**MHCO040000192012**

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| Filed on | : 02/11/2012 |
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| Decided on | : 18/08/2026 |
| Duration | : 13 Years |
| | : 9 Months |
| | : 16 Days |

**In the Court of Judge, Co-operative Court Thane at Thane**
**(Presided over by Smt. B. P. Jadhav, Judge)**

**Dispute No. CCT 212/2012**
**CNR No. MHCO04-000019-2012**

Shri. Vilas Prabhakar Jawale
Flat No. 301, 3rd floor,
Triveni Deep Co-operative Housing Society Ltd. Vadavali Ambernath (East)
Taluka Ambernath, District Thane ... Disputant

**V/s**

1. Rupee Co-operative Bank Ltd.,
Office at 2062 Sadashiv Peth,
Vijay Nagar Colony
Pune – 411 030, District Pune

2. The Manager
Rupee Co-operative Bank Ltd.
Branch Office at Plot No. 38
Laxmikrupa, Opposite Rotary Garden
Shivmandir Cross Lane, Ambernath (East)
Taluka Ambernath District Thane ... Opponents

3. Shri. S. K. Nagurkar
Special Recovery Officer of
Rupee Co-operative Bank Ltd.,
Office at Laxmikrupa Building
Opposite Gajanan Maharaj Mandir
Ambernath (East), Taluka Ambernath
District Thane

4. Smt. Jyotsna Vilas Jawale
A proprietor of M/s Moreswar Tours and Travels
Shop No.5, Mayur Deep, Next to Ashvini Hospital
Vadavali, Ambernath (East), Taluka Ambernath
District Thane

**Order below Exh.1**
**(Declared as on 18/08/2026)**

**1.** The disputant has filed the present dispute for declaration and injunction against the opponents and prayed for the following reliefs :

(a) To pass an order of permanent injunction for restraining to the opponent No.3 from auctioning the flat No. 301 situated at 3rd floor area admeasuring 575 sq. ft and area of terrace admeasuring 360 sq. ft in the building known as Triveni Deep Society Vadavali Section Ambernath (East) Taluka Ambernath District Thane of the disputant in recovery proceeding.

Brief facts of the dispute are as follows :

**2.** The disputant is residing at the address mentioned in the title clause. The opponent No.1 is a schedule bank registered under the provisions of Maharashtra Co-operative Societies Act 1960 and carrying on banking business. The opponent No.2 is branch manager who is working under the opponent No.1 and the opponent No.3 is special recovery officer appointed for the opponent No.1. The opponent No.4 is a sole proprietor of M/s Moreshwar Tours and Travels and carrying of tourist business, who availed hypothecation loan for purchase of vehicles.

**3.** It is contended that after received notice from the opponent No.3 regarding auction of his flat, he had obtained loan documents from the opponent No.1 and after going through the loan documents that the opponent No.4 had availed hypothecation loan for Rs. 9,75,000/- dated 21/08/1997 for purchase of vehicle from the bran i.e. the opponent No.2. The said loan was to be repay by monthly equal installment of Rs. 25,700/- @ 18% interest per annum against the security of hypothecation of vehicle and the repayment period was upto 28/10/2002 and accordingly the opponent No.2 had executed hypothecation loan agreement. The opponent No.2 had taken signatures of the disputant on blank forms and told to him that it is require for the formalities for sanctioning the loan. The disputant had not mortgaged his any immovable property as mortgage for the said hypothecation loan availed by the opponent No.4 had not mortgaged any immovable property as security for the said hypothecation loan except the said vehicles. The opponent No.4 had purchased a tourist vehicle No. MH 05 9855. After going through the statement of account of loan of the opponent No.4 that the opponent No.4 was repaying the said loan installment amount regularly to the opponent No.2.

**4.** It is contended that the opponent No.4 had availed further hypothecation loan for Rs. 10,80,000/- dated 11/02/1999 for purchase of tourist vehicle from the opponent No.2 for further expansion of her above said tourist business. The said loan was to repay by monthly equal installment of Rs. 28,500/- @ 18% interest per annum against the security of hypothecation of vehicle and the repayment period was upto 30/05/2004 and accordingly the opponent bank had executed the hypothecation loan agreement. The disputant has not mortgaged any movable or immovable property with the opponent No.1 or the opponent No.4 not mortgaged any immovable property as security for the said hypothecation loan except the said vehicle and accordingly the opponent No.4 had purchased a tourist vehicle No. MH 05 9855. The opponent No.4 had purchased a tourist vehicle No. MH 05 9873.

**5.** It is contended that the opponent No.4 could not repay the said installments regularly as set out in loan agreement because of increased business competition and up and down in the said business. The opponent No.4 could not repay the said installments regularly because of that there were increase in cost of spare parts of vehicles and constant increase of diesel prices and frequent changes in the policy of government in respect of transport tourist business. Therefore the said loan accounts became NPA (non performing assets).

**6.** It is contended that the opponent No.4 was became persistent defaulter in repaying the said loan installments because of heavy loss incurred in tourist business. As per the terms and conditions of the said hypothecation loan, if the opponent No.4 failed to repay the said installments as set out in the loan agreement, the opponent No.1 to 3 have right to take custody of the said vehicles. However the opponent No.1 to 3 had failed to take custody of the said vehicles and failed to sale the said vehicles as per the terms and condition of the hypothecation agreement. Therefore the opponent No.4 had written letter dated 01/08/2000 to the opponent No.2 to take custody of the said vehicles. However the opponent No.2 had deliberately have not taken custody of the said vehicles and not taken necessary procedure for recovery of the said loan. The opponent No.4 had also asked permission to sale the said vehicles, however the opponent No.2 had not given permission to sale the said vehicles for near about four years after requisition in writing was made by the opponent No.4. Therefore the opponent No. 4 had suffered heavy loss due to the costs of vehicles has gone down. If the opponent No.1 to 3 would have taken custody of the said vehicles and sale the said vehicles by auctioning and by following proper procedure laid down in the said act, the entire amount of loan including interest would have been adjust against the amount of sale of the said vehicles. However the opponent No.1 to 3 had deliberately not taken the custody of the said vehicles and sale the said vehicles as per the provisions of law. Therefore the opponent No.4 has suffered heavy loss because of inaction of the opponent No.3.

**7.** It is contended that the said loan accounts of the opponent No.4 became non performing assets (NPA) in the year 2000. Accordingly the opponent No.4 had written letter dated 01/08/2000 to the opponent No.2 to take custody of vehicles as per the terms and condition of the hypothecation agreement. The said letter is duly received by the opponent No.2. However the opponent No.2 had failed, avoided and neglected to do the same or even not bothered to reply by giving reason for the same. Therefore the opponent No. 4 had given written letter dated 02/01/2002 to the opponent No.2 to take custody of the said vehicles and auctioned the said vehicles as per the provisions of law. However the opponent No.2 have failed, avoided and neglected to do the same or even not bothered to reply the said letter.

**8.** It is contended that after going to the correspondence made by the opponent with the bank, the opponent No.2 was deliberately avoided and neglected to take custody of the said vehicles and auction the said vehicles by following the procedure laid down in the said act and rules, therefore the opponent No.4 had again wrote letter dated 26/04/2002 to the opponent No.2 and asked to give permission to sale the said vehicles. The said letter is duly received by the opponent No.2. However the opponent No.2 had deliberately not given permission to sale the said vehicles. After going through the correspondence made by the opponent with the bank the opponent No.4 had number of time approached to the authority of the opponent No.2 and requested for to take custody of the said vehicles of if failed to take custody to give permission to sale the said vehicles. However the authorities of the opponent No.2 had refused to give permission for sale of the said vehicles. If the opponent No.3 would have sold out the said vehicles, the sale price of the said vehicles would have received more than Rs. 16 to 17 Lakhs and the opponent No.4 would have repay the entire amount loan with interest. Therefore the opponent No.4 had suffered heavy loss because of adamant and non co-operation stand taken by the authority of the opponent No.2. The opponent No.2 had given permission in writing letter to the opponent No.4 to sale the said vehicles after laps of three to four years. Therefore the costs of the said vehicles had gone down and therefore there was heavy loss is sustained by the opponent No.4. However the opponent No.4 could not sale the said vehicles because of low price quoted by the purchasers. Accordingly the opponent No.4 had conveyed to the authorities of the opponent No.2.

**9.** It is contended that it is observed from the documents that the opponent No.2 had gave permission to the opponent No.4 for sale the said vehicles by writing letter dated 25/04/2003 after request made by the opponent No.4 in writing in the year 2000 i.e. after laps of three years that means the authorities of the opponent bank was very well knowledge of that the sale price of the said vehicles will now received very less than when the demand was made by the opponent No.4 in the year 2000. However the opponent No.4 could not sale the said vehicle No. MH 05 9855 because of low price quoted by the purchasers. Accordingly the opponent No.4 had conveyed the same to the authorities of the opponent No.2. In this way the opponent No.1 to 3 had harassed to the opponent No.4 and guarantors and as well as the disputant. The opponent No. 2 had again gave permission to the opponent No.4 dated 15/04/2004 to sale the said vehicle No. MH 05 9855 i.e. after laps of 4 years that means the authorities of the opponent No.2 was very well knowledge of that the sale price of the said vehicles will now received very less than when the permission was asked by the opponent No.4 to sale the said vehicles in the year 2000. The opponent No.4 had sold the said vehicles for very low cost and the said amount is directly transferred to the said loan accounts. Therefore the heavy loss is sustained by the opponent No.4 because of non co-operation and the adamant stand taken by the authorities of the opponent No.2. Therefore the opponent bank is showing illegal recovery of the said loan. The opponent No.4 had paid near about 23 lakhs to the opponent No.2 against the said loans.

**10.** It is contended that after going through the correspondence issued by the bank, the opponent No.4 had wrote letter dated 25/06/2002 to the opponent No.2 and requested to give the benefit of OTS scheme which was introduced by the Government. The opponent No.2 had duly received the said letter. The authority of the opponent No.2 had accepted the said proposal of OTS scheme by putting conditions to the opponent No.4 to pay 25% amount as part payment of OTS scheme. However the opponent No.4 could not pay the said amount because of heavy loss incurred in the tourist business. Therefore opponent No.2 had rejected the said proposal by giving letter dated 05/09/2002 by giving reason therein that non payment of 25% amount of OTS scheme as part payment. The Government had extended the period of OTS scheme from time to time. However the opponent No.2 had not extended the period of OTS scheme and straightway rejected the said proposal. The opponent No.4 had again wrote letter dated 31/03/2003 to the opponents to give proposal under the OTS scheme. The said letter is duly received by the opponent No.2. However the opponent No.2 has not accepted the said request of the opponent No.4 in respect OTS scheme. In this way the opponent No.3 have harassed to the disputant and the opponent No.4. Therefore the opponent No.4 and guarantors as well as the disputant had suffered loss due to deliberate act of the authority of the opponent No.1 to 3.

**11.** It is contended that the Government had extended the period of OTS scheme from time to time. It is seen from the record that the opponent No.4 had again written letter dated 08/10/2003, 08/11/2003, 31/03/2004 and 08/3/2005 to the opponent No.2 to give proposal of OTS scheme. The said letters are duly received by the opponent No.2. However the opponent No.2 have failed and avoided to give benefits of the said OTS scheme. The opponent No.2 had given benefits of crores of rupees to other heavy weights political personality being borrowers. In this way the opponent No.1 to 3 had harassed to the opponent No.4 and her guarantors as well as the disputant. The opponent No. 4 again wrote letters dated 24/01/2007, 04/04/2007 and 15/07/2009 to the opponent No.2 to give proposal of OTS scheme. The said letters are duly received by the opponent No.2. However the opponent No.2 have failed and avoided to give benefits of the said OTS scheme.

**12.** It is contended that instead of seizing the said vehicles and to take initiate of recovery proceeding by auctioning the said vehicles as per the terms and conditions of the hypothecation loan agreement and to settle the said loan accounts of the opponent No.4, the opponent No.2 filed recovery proceeding under section 101 of the MCS Act 1960 before the Registrar of Co-operative Societies and obtained the recovery certificate dated 05/03/2002.

**13.** It is contended that after obtaining the recovery certificate by the opponent No.2 dated 05/03/2002, the opponent No.3 i.e. the special recovery officer had deliberately not initiated recovery proceeding under section 156 of MCS Act 1960 and Rule 107 of MCS Rules 1961 for taking custody of the said vehicles and sale in auction by following the procedure laid down in the said acts and rules. The opponent No.3 had not taken any initiative to recovery of the said amount of loan with interest near about one decade i.e. last ten years and because of the said non action of the opponent No.3 for recovery of loan outstanding, the amount of loan and interest is increased in three times from the actual amount of loan. In this way the opponent No.1 to 3 had harassed the opponent No.4 and guarantors as well as the disputant. Therefore the opponent No.4 and guarantors as well as the disputant had suffered loss due non action of not taking custody of the said vehicles and auction of the said vehicles in time.

**14.** It is contended that the opponent No.3 had issued a public auction notice in Dainik Navshakti dated 07/12/2010 for sale of flat No. 301 situated at 3rd floor area admeasuring 575 sq. ft. and area of terrace admeasuring 360 sq. ft. in the building known as Triveni Deep Society Vadavali section Ambernath i.e. after laps of nine years of issuing of recovery certificate by the competent authority. Therefore the intention of the opponent No.1 to 3 is clear that to remain silent for recovery of amount of loan with interest for number of years and wait till the amount increased in numbers of times than the actual loan amounts with interest. Therefore the opponent No.4 had taken objection writing through advocate for sale of the above said flat in public auction.

**15.** It is contended that the said flat No. 301 situated on 3rd floor area admeasuring 575 sq. ft. and area of terrace admeasuring 360 sq.ft. in the building known as Triveni Deep Society Vadavli is purchased by the disputant by spending his life earning. The disputant is residing in the said flat and there is no any other residential accommodation to the disputant other than this flat. The entire amount of consideration is paid by the disputant. The said opponent No.4 is added as co-owner only in the said agreement for sale of the said flat. However the opponent No.4 had not paid any amount of consideration for the said flat. Therefore the opponent No.4 is not owner of the said flat. Therefore the opponent No.3 cannot sale the said flat of the disputant in public auction because of his own mistake of not taking custody of the said vehicles in time and sale in auction for recovery of the loan outstanding amount.

**16.** It is contended that the authority of the opponent No.2 had taken signature of the disputant on blank papers. The disputnat never remained sureties to the said loan at any time. However the authority of the opponent No.2 had added his name in the said loan documents as third surety of the said loan which was availed by the opponent No.4. After going through the loan documents the disputant came to know that his name added as third surety for the said loan. The said flat is not mortgaged by the disputant with the opponent No.2 bank or not kept as a co-lateral security for the said loans. Therefore the opponent No.3 has no authority to attach and sale the said flat of the disputant. Therefore it is required to restrain to the opponent No.3 for auctioning the said flat of the disputant.

**17.** It is contended that after giving public notice for action of the above said flat which is not at all mortgage for the said loans, the opponent No.4 had wrongly instituted a civil suit No. 7 of 2011 against the opponent No.2 and 3 before the Civil Judge Junior Division Kalyan for injunction simplicitor. The opponent No.2 and 3 had appeared in the said suit and filed their written statement along with application under section 9A of Civil Procedure Code and challenged the jurisdiction of the Civil Court. The Court granted stay for recovery proceeding till the final disposal of 9A application. The Court had allowed the said application of the opponent No.2 and 3 and passed order dated 30/07/2012 and returned the plaint for presenting the same before proper forum i.e. under section 91 of MCS Act 1960.

**18.** It is contended that under the above circumstances the disputant filed this dispute for to restrain the opponent No.3 to auction the said flat of the disputant, which is not mortgaged by him as a security for the said hypothecation loan. The disputant states that he met in motor accident. Therefore he could not walk without stick. Therefore he is handicap person. The said flat is purchased by him from his life earning. There is no any other residential accommodation to him except this flat. The opponent No.3 cannot sale the said flat because of own mistake of the opponent No.3 who had failed to take custody of the said vehicles as soon as the opponent No.4 failed to repay the said amount of installments and sale in auction in time and adjust the same in loan amount. Therefore it wrongful loss to the opponent No.4 and the guarantors as well as to disputant and wrongful gain to the opponent bank. The cause of action arose on the day of public notice for auction of the flat of the disputant given by opponent No.3. the said cause still continues thereafter every day. Hence constrained to file the present dispute.

**19.** The opponents are duly served with the suit summonses and notices.

**20.** In response to the suit summonses and notices the opponent No.1 and 2 appeared in the present dispute and filed their written statement at Exh. 23 and denied all the contentions in toto.

**21.** It is contended that the disputant has filed the dispute against these opponents and opponent No.4 who is wife of disputant. The disputant and his wife are staying in one house. The opponent No.4 had filed Reg. Civil Suit No. 07/2011 against these opponents in the Court of Civil Judge SD Kalyan for the relief of injunction that these opponents may be restrained from entering into the suit premises i.e. flat No. 31, Trivenideep CHS Ltd Vadavali and creating any third party interest in the said premises. The said suit was dismissed for want of jurisdiction.

**22.** It is contended that the present dispute is barred by principles of res-judicata. The present disputant is guarantor for M/s Moreshwar Tours and Travels (opponent No.4) who had availed huge loan facility from the opponent No.1. Inspite of repeated reminder and notices the opponent No.4 failed and neglected to pay arrears of loan amount to the opponent No.1. Therefore the opponent No.1 had filed recovery proceeding under section 101 of the MCS Act before the Deputy Registrar against the opponent No.4 and disputant along with other guarantors. The Deputy Registrar of Co-operative Societies Thane issued recovery certificate on 05/03/2002 in case No. 326/2001 and directed the opponent No.4 and the guarantors Shri. Vijay Khanvilkar, Shri. Gangadhar Patil and Shri. Vilas Jawale, the disputant and husband of the opponent No.4 to pay Rs. 9,84,053/- towards principle amount and Rs. 1,38,701/- towards interest and future interest @ 18% per annum on Rs. 9,84,053/- from 01/04/2001 till realization of above amount and a sum of Rs. 5639/- towards costs of the proceedings.

**23.** It is contended that the Deputy Registrar Co-operative Societies Thane also issued second recovery certificate on 05/03/2002 in case No. 325/2001 and directed the opponent No.4 and guarantors Shri. Vikramsingh Chauhan, Sau Shalini Ingale and Shri. Vilas Jawale the disputant and husband of opponent No.4 to pay Rs. 6,78,380/- towards the principle amount, Rs. 1,38,967/- towards interest and future interest @ 18% p.a. from 01/04/2001 till realization of the above amount and a sum of Rs. 4112/- towards cost of the proceedings. These opponents have recovered Rs. 8,46,000/- by selling the hypothecated vehicles of the opponent No.4, however there is still amount of rupees more than 30 Lakhs as balance to be payable by the opponent No.4 to the opponent No.1 towards loan amount. The opponent No.3 issued order of attachment dated 24/06/2009 accordingly and attached the suit flat for arrears of dues amounting to Rs. 28,98,528/-. After attachment of the suit flat, the opponent No.1 and 2 waited for a long period with the hope that the opponent No.4 and the disputant shall clear the dues of loan account. However the opponent No.4 failed and neglected to clear her dues.

**24.** It is contended that the disputant or opponent No.4 have not filed Revision petition under section 154 of MCS Act 1960 before Joint Registrar Co-operative Societies against the recovery certificate issued in case No. 325/2001 and case No. 326/2001. This Court is not acting as an appellate authority of District Deputy Registrar. Recovery certificate issued by the District Deputy Registrar cannot be challenged before this Court.

**25.** It is contended that the disputant is trying to seek the protection of order of this Court regarding which recovery certificate have been issued on the basis of the said Order under section 101 of the MCS Act and it can be challenged only before Joint Registrar under section 154 of the MCS Act. The disputant is well aware about the order dated 05/03/2002 passed by Deputy Registrar of Co-operative Societies Thane. The disputant as well as opponent No.4 have not challenged the said order before the competent authority. Since the proper and appropriate remedy available to the disputant was to prefer revision against the order passed under section 101 of MCS Act, the disputant cannot invoke the jurisdiction of this Court.

**26.** It is contended that the opponents did not pay the loan installments regularly. The said loan accounts became NPA because of the irregular repayment of loan installments and default in repayment of loan by the opponent No.4.

**27.** It is contended that these opponents as proposed by the opponent No.4 had granted permission to sale vehicles and asked the opponent No.4 to deposit money of sales proceeds of said vehicles with opponent No.2, however the opponent No. 4 refused to sell said vehicles and deliberately did not proceed with the sale of said vehicles as she did not want to deposit the sale proceeds of said vehicles to directly with the opponent No.2.

**28.** It is contended that the opponent No.3 accepted the proposal of the opponent No.4 to take the custody of said vehicles but due to scarcity of parking place directed the opponent No.4 to make available the said vehicles as and when required for the physical inspection of the same by the prospective purchasers and for valuation. It is the opponent No.4 who avoided giving physical inspection of the said vehicles by giving some or other excuses like the said vehicles are under minor repairing or on outing etc. Hence prayed to dismiss the dispute.

**29.** In response to the suit summonses and notices the opponent No.4 appeared in the present dispute and filed her written statement at Exh. 16 and denied all the contentions in toto.

**30.** It is contended that the opponent No. 4 is a sole proprietor of M/s Moreshwar Tours and Travels and carrying tourists business. She had availed loan of Rs. 9,75,000/- dated 21/08/1997 for purchase of vehicle for her above said business from the opponent No.1. This opponent had not mortgaged any other immovable or movable property as collateral security for the said hypothecation loan other than the mortgage of the said vehicle. The above said business of the opponent was in full swing. There was no competition in the said tourist business. This opponent was paying loan installments regularly. Therefore the opponent No.4 had again availed vehicle loan of Rs. 10,80,000/- dated 11/02/1999 for purchase of tourist vehicle against the hypothecation of the vehicle No. MH 05 9873 for further expansion of her business and as per loan agreement the loan period was upto 30/05/2004. The opponent had not mortgaged any other immovable or movable properties as security for the said loan except the above said vehicle.

**31.** It is contended that due to failure of repayment of the loan installments she had wrote letter dated 01/08/2000 to the bank manager to take custody of the said vehicles because of she was unable to repay the said installments. However the manager of the bank had deliberately have not taken custody of the said vehicles and not taken necessary procedure for recovery of the said loan. The opponent had also asked permission to sale the said vehicles, however the bank manager had not given permission to sale the said vehicles for near about four years after requisition in writing was made by this opponent. If the bank manager would have taken the custody of the vehicles and would have sale the said vehicles by auctioning and by following proper procedure laid down in the said act and rules, the entire amount of loan including interest would have been adjust against the amount of sale of the said vehicles.

**32.** It is contended that if the opponent No.3 would have sold out the said vehicles in the year 2000 she would have repay the entire amount of loan with interest. The opponent No.2 had given permission in writing letter dated 25/04/2003 to her to sale the said vehicles after laps of four years of after writing letter to them.
Therefore the costs of the said vehicles had gone down.

**33.** It is contended that the opponent bank is now showing illegal recovery of the said loan. She had paid near abut 23 lakhs to the opponent No.2 against the said loans.

**34.** It is contended that she had wrote letter dated 25/06/2002 to the opponent No.2 and requested to give the benefit of OTS scheme.

**35.** It is contended that the opponent No.3 had issued public auction notice for sale of flat No. 301 in the building Triveni Deep Society. The said flat is purchased by the disputant. The said flat is not mortgaged by the disputant with the opponent No.2 bank or not kept as a co-lateral security for the said loans. Hence prayed to restrain the authority of the bank/recovery officer of the bank to auction the flat of the disputant which is not at all mortgaged with the bank.

**36.** Considering the rivals pleadings, my predecessor has framed issues at Exh.24. This Court has decided to treat the issue No. 1 and 2 those are jurisdiction of this Court and maintainability of this dispute as preliminary issue as per Order 14 Rule 2 of CPC 1908 and I have given finding on each of them with reasons as follows :-

| Sr. No | Points | Findings |
|---|---|---|
| 1. | Whether this Court has jurisdiction to try and entertain the present dispute under section 91 of the MCS Act 1960 ? | In the negative |
| 2. | Whether dispute is maintainable in view of grant of recovery certificate under section 101 of MCS Act 1960 ? | In the negative |
| 3. | What order ? | As per final order |

**REASONING**

**AS TO ISSUE NO. 1 TO 4**

**37.** After careful perusal of the entire proceeding it is seen that the disputant is expired on 02/04/2025. The legal heirs of deceased disputant not been taken on record to proceed with the dispute. It is an admitted fact that the opponent No.4 is the wife of disputant. Though she is present in the dispute not been taken any efforts to bring the LRs of deceased on record. Therefore the dispute needs to be disposed of as abated.

**38.** The second thing is that the late Shri. Vijay Jawale has filed this dispute for declaration and injunction. It is also an admitted fact from the pleading of dispute itself that the disputant had obtained loan from the opponent bank. It is seen that the loan went in default, therefore the bank had filed recovery proceeding under section 101 of the MCS Act 1960. It is an admitted position that the opponent bank had already obtained recovery certificate under section 101 of the MCS Act 1960 on date 05/03/2002 against the disputant and on the basis of the said recovery certificate the bank had initiated the recovery process. It is also seen that on the basis of the said recovery certificate the bank has issued the notice for the auction of flat No. 301 and therefore it is seen that the present dispute is filed by the disputant to give go by to the said recovery proceeding.

**39.** In view of the citation Hon'ble Bombay High Court in 2003(3) ALL MR 393 Sau. Vasundhara Ashok Patil Vs. Rajaram Bapu Sahakari Bank Ltd. Sangli and others it clears that the certificate issued under section 101 cannot be challenged under section 91. Only remedy of the party aggrieved is to file revision application under section 154 of the MCS Act 1960. Section 101 is the speedy remedy to recover an amount and when statute gives the finality to the action or order it can be challenged only in a manner prescribed by statute. Therefore a dispute under section 91 would be completely barred.

**40.** It is seen from the pursis at Exh. 66 filed by the opponent bank stating that the disputant have paid the entire outstanding loan amount and the account of the disputant is closed on 01/03/2024 and prayed to dispose of the dispute. Therefore as of now there is no outstanding amount against the deceased and his legal heirs.

**41.** The legal heirs of the deceased and opponent No.4 has filed an application at Exh. 67 stating that the entire disputed loan is repaid on date 29/02/2024 and now there is no outstanding amount remains, the loan account is closed and therefore the legal heirs want to withdraw the dispute.

**42.** It is seen that the disputant Vilas Prabhakar Jawale is expired on 02/04/2025 and since the legal heirs are not on record and the dispute is abated. Therefore the withdrawal application cannot be considered. The application at Exh. 67 is considered to the extent of Smt. Jyotsna Vilas Jawale being opponent No.4 only. However the pursis filed by the opponent bank has to be considered.

**43.** In view of the facts discussed herein above that the dispute is filed to challenge the recovery certificate under section 101 of the MCS Act 1960 and to give go by to the recovery proceeding initiated by the opponent bank on the basis of recovery certificate under section 101 of the MCS Act, such a dispute is not maintainable under section 91 of the MCS Act 1960. In view of the discussion herein above I am of the considered view that the dispute is not maintainable hence needs to be dismissed. Hence I answer issue No. 1 and 2 in the negative.

**AS TO ISSUE NO. 3**

**44.** For the reasons recorded in context of Issue No.1 and 2 I answer issue No. 3 as per order below. Hence I proceed to pass the following order.

**Order**

1. Dispute bearing CCT No. 212/2012 is hereby dismissed.
2. Dictated and pronounced in open Court.

Sd/-

Place : Thane
Date : 18/08/ 2026

( Smt. B. P. Jadhav )
Judge
Co-operative Court, Thane