



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

CIVIL REVISION APPLICATION NO. 146 OF 2025

(The Recovery Officer, Shikshak Sahakari Bank Ltd. Nagpur and another vs. Mr. Pradeep
Balchandra Polke and another)

*Office Notes, Office Memorandum of Coram,
appearances, Court's orders or the directions,
and Registrar's orders.*

Court's or Judge's order

Mr. N.L.Jaiswal, Advocate for applicants.
Mr. R.S.Sekhsaria, Advocate for respondents.

CORAM : ROHIT W. JOSHI, J.
JANUARY 13, 2026

1) The present revision is filed challenging the order dated 21/11/2025 passed by the learned 3rd Joint Civil Judge Junior Division, Nagpur on an application for rejection of plaint filed vide Exh.9 in R.C.S. No.1173/2025. The learned trial Court rejected the said application for rejection of the plaint by the impugned order. The ori. plaintiffs/respondents have filed the aforesaid suit seeking following reliefs :-

1. *"Declare that the threatened action of Defendants to take physical possession of Schedule-I, II & III from Plaintiffs (Sch-I property from Plaintiff No.1) and (Sch-II & III Properties from Plaintiff No.2) and to handover the same to the Defendants is illegal, invalid and without authority of law and*
2. *Order/Letter dated 25/7/2025 obtained by defendants from Additional Collector, Nagpur directing Tahsildar & Executive Magistrate, Nagpur to take physical possession of Suit Properties from Plaintiffs and to hand over the possession thereof to the Defendants is not binding on Plaintiff's and the same is procured by the Defendants fraudulently and is un-executable and*

3. *To restrain the Defendants, their agents, servants, representatives, delegates and/or any person/authority acting for and on behalf of or at the instance of defendants from taking over the possession of Suit Properties or conducting auction/sale thereof by issuing perpetual prohibitory injunction and*
 4. *to declare that Plaintiffs stood discharged from liability (if any) to the Defendants owing to their Inaction to take action against principal borrower by neglecting to attach and auction the properties mortgaged by the principal borrower to secure the repayment of its loan in the dust of Justice.*
 5. *To grant such other relief as may deem fit and proper in the circumstances of the case in the interest of Justice and*
 6. *To award cost of the proceeding in the interest of Justice.”*
- 2) The applicants are the original defendants and respondents are original plaintiffs. Hereinafter, parties will be referred to “plaintiffs” and “defendants”.
- 3) Perusal of the plaint averments will demonstrate that in an application filed by the defendant No.2/Shikshak Sahakari Bank Ltd., Nagpur order under Section 101 of the Maharashtra Cooperative Societies Act, 1960 (hereinafter referred to as ‘MCS Act, 1960) came to be passed against one Madhav Murlidhar Jadhav. On the basis of the said order dated 23/04/2019 the Assistant Registrar, Cooperative Societies has issued Demand Notice in Form-V appended to Maharashtra Cooperative Societies Rules 1961. The Demand Notice in Form-V is issued as per Rule 86-F of the Maharashtra Co-operative Societies Rules, 1961, (hereinafter referred to as “the MCS Rules, 1961”). On the basis of the aforesaid order and Demand Notice dated

23.04.2019 (date wrongly typed as 23.04.2018), defendant No.1 moved an application under Section 107 of the MCS Act, *inter alia*, seeking assistance for taking physical possession of the properties owned by the plaintiffs. The said application came to be allowed by the District Magistrate vide order dated 25.07.2025 whereby the Tahsildar and Executive Magistrate, Nagpur was directed to take physical possession of the suit properties and hand over the same to the defendants. The District Magistrate also permitted the Executive Magistrate to take police aid for the said purpose.

- 4) Having regard to the prayers made in the plaint in the light of the pleadings it is apparent that the challenge to the order passed by the District Magistrate and prayer for declaration that the action of defendants, intending to take physical possession of suit properties, is illegal and without authority of law, is in fact challenge to an action which is taken pursuant to order dated 23.04.2019 passed under Section 101 and the consequent to Demand Notice dated 23.04.2019.
- 5) Mr. Jaiswal, learned counsel for the applicants/defendants contends that the suit is barred in view of Section 101(3) of the MCS Act, 1960. The contention is that a certificate granted by the Registrar under Section 101 is final and conclusive and that such order/certificate is only subject to challenge in a revision under Section 154 of the MCS Act, 1960. He points out that Civil Suit for challenging the order/certificate under Section 101 is specifically barred under Section 101(3). Apart from this, the learned counsel also contends that the plaint does not indicate that suit notice as contemplated under Section 164 of the MCS Act, 1960 was issued prior to institution of suit and therefore, the suit is not maintainable and accordingly plaint is liable to be rejected.

6) Per contra, Mr. Raj Sekhsaria, learned Advocate for the respondents/plaintiffs, contends that order under Section 101 is not passed against the plaintiffs. He further contends that although order under Section 101 is not passed against the plaintiffs, Demand Notice in Form-V is wrongly issued against the plaintiffs. He contends that the demand notice is clearly issued in breach of mandate of Section 101 of the MCS Act and Rule 86-F of the MCS Rules. He contends that unless there is an adjudication against a person under Section 101 of the Act, Demand Notice in Form-V cannot be issued against him. He sums up the contention by submitting that the Demand Notice is issued without jurisdiction and in disregard to provisions of the Act and Rules and is, therefore, *non est* and void *ab-initio*. The learned Advocate, therefore, contends that bar under Section 101(3) of the Act will not be attracted. As regards, suit notice under Section 164 of the Act, the contention is that since the proposed action of taking possession pursuant to a void Demand Notice is being challenged, notice under Section 164 of the Act is not required to be issued.

7) Mr. Jaiswal, learned counsel for the applicants/defendants, counters the submission, contending that Section 101 does not contemplate passing of any order, but merely an enquiry which is concluded upon issuance of Demand Notice.

8) As regards first contention with respect to bar under Section 101(3) of the Act, it needs to be stated that certificate in Form-V is issued in accordance with Rule 86-F of the MCS Rules, 1961. Perusal of Rule 86-F indicates that an authority dealing with Section 101 proceeding is required to hear the arguments of the parties and then pass a reasoned judgment and pass order either allowing or rejecting the application. The provision

contemplates issuance of demand notice if the application is allowed. The Demand Notice must be in accordance with order passed. Section 101 of the Act, read in conjunction with Rule 86-F will clearly indicate that passing of a reasoned judgment and order is mandatory.

9) Perusal of Rule 86-F will indicate that thus an authority dealing with a proceeding under Section 101 of the Act is required to hear respective sides and pass a reasoned order either allowing or rejecting the application. The Rule contemplates issuance of a Demand Notice in accordance with such adjudication. In view of clear mandate of Section 101 read alongwith Rule 86-F, the contention of Mr. Jaiswal is that Section 101 does not contemplate passing of an order is liable to be rejected.

10) Since, there is no order against the plaintiffs under Section 101 of the Act, Demand Notice could not have been issued against them by referring to the said order, which is passed only against Mr. Madhav Jadhav and not against the plaintiffs. The names of the plaintiffs are mentioned as guarantors for the first time in the Demand Notice. There is no adjudication against the plaintiffs in the proceeding under Section 101. It is, therefore, clear that the Demand Notice is issued against the plaintiffs in utter disregard to the mandate of Section 101 and Rule 86-F. The Demand Notice which is issued against the plaintiffs in the absence of an order against them under Section 101 of the Act is clearly without jurisdiction and/or authority of law. The Demand Notice is, therefore, a nullity in the eyes of law.

11) It is well settled that ouster of jurisdiction of the Civil Court cannot be readily inferred and that a Civil Court has jurisdiction to decide every *lis* of civil nature, unless its

jurisdiction is barred by an express provision or by necessary implication. It is also well settled that when an authority performing any function under the Act does not perform the said function in compliance with the provisions of the said Act, jurisdiction of Civil Court to assail such action can be invoked even if there is a specific provision barring or excluding its jurisdiction. Reliance in this regard can be placed on the judgment in the case of ***M. P. Electricity Board, Jabalpur Vs. Vijaya Timber Co***, reported in ***(1997) 1 SCC 68***.

12) Likewise, in cases where the act or order by which a person is aggrieved is a nullity or *non-est*, the jurisdiction of Civil Court can always be invoked to challenge such order or action, even if the same is expressly barred. This legal proposition is well settled, as can be seen from catena of decisions, including the judgments of the Hon'ble Supreme Court in the case of ***Lala Ram Swarup and ors. Vs. Shikar Chand and anr***, reported in ***AIR 1966 SC 893***, in the case of ***Krishan Lal Vs. State of J & K***, reported in ***(1994) 4 SCC 422***, and in the case of ***Dhruv Green Field Ltd. VS. Hukam Singh and ors*** reported in ***(2002) 6 SCC 416***.

13) Section 164 of the Act, provides that no suit shall be instituted against a co-operative society in respect of any act touching the business of the society without two months notice. The plant does not disclose that such notice is issued. However, perusal of prayer clauses 1, 2 and 4 in the plaint will indicate that the grievance raised by the plaintiffs is that possession of their property is being taken pursuant to a demand notice which is void ab initio and accordingly they have prayed for declaration that the proposed action of taking physical possession of their properties is illegal, order passed by District Magistrate directing taking of physical possession which is passed for

implementation/execution of the said demand notice is unexecutable and for an injunction restraining the defendants from taking possession of their properties and/or from putting them to auction. All these prayers cannot be said to be related to business of the society since business of a society cannot include act of recovery of possession or conducting auction of properties of a person in the absence of any adjudication of liability against him. Such act which is without authority of law cannot be termed to be business of society. In the considered opinion of this Court, having regard to nature of the reliefs sought which are predominantly raising challenge to an act which is non-est being without jurisdiction and authority of law will not require issuance of suit notice under Section 154 of the Act.

14) The contention may hold good with respect to prayer clause (4) in the plaint. However, in view of judgment of the Hon'ble Supreme Court in the case of ***CBI Vs. Prabha Jain***, reported in ***(2025) 4 SCC 38***, it will not be appropriate to comment on maintainability of suit viz-a-viz the said prayer since the suit is held to be maintainable with respect to other prayers and the plaint cannot be rejected in part.

15) In view of the aforesaid, this Court sees no jurisdictional error in the order passed by the learned trial Court, rejecting the application for rejection of plaint, Civil Revision Application is therefore, rejected.

(ROHIT W. JOSHI, J.)