

Arjun

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.13372 OF 2023

M/s. Jijau Developer, ...Petitioners
Through Sonali Ramdas Ghawate & Anr.

V/s.

State of Maharashtra & Ors. ...Respondents

Mr. Sugandh Deshmukh, for the Petitioners.

Mrs. M. S. Srivastava, AGP, for the Respondent Nos.1 & 2-State.

Mr. P. B. Shah i/b Mr. K. P. Shah, for Respondent Nos.3 & 4.

**CORAM : MADHAV J. JAMDAR, J.
DATED : NOVEMBER 30, 2023**

P.C.:

1. Heard Mr. Deshmukh, learned counsel appearing for the Petitioners, Mrs. Srivastava, learned AGP for the Respondent Nos.1 and 2-State and Mr. Shah, learned counsel appearing for Respondent Nos.3 and 4.

2. The Petitioners by the present Writ Petition filed under Article 226 of the Constitution of India challenge the order dated 23rd October 2023 passed by the Divisional Joint Registrar, Co-operative Societies, Pune Division, Pune, by which simpliciter notice has been issued without granting any stay order by the Divisional Joint Registrar in the Revision Application No.391 of

2023 filed by the Petitioners. The challenge in the said Revision Application was to the auction proceeding.

3. It is an admitted position that the Petitioners have not deposited 50% of the amount as per the mandate of Section 154 (2-A) of the Maharashtra Co-operative Societies Act, 1960 (“**said Act**”) in the said Revision.

4. A learned Single Judge in the decision of ***Greater Bombay Co-Operative Bank Ltd. v. Dhillon P. Shah***¹ has *inter alia* held that Sub Section 2-A of Section 154 will be applicable even to the challenges to the derivative actions subsequent to the recovery certificate issued under Section 101 of the said Act. In the said decision, it has been *inter alia* held as follows :

“8. Assuming that the Revision was properly filed by the respondents 1 and 2, however, the Revisional Authority could not have entertained that revision in view of non-compliance of the mandate of section 154 (2A) of the Act, which reads thus:

“No application for revision shall be entertained against the recovery certificate issued by the Registrar under section 101 unless the applicant deposits with the concerned society, 50% amount of the total amount of recoverable dues.”

To get over this position, learned Counsel for the respondents 1 and 2 contends that the said respondents were not challenging the recovery certificate as such,

¹ 2003 SCC OnLine Bom 953 : (2004) 1 Mah LJ 996

but only the consequential steps taken by the authorities for execution of the recovery certificate so issued. To my mind, that would not extricate the said respondents from the liability fastened under sub-section (2A) referred to above. It will be preposterous to accept the stand that a person “against whom”, recovery certificate is issued, need not challenge the recovery certificate as such or for that matter, even if he has failed in the challenge to the recovery certificate (as in the present case), yet would be entitled to interdict the process of recovery of the amount specified under the recovery certificate, by ostensibly challenging only the derivative action by way of Revision Application under section 154 of the Act without complying the mandatory requirement under sub-section (2A) thereof of 50% payment of the total amount of the recoverable dues. For, a person “against whom” recovery certificate has been duly issued and, who has not challenged the same or has failed in his challenge thereto, cannot be in a better position than a person who intends to challenge the recovery certificate itself by way of revision application under section 154 and who is then obliged to pay fifty per cent, of amount of recoverable dues. In my opinion, having regard to the purpose and the legislative intent for introducing sub-section (2A), the language of that provision would deserve liberal construction so as to encompass challenge to the derivative actions, by way of revision application under section 154 of the Act, founded on the recovery certificate which has either not been challenged or the challenge thereto has failed. To put it differently, the rigours of sub-section (2A) would

take within its sweep revision application filed by a person “against whom” recovery certificate under section 101 of the Act has been issued, challenging the recovery certificate itself or any attempt by him to interdict the process of recovery of the dues founded on such recovery certificate, by ostensibly challenging only the derivative action in relation to the recovery certificate so issued and has become final.”

(Emphasis added)

- 5.** It is the contention of Mr. Deshmukh, learned counsel appearing for the Petitioners that although Stay has been sought before the Divisional Joint Registrar without considering the said relief, notice has been issued. However, admittedly, there is no compliance of Sub Section 2-A of Section 154 of the said Act and, therefore, said Revision itself cannot be entertained.
- 6.** Accordingly, no interference under the writ jurisdiction of this Court is warranted.
- 7.** The Writ Petition is dismissed, however, with no order as to costs.

[MADHAV J. JAMDAR, J.]