

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 12637 OF 2024****WITH****INTERIM APPLICATION NO.252 OF 2026**

Ratnaprabha Balu Bhalerao

.....Petitioner.

Vs.

The State of Maharashtra & Ors.

.....Respondents.

Mr. V.S. Tadke a/w Adv. M. B. Gawade for the Petitioner.

Smt. R.A. Salunkhe AGP, for the Respondent-State.

Mr. Manoj Patil for the Respondent No.5.

**CORAM : A. S. GADKARI AND
SHYAM C. CHANDAK, JJ.****DATE : 27th JANUARY, 2026.****PC.:-**

1) The case in hand is an excellent example, how the writ jurisdiction of the Court is being misused though there are various statutory alternate remedies available at the disposal of the Petitioner.

2) By this Petition under Article 226 of the Constitution of India, the Petitioner has impugned Order dated 19th August, 2024 passed under Rule 107 of the Maharashtra Co-operative Societies Act, 1961 thereby confirming the sale of the property which was attached in furtherance of

Certificate issued under Section 101 of MCS Act.

3) Heard Mr. Tadke learned Advocate for the Petitioner, Smt. Salunkhe learned AGP for the Respondent-State and Mr. Patil learned Advocate for the Respondent No.5. Perused entire record.

4) The facts giving rise for filing the Petition can briefly be scrutinized as under:-

4.1) On an Application filed under Section 101 of MCS Act by the Respondent No.5, a Certificate was issued by the Assistant Registrar, Co-operative Societies, Pune by which the principal borrower Mr. Suryakant Dhondibhau @ Dhondu Bhalerao was directed to pay a sum of Rs.37,70,000/- along with the interest accrued thereon. As the principal borrower did not comply with the directions issued by the Certificate issued under Section 101 of MCS Act, the Respondent No.5 adopted proceedings under Rule 107 of the MCS Act. The Petitioner being co-borrower, her property was attached and was put up for sale. The Respondent No.6 being the successful bidder, sale of the property is confirmed in his favour by the impugned Order dated 19th August, 2024.

5) Learned Advocate for the Petitioner submitted that, before passing the Order under Section 101 of MCS Act, due notice of initiating the said proceeding was not issued to her and therefore the issuance of Certificate under Section 101 of MCS Act is bad in law. He submitted that,

now she has received information under the Right to Information Act from the Respondent No.5, admitting the fact that, the Petitioner was not served with the notice of the said proceedings.

6) It be noted here that, against the Certificate issued under Section 101 of MCS Act, there is a substantive alternate statutory remedy under Section 154 of the MCS Act of filing a Revision. The Petitioner under legal advice instead of preferring the said revision, has directly approached this Court after the sale of the attached property by the competent Authority under the MCS Act is confirmed by the impugned Order dated 19th August, 2024. A bare perusal of Rule 107 and Sub-Rule 14 of the said Rules indicates that, even against the Order of confirmation of sale, the Petitioner is having remedy to challenge it before the competent Authority established under Rule 107(14) of MCS Act. It is therefore apparent that, though it is contented by the Petitioner that, she is illiterate lady the pleadings of the Petition itself makes it clear that, the Petitioner is using a smart-phone and is sending and receiving the messages on WhatsApp.

6.1) Perusal of impugned Order dated 19th August, 2024 further reveals that, the hearing of the Application under Rule 107 was conducted on various occasions. The notice of the said Application was duly served upon the Petitioner and in furtherance of the said notice the principal borrower Mr. Suryakant Dhondibhau @ Dhondu Bhalerao appeared and

participated in the said proceedings. We therefore having our own doubt about the information provided by the Information Officer of Respondent No.5-Society that, the due notice of the proceedings was not served upon the Petitioner. According to us, it is detrimental to the interest of the Respondent No.5-Society.

7) In view of the above, we are of the clear opinion that, the present Petition as filed and presented is a sheer abuse of process of law.

8) It is the settled position of law and as has been decided in catena of decisions by the Hon'ble Supreme Court, ordinarily the Court will not entertain a Petition under Article 226/227 of the Constitution of India, where the Petitioner has an alternative remedy, which without being unduly onerous, provides an equally efficacious remedy. Though no hurdle can be put against the exercise of the constitutional powers of the High Court, it is a well-recognized principle which gained judicial recognition that, the High Court should direct party to avail himself of such remedies, one or the other before he/she resorts to the constitutional remedy.

Reliance is placed on the following decisions :-

- (i) *Thansingh Nathmal Vs. The Superintendent of Taxes, Dhubri & Ors., reported in AIR 1964 SC 1419.*
- (ii) *A. Venkatasubbiah Naidu Vs. S. Chellappan & Ors., reported in (2000) 7 SCC 695.*

- (iii) Shalini Shyam Shetty & Anr. Vs. Rajendra Shankar Patil, reported in (2010) 8 SCC 329.*
- (iv) Radhey Shyam & Anr. Vs. Chhabi Nath & Ors., reported in (2015) 5 SCC 423.*
- (v) Genpact India Private Limited Vs. Deputy Commissioner of Income-Tax & Anr., reported in (2019) 419 ITR 440 (SC).*
- (vi) Virudhunagar Hindu Nadargal Dharma Paribalana Sabai & Ors. Vs. Tuticorin Educational Society & Ors., reported in (2019) 9 SCC 538.*
- (vii) Magadh Sugar & Energy Ltd. Vs. State of Bihar & Ors., reported in 2021 SCC OnLine SC 801.*

9) In view of the above, we are not inclined to entertain the Petition and is accordingly dismissed.

10) In view of dismissal of Petition, nothing further survives in the Interim Application No. 252 of 2026 and is also disposed off.

11) Taking into consideration the fact that, the Petitioner has unnecessarily called upon this Court for spending its valuable judicial time by filing the present Petition, we were in fact inclined to saddle the Petitioner with exemplary costs. However, at the sincere and profuse request of learned Advocate for the Petitioner, we are refraining ourselves from doing so.

(SHYAM C. CHANDAK, J.)

(A.S. GADKARI, J.)