

ORDER BELOW EXH.5**(GAJANAN VRS JANKALYAN NAGARI)**

This is an application filed by the disputant under Section 95(4) of the Maharashtra Cooperative Societies Act (hereinafter referred as 'the M.C.S. Act' in short for brevity) for grant of temporary injunction to restrain Opponents from auction the mortgage property i.e. agricultural field bearing field Survey No.5, total ad-measuring 2-H, 95-R, alongwith trees, shrubs, etc. situated at mouje Gugali, Tq. Motala, Dist. Buldhana, which is bounded as under :

East	:	Field of Shivaji Khadke.
West	:	Field of Dnyandeo Asne.
North	:	Field of Kailashrao Deshmukh.
South	:	Government Road.

The above said field property is the subject matter of the present dispute (hereinafter referred as 'the suit field' in short for brevity).

2. It is the contention of disputant that, it has been alleged by the opponent that, in the year 2016, the disputant has taken the financial assistance from the opponent and against that, the disputant/petitioner has given secured asset by way of executing several documents which are relating to the loan transaction and all said documents are in the custody of the opponent. It is alleged by disputant that, at the time of executing those documents, all the relevant papers were blank over which they have obtained the signatures of the disputant and subsequently, they have filled up. Hence, those documents are not enforceable against the disputant

and his property. Therefore, action on the part of the opponent is not at all binding upon him.

3. It is further contention of disputant that, the disputant could not liquidate the amount within stipulated time and therefore, opponent have started the action Under Section 101 of M.C.S. Act. Not only this, it has been alleged by the opponent that, they have obtained the certificate under Section 101 of the M.C.S. Act and on that basis, the opponent No.2 has issued a notice on 17.02.2025 and threatened that, they have called the auction on 20.03.2024 of the suit field and therefore, the disputant is apprehending that, the opponent illegally auctioning the property without following due procedure established by law and therefore, complete action on the part of the opponent is bad in law, without following due procedure of law, unjust, unwarranted, unlawful, untenable, not maintainable, contrary to the provision of law, perverse, void ab-initio and it needs to be quashed and set aside.

4. The disputant is challenging the complete action of the opponent because the opponent has obtained the certificate under Section 101 of the M.C.S. Act behind back of the disputant. It is further alleged that, without giving fair opportunity to the disputant, violate the principles of natural justice and this is one of the material ground for the disputant, because no point of time, the disputant has duly received any notice in respect of the above said proceeding and therefore, action on the part of the opponents need to be quashed and set aside.

5. It is also alleged that, the settled principle under the M.C.S. Act that, the Authority should have comply the mandatory provisions of law which are laid down under the said Act and then

an then only, the Authority is entitled for issuance of recovery certificate. But, in the present case, the opponent is utterly failed to comply the above said mandatory provisions of law which are laid down under the Maharashtra Cooperative Societies Rules 86(A) to 86(F), if these rules were not followed, under these circumstances, disputant is entitled to challenge the above said certificate before this Court. Therefore, action on the part of the opponent is totally coercive and it needs to be quashed and set aside. The disputant relied on the landmark judgment of Hon'ble High Court, Bombay in between Vitthal S/o. Laxman Patangale .. V/s .. State of Maharashtra and in view of the observations of the Hon'ble High Court of Bombay, action on the part of the opponent is bad in law.

6. It is also alleged that, after through the record, the opponent has suppressed the material facts from the concerned Authority, because since the date of sanctioned of loan amount, the disputant has made substantial payment to the opponent, but intentionally and malafidely, the opponents bank have not placed proper and correct copy of statement, before the said Authority and therefore, they have claimed the approximately Rs.20,00,000/- against the disputant while they are well aware that, the disputant has taken Rs.10,00,000/- only towards the loan and subsequently, he has paid substantial amount to the opponent. Despite this fact, the opponents bank have not reduced the principal amount so also, they have charged the more interest than the agreed rate of interest. It is specifically contention of disputant that, this type of dispute cannot be resolved by the Authority Under Section 101 so also, it cannot be resolved through summarily, because in the present dispute, there are disputed question of facts regarding the amount claimed and

therefore such dispute be adjudicated under Section 91 of the M.C.S. Act rather than through summary proceeding Under Section 101 and therefore, certificate obtained by the opponents need to be quashed and set aside. It is further contention of disputant that, as per the agreement took place between the parties, loan in question is barred by law of limitation and the opponent is not entitled to recover the same. It is further contention that, if this Court persuade the notice Under Rule 107 (11) of M.C.S. Act, issued by the opponents, it is crystal clear that, said notice is totally defective under the law, because, under which order or decision, the opponents are creating third party interest by way of calling auction. Therefore, disputant prayed to restrain from creating third party interest so also to restrain not to sell the suit field.

7. It is further contention that, the suit field fetching the market value of Rs.1,00,00,000/- but they have mentioned the upset value of Rs.21,00,000/- and therefore, valuation drawn by the opponents is totally bad in law and not calculated properly and needs to be quashed and set aside. It is further submitted that, it is settled principle under the law that, when the part of the property can satisfied the outstanding amount, it is not mandatory on the part of the opponents to put the complete property of the disputant for auction, because in the case in hand, the suit field in question is near about 7-Acres and if 1-Acre land sold out, under these circumstances, loan can be easily satisfied, but the opponents are utterly failed to comply the principle.

8. It is also the contention of disputant that, when the disputant has received the notice under Rule 107 (11) of M.C.S. Act dated 17.02.2025, the disputant has made an enquiry and found

that, ex-parte certificate has been obtained by opponents and therefore, he has requested to the opponents to supply the same, but the opponents bank refused to do so. It is settled principle under the law that, each and every action on the part of the opponents should be fair and transparent against the borrower, but in the present case, approximately, the opponents bank have received principal amount from the disputant, but despite this fact, illegal action is initiated by the opponents and therefore, the action on the part of the opponents needs to be quashed and set aside.

9. It is alleged that, the disputant having good prima-facie case on merit, because the opponents have obtained ex-parte certificate against the disputant so also, the opponents have not complied the mandatory provisions of law. So also balance of convenience also lies in favour of the disputant because the opponents refused to share the loan transaction documents with the disputant and also intentionally putting complete property for sale which is prohibited under the law. If interim relief in favour of the disputant is not granted, then the disputant will come on street and become landless and suffers great hardship and irreparable loss. Hence, he prayed to allow the instant application.

10. After service of suit sommons and notice below Exh.5 opponents appeared and filed their detailed W.S. and reply below Exh.14 contending that, the instant dispute is not maintainable u/s 91 of the M.C.S.Act. Perusal of the dispute and prayer clause therein indicates that, the disputant challenged the recovery certificate issued by A.R.C.S., Buldhana in favour of opponent No.1 u/s 101 of the M.C.S.Act. Main prayer of the disputant that, the Recovery Certificate be declared as not binding upon him and same may be

quashed and set aside. It is settled principle of law that, the legality of proceeding u/s 101 and legality of the certificate issued thereunder can not be challenged by filing dispute u/s 91 of the M.C.S.Act. It is specifically provided u/s 91 of the M.C.S. Act that, any proceeding for recovery of the amount as arrears of land revenue, on a certificate granted by the Registrar u/s 101 of the M.C.S. Act, shall not be deemed to be a dispute for the purpose of Section 91 of the Act. Thus, the jurisdiction of the Co-operative Court is expressly excluded by the Priviso to Section 91 of the M.C.S.Act. Hence, the only remedy available to the disputant is to file Revision u/s 154 of the M.C.S. Act. Therefore, as equally statutory remedy is available to the disputant, but in order to avoid the condition to deposit 50% amount of the due amount, the disputant filed this dispute by making false and misleading statements and hence, the instant dispute is liable to be dismissed as not maintainable, without jurisdiction.

11. The opponents further contended that, the very basis of filing of instant dispute is that the A.R.C.S., Buldhana granted Recovery Certificate u/s 101 of M.C.S. Act in favour of the opponents without issuing any notice to him of the said proceeding, is totally false and incorrect. It is contended that, notice/summons of the proceeding u/s 101 of M.C.S. Act was duly issued by A.R.C.S., Buldhana on 27.08.2021 to the disputant, borrower and surety which was served on them, before 06.09.2021 i.e. the returnable date. In spite of service of notice, the disputant and other parties remained absent on the fixed date and thereafter also. It is clear that, though notice of the case was duly served on the disputant, but he failed to remain present and therefore, the A.R.C.S., Buldhana proceeded ex-parte and issued Recovery Certificate in favour of the opponents. In view

of this, it can not be said that, the Recovery Certificate is issued in utter disregard and violation of the principles of natural justice. It is further contended that, ratio laid down in the judgment of Hon'ble Bombay High Court cited by the disputant is not applicable in this case.

12. It is further contended that, the disputant was/is a member of the opponents society and no any limitation is prescribed under the M.C.S. Act for filing proceeding u/s 101 of the M.C.S. Act and Rule 107 of the M.C.S. Rules. Therefore, the proceeding initiated by the opponents is well within limitation. It is also contended that, the instant dispute filed by disputant in the present form is not tenable and the disputant deliberately failed to implead all necessary and proper parties in this case. A.R.C.S., Buldhana granted Recovery Certificate u/s 101 against the disputant on 30.11.2021. The disputant challenged the said certificate by making false allegation, but he has not impleaded the A.R.C.S., Buldhana as a party in this proceeding. Moreover, the disputant is a guarantor for the loan. The loan is obtained by the mother of the disputant namely Sau. Alka Sudhakar Khadke and for the said loan the disputant and his brother-in-law Adv Rajesh Ubarhande are the guarantors. In view of this, the principal borrower, as well as another guarantor are also necessary parties to the dispute. In absence of impleadment of necessary parties, the dispute in the present form is not maintainable and liable to be dismissed.

13. It is also the contention of opponents that, after considering the proposal, the opponents Society sanctioned the loan of Rs. 10,50,000/- to the mother of the disputant. Thereafter, the borrower, the disputant and another guarantor have executed all

necessary documents of the said loan such as demand Promissory Note, Agreement of loan, Surety Bond, and other documents etc. in favour of the opponents No.1 Society. For the security of the said loan the present disputant as a guarantor of the said loan executed a registered mortgaged deed of the disputed property on 14.01.2016 in favour of the opponent No.1 Society. After execution of all necessary documents, the Society had disbursed the amount on 15.01.2016 by depositing the amount in saving account of the borrower. It is agreed by the borrower and guarantors to repay the loan amount @ Rs.16% p.a. in monthly installment of Rs. 31,500/- and also agreed to pay penal interest @ Rs.2% over and above the agreed rate of interest, if the loan is not refunded as per agreed terms and conditions. The loan is agreed to be totally paid and refunded till 15.01.2021.

14. In spite of the above said terms and conditions, the borrower and the disputant failed to make repayment of the loan amount as agreed and committed breach of agreement. Therefore, opponent No.1 Society issued notice on 22.05.2021 to the borrower and guarantors for repayment of loan amount. The said notice is served on the disputant and other party, but they failed to repay the loan amount as per agreement. Therefore, ultimately on 25.08.2021 the opponent No.1 Society filed proceeding u/s 101 of the M.C.S.Act. before A.R.C.S., Buldhana for grant of Recovery Certificate. All relevant documents in respect of the loan account including statement of loan account, were produced in the proceeding before the A.R.C.S. Buldhana. The A.R.C.S., Buldhana issued summons to the disputant, the borrower and another guarantor to remain present on 06.09.2021 for submitting their say and hearing. The summons of the proceeding were served on all the parties including the disputant

before the next returnable date. But, the disputant and other parties failed to appear before the A.R.C.S., Buldhana on the fixed date, hence, the A.R.C.S., Buldhana proceeded ex-parte against the disputant and granted Recovery Certificate in favour of the opponents Society on 30.11.2021. In view of above stated facts, it will be seen that, the A.R.C.S., Buldhana offered ample opportunity for hearing to the disputant and hence, there is no violation of principle of natural justice.

15. After issuance of Recovery Certificate by A.R.C.S., Buldhana, the opponent No.1 Society handed over the Certificate for execution to the opponent No.2 Special Recovery Officer. Accordingly, the Special Recovery Officer, firstly issued demand notice to the disputant and other person on 10.12.2021 which is served on all persons. In spite of service of demand notice, the disputant and the borrower have not paid the loan amount.

16. The opponent No.2 decided to recover the loan amount by attachment and sale of immovable property which is mortgaged as a security for the loan amount. Therefore, opponent No.2 attached the mortgaged property on 06.12.2023. The attachment order is served on the borrower and the disputant. Thereafter, the opponent No.2 submitted proposal for granting approval to the upset price of the attached property before District Deputy Registrar Co-operative Society, Buldhana. The opponent Society obtained market value of the property from Authorized Government Valuer. The District Deputy Registrar Co-operative Society, Buldhana issued notice to the property owner and the disputant for submitting their say on the point of upset price of the mortgaged property. In spite of service of notice on the disputant and borrower, they remained absent before

District Deputy Registrar Co-operative Society, Buldhana for enquiry in respect of valuation of the property. The District Deputy Registrar Co-operative Society, Buldhana, after following due procedure, determined and approved the upset price of the attached land at Rs. 21,80,000/- Thus, disputant has no locus standi to take an objection for the approved upset price.

17. It is further submitted that, the Recovery Certificate is granted by A.R.C.S. Buldhana after following legal procedure and the said certificate is correct and legal. It is crystal clear from the document that the borrower and disputant have obtained a loan of Rs. 10,50,000/- from the opponent No.1 Society and failed to repay the said loan amount. Therefore, for recovery of the said amount, the opponent No.2 initiated action u/s 156 of M.C.S.Act r/w Rule 107 of the M.C.S. Rule for execution of Recovery Certificate is totally correct, legal and justified. The opponent No.2 has not committed any error of facts and law in the execution proceeding. The opponent No.2 followed complete procedure for sale and auction of immovable property as laid down under Rule 107 of the M.C.S. Rule. The opponent No.2 conducted the first auction of the attached property on 30.11.2024. But no bidder came forward to submit bid and to purchase the said property and therefore, the auction sale was adjourned. Thereafter, again after following due and necessary procedure, second auction of attached property is conducted on 20.03.2025, but that time also in absence of bidder, sale can not be completed and auction is adjourned. In this regard it is submitted that, on sale notice dated 17.02.2025 due to clerical error, the date is wrongly typed as 20.03.2024 instead of 20.03.2025. In fact, the notice issued on 17.02.2025 and therefore, it is clear that, the said mistake is

only a typing error and same will not create any legal right in favour of the disputant.

18. It is contended by opponents that, opponent Nos.1 and 2 have rightly initiated the recovery proceeding against the disputant. Opponents have not committed any error in starting the proceeding. No any legal injury has been caused to the disputant. The action taken by the opponents is within the framework of law and therefore, the disputant is not entitled for any relief. Opponents are acting as custodian and trustee of public property and the action is taken by the opponents to recover and protect the public property. The disputant himself admitted that, the loan amount is obtained, but he is avoiding to repay the said amount. In view of the facts and circumstances of the case, the disputant failed to made out any prima-facie case, no irreparable loss would be caused to the disputant, if the Recovery Certificate is executed. On the contrary, the opponents will be put to irreparable loss, if any interim relief is granted in favour of the disputant. Hence, they prayed to reject the instant application.

19. Heard the argument advanced by both parties vehemently. Perused the record, say and the written notes of argument filed by the disputant.

20. On going through the contentions and submissions of both sides, following points arise for my determination and I recorded its findings, with reasons, as under :-

<u>Sr.No.</u>	<u>Points</u>	<u>Findings</u>
01	Do disputant proves that he has made out a prima facie case ?	...In the Negative...

- | | | |
|----|---|---|
| 02 | Do disputant proves that balance of convenience lies in his favour ? | ...In the Negative... |
| 03 | Do disputant proves that it would suffer irreparable loss if temporary relief is not granted as sought ? | ...In the Negative... |
| 04 | What order ? | The application is rejected. |

-: REASONS :-

21. Before entering into discussion, it would be just to advert undisputed facts for better appreciation of the points in controversy. These are as under :-

1) Opponent No.1 is the registered society and opponent No.2 is the recovery officer.

2) Disputant is the members of opponent No.1 Society registered under the provisions of the M.C.S. Act.

3) Mother of disputant Alka Sudhakar Khadke obtained the loan from the opponent No.1 and opponent No.1 initiated the proceeding under Section 101 of M.C.S. Act. A.R.C.S., Buldhana issued recovery certificate in favour of opponents.

22. To show prima-facie case, the disputant has filed the documents viz. Notice dated 17.02.2025 (Exh.4/1), receipt dated 17.03.2025 (Exh.10/1), Written complaint/report dated 17.03.2025 (Exh.10/2).

23. On the other hand, opponents have not filed any document in their support.

AS TO POINT NOS.1 TO 3 :-

24. In order to avoid repetition of discussion, I am considering these points jointly. It is a settled principle of law that in order to claim prohibitory (temporary or permanent) injunction, it is a necessary for the plaintiff / disputant to prima-facie prove apart from establishing other two ingredients namely irreparable loss and injury.

25. Disputant is the guarantor of the alleged loan amount obtained by his mother Alka and opponent No.1 is a Society registered under the M.C.S. Act, as well as opponent No.2 is the recovery officer of opponent No.1. The Society is established for the welfare of the members of the Society. Disputant has filed the present dispute under Section 91 of the Maharashtra Co-operative Societies Act, 1960 challenging the illegal act of the opponents in obtaining the alleged recovery certificate issued by A.R.C.S. Buldhana. It is admitted position that, mother of disputant Alka Khadke has obtained the loan from the opponent No.1 and the disputant was the guarantor on the same. But the borrower as well as other guarantor have not been made as a party in the instant dispute.

26. It is the main contention of disputant that, though the opponent No.1 has initiated the proceeding before A.R.C.S., Buldhana, but it was proceeded without the prior notice issued to the disputant and borrower. So, the recovery certificate issued by A.R.C.S., Buldhana is against the principles of natural justice. It is pertinent to mention here that, Section 91 of the M.C.S. Act which provides the procedure for settlement of dispute and power of Co-operative Court. As per Section 154 of the M.C.S. Act, if any order or decision passed by the concerned authority of the Co-

operative Society, the revision shall lie to the State Government and out of the total amount of recoverable dues 50% amount be deposited in the said revision. This provision is mandatory in nature.

27. In the case in hand, already the A.R.C.S., Buldhana issued recovery certificate in favour of opponents and the main prayer of disputant, to set aside and quash the recovery certificate issued by concerned authority, but for that purpose that point can be decided on merit after adducing the evidence by both parties, whether concerned authority acted without due procedure or not. It is pertinent to mention here that, Section 154 is clear that, if any order or decision passed by any concerned authority, then the revision shall lie against the said order or decision. So in view of specific provision, the dispute can't be entertained by the Co-operative Court after passing the order of recovery certificate. The disputant is having efficacious remedy to prefer an revision before the appropriate authority, but prima-facie it reveals that, the disputant has filed the instant dispute and application only to avoid 50% amount due to be deposited. It is pertinent to mention here that, if the the court is not empowered to grant final relief in the eyes of law, then interim relief also can't be granted in favour of disputant. From the record, it prima-facie reveals that, the mother of disputant Alka has obtained the loan from opponent No.1, then being a guarantor the disputant is bound to pay the loan amount as contemplated in their agreement.

28. It is the prayer of disputant, to stay the auction proceeding which have already been initiated by the opponent No.1 to sell out the suit field, on the basis of recovery certificate issued by the concern authority. For that purpose, the disputant is relied on the

authority of Hon'ble Bombay High Court i.e. Vithal Laxman Fatangade Vrs State of Maharashtra (2011) (2) MHLJ 194 in which Hon'ble Bombay High Court held that,

“the Deputy Registrar, Co-operative Societies performs quasi-judicial function and expected to follow the procedure contemplated under Rule 86-A to 86-F of the Act. Non-observance of such procedure has been deprecated. Consequently, ex-parte recovery certificate was quashed and set aside. Similar view is reiterated by the Division Bench of this Court in case of Sundeeep Polymers Pvt. Ltd. And Others Vs. State of Maharashtra and Others and observed in paragraph No.10 as under: “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”.

29. Though Hon'ble Bombay High Court held in the case of Vithal (Supra) that, without prior notice and without due procedure of law, if the recovery certificate is issued then it can be quashed and set aside. But after taking into consideration the factual position that, the powers of quashing and setting aside in respect of recovery certificate is vested with revisional court and not to Co-operative Court. So, the Co-operative Court is having no power or jurisdiction

to stay the auction which is initiated on basis of recovery certificate u/s 101 of the M.C.S. Act. From the pleadings of the parties, it prima-facie reveals that, concerned authority issued notice to disputant and borrower by which fair opportunity was given to them and adopted due procedure. But they willfully failed to appear in that proceeding.

30. It is pertinent to mention here that, an *ex-parte* recovery certificate issued by the concerned authority under the Maharashtra Co-operative Societies Act can be set aside, if it violates principles of natural justice, such as lack of proper notice, failure to follow mandatory procedures (like Rule 86-A to 86-F), or if the Registrar made an order without proper documentation, making it invalid and liable for challenge, but the remedy for it is only by preferring a revision petition to the Revisional Joint Registrar or State Government (under Section 154) or Writ Petition before Hon'ble High Court (under Article 227) as the case may be.

31. It is apt to mention here that, once a certificate is issued under Section 101, it is considered final and conclusive proof of the arrears stated. Co-operative Courts and Civil Courts are typically barred from questioning or setting aside such certificate. In the case of Chandrakant vs State of Maharashtra decided on 24th Jan, 2012 in which Hon'ble Bombay High Court held that,

“the disputant is an efficacious statutory remedy of revision under Section 154 of Maharashtra Cooperative Societies Act is available”.

32. So, the Registrar's jurisdiction under Section 101 is limited to verifying arrears. In cases of procedural failure, such as the absence of notice, the Hon'ble High Court (under Article 227) or

the Revisional Authority may quash the certificate and remand it for a *de-novo* enquiry. It is settled principle of law that, the legality of proceeding u/s 101 and legality of the certificate issued thereunder can not be challenged by filing dispute u/s 91 of the M.C.S.Act. It is specifically provided u/s 91 of the M.C.S. Act that, any proceeding for recovery of the amount as arrears of land revenue, on a certificate granted by the Registrar u/s 101 of the M.C.S. Act, shall not be deemed to be a dispute for the purpose of Section 91 of the Act.

33. On application of the equitable principles to the present set of facts, circumstances and documents on record, it prima-facie reveals that, the borrower and gurantors made default to pay the amount of loan to the opponents, so opponents initiated the proceeding u/s 101 of the M.C.S.Act and obtained the recovery certificate to that effect. Moreover, the grounds raised by the disputant regarding the auction of the suit field are also not enquired can be decided on merit. So, detailed inquiry is required. So, the disputant has not made the prima-facie case and balance of convenience in his favour. If the temporary injuction is granted in favour of disputant, then it would be miscarriage of justice as the concerned authority is already taken all the efforts and thereafter, issued recovery certificate. It is pertinent to mention here that, if disputant claim equittable relief, then he must have to come before the court with clean hands. But from the record, it prima-facie reveals that, disputant and borrower willfully avoided to pay the loan amount and so disputant has not come with clean hands before this court. Hence, he is not entitled to claim any equittable relief. In view of the above submissions, the instant application is without any

substance and merit and it is liable to be rejected. Hence, I recorded point Nos.1 to 3 in negative.

AS TO POINT NO.4 :-

34. The phrases prima-facie case, balance of convenience and irreparable loss are not rhetoric phrases for incantation but words of width and elasticity to meet myriad situations. Therefore, the temporary relief is not required to be granted against opponents. In the result, following order is passed as under :-

ORDER

1. The application (Exh.5) stands rejected.
2. Costs in cause.

(Dictated and pronounced in open court)

Akola.

Date 05.01.2026.

(V.V. Joshi)

Judge,

Co-operative Court, Akola.

ENDORSEMENT

Case Argued on	:	05.01.2026
Order prepared on	:	05.01.2026
Transcription Ready on	:	05.01.2026
Order checked and signed off	:	05.01.2026

प्रमाणपत्र

असे खात्रीपूर्वक कथन करण्यात येते की, पी.डी.एफ. फाईल मधील आदेश हा मूळ आदेश प्रतीप्रमाणे तंतोतंत शब्दशः बरोबर आहे.

टंकलीखित श्री व्हि.जी. पवार यांचेमार्फत.