitioner and also in view of the fact that the Petitioner has not challenged the 101 Recover Certificate and has not availed the alternate remedy, the Petitioner has failed to make out a case for causing interference by this Court. As such, the Writ Petition, being devoid of merit, is hereby dismissed.

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

RUSHIKESH VISHNU PATIL
Digitally signed by RUSHIKESH VISHNU PATIL Date: 2025.09.30 11:33:55 +0530