IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.540 OF 2020

Dagu Rama Tambe & Anr. ...Petitioners
V/s.
The Mahanagar Co-operative Bank Limited and Ors. ...Respondents

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Mr. Rameshwar Totala a/w. Mr. Mitesh Jain i/b. Mr. Adesh Agarkar for the Petitioners.
Mr. Prashant Sarvankar for Respondent No.1.
Mr. Hamid Mulla, AGP for Respondent Nos.2 and 3-State

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CORAM : M. M. SATHAYE, J.

DATED : 11th NOVEMBER 2025.

P.C.:

1. Heard learned Counsel for the parties.

2. The Petitioners are guarantors for a term loan facility of Rs.1.00 Crore for which agricultural land bearing Gat No. 715 situated at Village Gonde, Taluka, Sinnar, District Nahsik is mortgaged as security. They are challenging the order dated 04/09/2019 passed by the District Magistrate, Nashik.

3. Learned counsel for the Petitioners submitted that under Sub-Rule 15 of the Rule 107 of Maharashtra Co-operative Societies (**MCS**) Rules, 1961 it is provided that as may be practicable, no larger section or portion of immovable property shall be sold than may be sufficient to discharge the amount due with interest and expenses. He submitted that other properties

of the borrower as stated in order u/s. 101 of the MCS Act are available and ought to be sold first before Petitioners' property can be made subject matter of attachment / sale. He submitted that the impugned order is also in contravention of Rule 107, Sub Rule 11(d-1)(i) and (iii). He further submitted that other mandatory requirements about publication of notices is not followed.

4. It is seen from the records that by order dated 06/01/2020, the Petitioners are protected by ad-interim relief.

5. Learned Counsel for the Respondent-Bank relied on the affidavit-in-reply. He submitted that principal borrower M/s A. M. Reddy Construction had availed 4 loan facilities and the properties as mentioned in para 4 of the affidavit-in-reply have been mortgaged by the borrower in order to secure the loan facility. He submitted that present Petitioners are guarantors to one of the loan facilities being term loan being Rs.1.00 Crore for which the subject matter land Gat No. 715 has been mortgaged as a security. He submitted that with the permission of the Petitioners, Plot Nos. 51, 45 and 82 belonging to the borrower has been already sold, still there is outstanding amount. He submitted that after affidavit-in-reply is filed, plot no. 37 belonging to borrower is also sold under the provisions of SARFAESI Act. He undertakes to file additional affidavit in support of this contention, before

next date, with its copy served upon Advocate for the Petitioners. He submitted that so far as hypothecated stock-in-trade and machinery of borrower is concerned, the said has been lost, in as much as, the borrower has a construction business and various sites in different parts of Maharashtra. That the Respondent Bank has tried to locate the said hypothecated stock-in-trade and machinery, however, could not locate it and therefore as on today, Petitioners' property Gat No. 715 (as security) is being taken up for recovery of pending dues.

6. Admittedly, the Petitioners have not challenged the certificate / order dated 08/02/2018 under section 101 of the MCS Act. It is also admitted that Petitioners have not challenged any of the sales of borrower's properties effected by the Respondent-Bank by way of attachment/sale under provisions of law.

7. Learned Counsel for the Petitioners submitted that some of the properties of the borrower which are stated to be sold, where sold for less than their market potential. In essence, it is submitted that they are sold under-valued. In this respect, since the sales of the secured assets of the borrowers are not challenged by the Petitioners, the argument of under-valued-sale is beyond the remit of this Petition.

8. The Petitioners are at liberty to adopt appropriate proceedings, as

available under law, to challenge the sales of borrower's secured assets earlier or challenge the order and certificate under section 101 of the MCS Act.

9. In the aforesaid facts and circumstances, learned Counsel for the Petitioners seeks short accommodation to take instructions as to whether the Petitioners wish to challenge the order/certificate u/s. 101 of MCS Act and/or sale of borrower's secured assets.

10. For such instructions, stand over to 26/11/2025.

11. Ad-interim relief granted earlier to continue till the next date.

(M. M. SATHAYE, J.)