



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 2417 OF 2024

DEV POLYMERS, THROUGH ITS PROPRIETOR SUSHIL DEVKISAN SARDA AND ANOTHER
Vrs.
THE SHEGAON AGRASEN SAHAKARI PAT SANSTHA MARYADIT SHEGAON, DIST. AKOLA
AND OTHERS

WITH

WRIT PETITION NO. 2520 OF 2024

DEV PLASTICS, THROUGH ITS PROPRIETOR KAMLA DEVKISAN SARDA
Vrs.
THE SHEGAON AGRASEN SAHAKARI PAT SANSTHA MARYADIT SHEGAON, DIST. AKOLA
AND OTHERS

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri V. A. Lohia, Advocate for petitioners.
Shri Piyush Rewatkar, Advocate h/f Shri A. J. Mirza, Advocate
for respondent Nos.1 and 5.
Ms. M. R. Kavimandan, A. G. P for respondent No.4.

CORAM: M. W. CHANDWANI, J.

DATE : 25/02/2026.

1. Heard.
2. Both Writ Petitions challenge the order dated 08/12/2023 passed by the learned Assistant Registrar of Co-operative Societies, Murtizapur, Dist. Akola (For short, "Assistant Registrar") in the case bearing No. जा.क्रं. सनिमु/वि-१कलम१०१/व.दा./दि.शेगांव श्री अग्रसेन सह. पत संस्था, मुर्तिजापूर/११३३/२०२३ wherein the application for obtaining Recovery Certificate filed under Section 101 of the Maharashtra Co-operative Societies Act, 1960 (For short, "Act of 1960") by respondent No.1 / Original applicant was allowed.

3. Since, the impugned order and issue involved in both writ petitions is same, the petitioners in Writ Petition No.2417/2024 are the original non-applicant No.1 and 4 and the petitioner in Writ Petition No.2520/2024 is the original non-applicant No.4, therefore, both petitions are disposed of vide this common order.

4. The petitioners in both petitions are the members of respondent No.1 – The Credit Co-operative Society. For the purpose of their business, they requested respondent No.1 to enhance the Cash Credit Limit, accordingly, the Cash Credit was enhanced to the extent of Rs.40,00,000/-. The petitioners defaulted in repayment of the same. Thereafter, a notice was sent by respondent No.1 to the petitioners on 09/02/2023, yet, the loan amount was not repaid by the petitioners. Therefore, respondent No.1 filed an application before the Assistant Registrar for issuance of Recovery Certificate against the petitioners. Accordingly, the petitioners appeared and notices were issued to the petitioners to appear and contest the application. Thereafter, by the impugned order, the Assistant Registrar issued Recovery Certificate in favour of respondent No.1.

5. The contention of learned counsel for petitioners in both petitions is that, the mandatory procedure laid down under Chapter VIII-A of the Maharashtra Co-operative Societies Rules, 1961 (For short, “Rules of 1961”) has not been followed. Learned

counsel for the petitioners challenged the impugned order, mainly on the grounds that the application filed by respondent No.1 is incomplete and not in conformity with the prescribed format. That, various particulars are required as per Chapter-VIII-A of the Rules of 1961 which are not filled and casually left blank. Further, the application is required to be supported by an affidavit of authorized officer, thereby stating on oath that the statements are true and correct. Nonetheless, the application filed is not supported by any such affidavit, and various other particulars are required in the affidavit are left blank. Moreover, the application does not even state the name of such authorized officer who has filed it on behalf of respondent No.1. Hence, the very foundation of the recovery proceeding is vitiated.

6. Reliance is placed by the petitioners on the case of **Sundeep Polymers Pvt. Ltd. and others Vrs. State of Maharashtra and others**, reported in **2010 (7) Mh.L.J. 538** wherein, it has been held in Para No.10 as under :-

“10. It is mandatory for the Authorities to follow the Rules provided in Chapter VIIIA of the Maharashtra Co-operative Societies Rules 1961 while issuing Recovery Certificates. It is amply clear that in this case the Recovery Certificate has been issued without following due procedure and also without proper service of notice on the appellants and the Rules of natural justice are violated. Hence the Recovery Certificate issued must be held to be invalid and bad in law and needs to be struck down. This has resulted into unnecessary waste of time and money by the appellants as well as the bank.”

The decision passed in **Sundeep Polymers (supra)** is also followed in the case of **Sayyad Sardar**

Sayyad Ahmad Vrs. State of Maharashtra and others (Writ Petition No.975/2014 dated 14/07/2015).

7. Reliance is also placed on the decision of Division Bench of this Court in the case of **Top Ten, A Partnership Firm and another Vrs. State of Maharashtra and others**, reported in **2012 (1) Mh.L.J. 347** wherein Para No.17 is reproduced as under :-

17. Chapter VIIIA of 1961 Rules vide its Rule 86A shows procedure for filing application for grant of certificate for recovery. The form in which it is to be filed is also prescribed and documents which must accompany are also stipulated. Form "U" in which application under section 101 is required to be filed shows the requirement of disclosure of relevant facts by the concerned society; all necessary facts which make the respondents before that authority either borrower or guarantor; the procedure followed for sanctioning loan, securities furnished, documents executed. The applicant then has to point out failure to repay principal amount and interest upon it and demand/demands made by the concerned society. A resolution of the Board of Directors to file an application under section 101 is, also required to be pleaded. Details of loan transaction are also required to be pointed out as part and parcel of this application. The application is required to be supported by affidavit of responsible officer of a co-operative society. Rule 86B contemplates scrutiny of such application by the Registrar. Registrar cannot issue notice to other side, if such application is incomplete in material respect. The other side is expected to file written statement. Rule 86C contemplates appearance of party, either personally or through an Advocate and consequence of failure to appear. Rule 86D enables both the parties to file documents. It also enables the Registrar to call for such other documents from opposite party by order in writing, if production of such document is found essential. Request for such production from opponent cannot be entertained before he files his written statement. Adverse inference can be drawn if the document is not produced, after such direction. The applicant Society has to prove contents of its application and also show how the contentions raised in defence by

other side are not correct. After this exercise is undertaken by the applicant Society, the opponent has been given opportunity to file reply in support of his defence, and after such reply, Registrar has to hear oral arguments. Then he has to deliver a reasoned judgment under Rule 86F. If he issues certificate, it has to be in Form "V". Rule 86-E specifically stipulates that no cross-examination of any of the parties is permitted."

8. On the other hand, learned counsel for respondent No.1 state that the petitioners failed to identify that the order passed by the Assistant Registrar under Section 101 of the Act of 1960 is reversible under Section 154 of the Act of 1960 and that the person aggrieved can opt for alternate remedy by filing revision application.

9. On the contrary, learned counsel for the petitioners with regards to the aspect of availability of alternate remedy placed reliance on the case of Omprakash Maniklal Daga and others Vrs. The Deputy Registrar of Cooperative Society, Akola and another wherein Para Nos.6 and 7 has held as under :

"6. The submission made on behalf of the respondent No.2-bank as above cannot be accepted. The roznama dated 29 September, 2017 does not record that hearing was conducted on that date. The roznama only records that the petitioners should produce the documents as specified on the next date. The roznama also does not show that the parties would put to notice that all the parties were heard on 5 October, 2017.

7. In my view, it is the case of breach of principles of natural justice and the Deputy Registrar should not have proceeded in the matter with undue haste. Hence, overruling the preliminary objection raised on behalf of the respondent No.2-bank about availability of the alternate statutory remedy under Section 154 of the Act of 1960, the writ petition is entertained. One more reason for

entertaining the petition is that cognizance of the grievance of the petitioners made in the writ petition is already taken by the order dated 17th November, 2017 and at this stage it would not be appropriate to relegate the parties to avail alternate remedy.”

10. However, having found that the application for obtaining Recovery Certificate has not been scrutinized by the Assistant Registrar properly, the mandatory procedure provided under Chapter-VIII-A of the Rules of 1961 does not appear to have been followed. Moreover, mere availability of alternate remedy will not bar the writ petition.

11. That apart, learned counsel for the petitioners submitted that though on 25/08/2023, the petitioners moved an application before the Assistant Registrar requesting that the disputed account extracts be referred for independent verification, the Assistant Registrar referred the matter to Chartered Accountant by issuing a letter only on 01/09/2023. When the report was not obtained, the Assistant Registrar issued a reminder to the Chartered Accountant on 15/09/2023. Thereafter, on 01/12/2023, the Assistant Registrar supplied the copy of the Chartered Accountant’s report to the petitioners and, on the very same day, closed the matter for orders without granting the petitioners sufficient time to examine the report or consult their counsel.

12. Perusal of the Roznama of the present proceeding reveals that on 25/08/2023, the matter was referred to Chartered Accountant for verifying of accounts

and the calculations, and on next date that is on 01/12/2023, the matter was taken up for hearing and the Chartered Accountant's report was supplied to the petitioners and thereafter, the impugned order came to be passed on 08/12/2023. Thus, the contention that, time for reviewing the report and consulting counsel was not given does not survive.

13. In view of the aforesaid discussion, the petition succeeds and is accordingly allowed.

14. The order passed by the Assistant Registrar, Co-operative Society, Murtizapur is hereby set aside.

15. The Assistant Registrar, Co-operative Societies, Murtizapur shall conduct due enquiry, as per rule and after following due procedure shall pass appropriate order.

16. The parties to appear before the Assistant Registrar, Co-operative Societies, Murtizapur, Dist. Akola on **16/03/2026**.

17. The liberty is granted to respondent No.1 to correct its application.

[JUDGE]