

(2014) 08 BOM CK 0166

In the Bombay High Court

Case No : Writ Petition No. 2752 of 2013 and Writ Petition No. 2760 of 2013

Ramesh

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 28-08-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 226, 227
Maharashtra Co-operative Societies Act, 1960 — Section 101, 149, 154, 154(2), 154(2A)

Citation : (2014) 6 ALLMR 216

Hon'ble Judges : R.V. Ghuge, J

Bench : Single Bench

Advocate : B.S. Deshmukh, Advocate for the Appellant; S.D. Kaldate, A.G.P., D.B. Thoke and Pramod Gaikwad, Advocate for the Respondent

Judgement

R.V. Ghuge, J.—Rule. Rule made returnable forthwith. Heard finally by consent of the parties.

2. By these petitions, the issues raised for the decision of this Court are as follows : -

1. Whether this Court, in its writ and/or supervisory jurisdiction under Article 227 of the Constitution of India, should entertain a proceeding under the Maharashtra Co-operative Societies Act, 1960 (For short, M.C.S. Act), challenging the recovery certificate u/s 101, directly by avoiding or not resorting to the statutory remedy u/s 154 and section 154(2A) of The M.C.S. Act ?

2. Whether the remedy u/s 154 r/w section 154(2A) of the M.C.S. Act could be termed to be a statutory remedy available and not merely an alternate remedy ?

3. Learned Advocate for the petitioner has argued vehemently and at length that in the peculiarity of the facts of his case and relying upon reported judgments, the petitioner's case is fit enough to be entertained directly by this Court under

its writ or supervisory jurisdiction without directing the petitioner to avail of the statutory remedy. According to the petitioner, remedy u/s 154 r/w section 154(2A) of the M.C.S. Act is an alternate remedy.

4. I have considered the contentions of the petitioner in brief, in both these petitions. Since a common issue is involved in both these petitions, I would not be advertng to the facts of the second petition in view of the order that I propose to pass and for the reasons indicated therein.

5. The facts narrated by the petitioner are as follows : -

(a) He had borrowed a loan of about Rs.16,00,000/- in the year 2003. One loan account was with reference to an amount of Rs.9,00,000/- and the other with relation to an amount of Rs.6,00,000/-.

(b) A close relative stood as a guarantor and his agricultural land was mortgaged as a secured property against both the above stated loans.

(c) Certain blank papers have been signed by the petitioner under orders of the respondent Bank in the year 2003 in relation to the two loan accounts.

(d) Both the loan accounts, referred to above, have been closed on account of the repayment made by the petitioner. There is no dispute as regards this fact.

(e) In relation to the controversy at issue, the respondent Bank has prepared documents to show that the loan was sanctioned on 28/03/2008 for an amount of Rs.9,00,000/-.

(f) Proceedings for recovery of loan were initiated by the Bank under the Maharashtra Co. op. Societies Act, 1960 (For short, M.C.S. Act) before the competent authority, which is the Assistant Registrar of Co-operative Societies. In its written statement filed before the said Authority, the petitioner has categorically stated in paragraph No.2 that several relevant documents have not been filed by the bank.

(g) Keeping aside all the objections raised by the petitioner, the said authority allowed the proceedings and issued a recovery certificate u/s 101 of the M.C.S. Act.

(h) The petitioner challenged the said proceedings as well as the recovery certificate before the Revisional Authority u/s 154 r/w section 154(2A) of the M.C.S. Act.

(i) The Revisional Authority declined to entertain the revision petition and returned the papers to the petitioner in view of having not complied with the mandatory requirement of section 154(2A) of the M.C.S. Act, which mandates depositing of 50% of the amount assessed in the recovery certificate with that Society from whom the loan has been taken.

(j) The petitioner has mortgaged one of his residential properties with the H.D.F.C. Bank while obtaining a home loan.

(k) The said property, which is under mortgage with H.D.F.C. Bank is sought to be auctioned and the offset price is stated to be Rs.17,23,019/ -.

(l) The said residential property as per the market value, would fetch an amount of Rs.45,00,000/ - to Rs.50,00,000/ - approximately.

6. The petitioner has placed reliance on the judgment of the Division Bench of this Court in the matter of M/s. Top Ten and Shri Narsidas Katkoria Vs. State of Maharashtra and Others.,

7. In view of the ratio laid down in the case of Top Ten (supra), the Authority u/s 101 is not empowered or competent to take up complex issues involved in recovery of loans. Only plain and simple issues or correctness of errors are to be inquired into u/s 101. Paragraph 19 of the said judgment is relied upon. Reliance is placed upon the judgment of the Apex Court in the case of Whirlpool Corporation Versus Registrar of Trade Marks, Mumbai and others, reported at (1998) 8 SCC 1 to contend that an alternate remedy can be given a go -bye and the High Court can entertain such matters since there is no constitutional bar.

8. Reliance is placed upon the judgment of the Full Bench of this Court dated 21/04/2011 in the matter of Smt.Shireen Sami Gadiali and another Vs. Spenta Co.op. Housing Society Ltd., and others, reported at 2011(3) Bom.C.R. 465 to submit that this Court can entertain proceedings directly. It is, therefore, contended that on the one hand this petition be entertained by this Court in order to reduce the rigours of litigation suffered by the petitioner and on the other hand to conclude that the Assistant Registrar has a very limited scope u/s 101.

9. Mr.D.B.Thoke, learned Advocate on behalf of respondent Nos. 5 and 6 submits as under : -

(a) Both the loans taken by the petitioner in the year 2003 have been repaid and there is no dispute in relation thereto.

(b) The mortgaged land of the guarantor for the loans obtained in 2003, has not yet been released since neither the petitioner nor the guarantor took steps to redeem the land.

(c) The petitioner, in response to the recovery proceedings, has stated in paragraph No.5 of his written statement that the claim of the bank for recovery of loan is premature since the tenure for repayment of the loan (said to be taken in 2008) has yet not expired and therefore the Bank cannot resort to the proceedings u/s 101 before the term of the loans ends.

(d) In the impugned order, in paragraph Nos. 3 to 5, the competent authority has considered the fact of the loan application dated 25/03/2008, letter of sanction of loan dated 28/03/2008, promissory note dated 29/03/2008, agreement dated 29/03/2008, letter of lien and set off dated 20/03/2008, application of the guarantor dated 25/03/2008, continuing guarantee letter dated 29/03/2008 and

the details of the bank account of the petitioner.

(e) The competent authority, upon going through all the documents, including the contract on a Non -Judicial Stamp Paper etc. has considered the factum of the loan taken by the petitioner.

(f) The petitioner was operating his business in the form of a Firm by name Gajanan Hatcheries.

(g) A bank account extract from 28/03/2008 to 12/03/2013 and account extract of C.C. against I.P. Mortgage on A/c No.03174000119 in relation to Gajanan Hatcheries was produced before this Court, which is taken on record and marked as "X" for identification.

10. According to the respondents, all these documents were placed before the competent authority and the petitioner has participated in the proceedings.

11. It is, therefore, submitted that no such exceptional circumstances or peculiarities emerging from the facts of this case have been pointed out so as to convince this Court to entertain the petition filed by the petitioner without availing of the statutory remedy.

12. I have considered the narration of facts as recorded in brief hereinabove. So far as the limitations on the Writ or supervisory jurisdiction of this Court are concerned, the view taken by the 5 Judges Bench of the Supreme Court in the case of Syed Yakoob Vs. K.S. Radhakrishnan and Others, is explicit in paragraph Nos.7 and 8 of the said judgment, which read thus : -

7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Art. 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or Tribunals; these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or in excess of it, or as a result of failure to exercise jurisdictions. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had

erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Courts under Art. 226 to issue a writ of certiorari can be legitimately exercised (vide *Hari Vishnu Kamath v. Syed Ahmed Ishaque*), *Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others*, and *Kaushalya Devi v. Bachittar Singh* .

8. It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected by a writ has to be an error of law; but it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious misinterpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record. It may also be that in some cases, the impugned error of law may not be obvious or patent on the face of the record as such and the Court may need an argument to discover the said error; but there can be no doubt that what can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the record. If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior Court or Tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari. In our opinion, it is neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of the legal provision which is alleged to have been misconstrued or contravened.

13. The Apex Court had yet another occasion to define the scope and limitations of the Writ and supervisory jurisdiction of this Court in the matter of *Surya Dev Rai Vs. Ram Chander Rai*, reported at 2003(6) SCC 682 . The Apex Court has

considered the said issue in paragraph Nos. 38 (1 to 9) and 39, which read thus :

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38. Such like matters frequently arise before the High Courts. We sum up our conclusions in a nutshell, even at the risk of repetition and state the same as hereunder: -

(1) Amendment by Act No.46 of 1999 with effect from 01.07.2002 in Section 115 of CPC cannot and does not affect in any manner the jurisdiction of the High Court under Articles 226 and 227 of the Constitution.

(2) Interlocutory orders, passed by the courts subordinate to the High Court, against which remedy of revision has been excluded by the CPC Amendment Act No. 46 of 1999 are nevertheless open to challenge in, and continue to be subject to, certiorari and supervisory jurisdiction of the High Court.

(3) Certiorari, under Article 226 of the Constitution, is issued for correcting gross errors of jurisdiction, i.e., when a subordinate court is found to have acted (i) without jurisdiction - by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction ? ?? " by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When the subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

(5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied : (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (iii) a grave injustice or gross failure of justice has occasioned thereby.

(6) A patent error is an error which is self -evident, i.e., which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long -drawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has chosen to take one view the error cannot be called gross or patent.

(7) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be

exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred there against and entertaining a petition invoking certiorari or supervisory jurisdiction of High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not covert itself into a Court of Appeal and indulge in re -appreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

(9) In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari the High Court may annul or set aside the act, order or proceedings of the subordinate courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High Court may not only give suitable directions so as to guide the subordinate court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate court as the court should have made in the facts and circumstances of the case.

39. Though we have tried to lay down broad principles and working rules, the fact remains that the parameters for exercise of jurisdiction under Articles 226 or 227 of the Constitution cannot be tied down in a straitjacket formula or rigid rules. Not less than often the High Court would be faced with dilemma. If it intervenes in pending proceedings there is bound to be delay in termination of proceedings. If it does not intervene, the error of the moment may earn immunity from correction. The facts and circumstances of a given case may make it more appropriate for the High Court to exercise self -restraint and not to intervene because the error of jurisdiction though committed is yet capable of being taken care of and corrected at a later stage and the wrong done, if any, would be set right and rights and equities adjusted in appeal or revision preferred at the conclusion of the proceedings. But there may be cases where "a stitch in time would save nine". At the end, we may sum up by saying that the power is there but the exercise is discretionary which will be governed solely by the dictates of judicial conscience enriched by judicial experience and practical wisdom of the Judge.

14. In the light of the above, the essential aspect that is required to be gone into

in this case is as to whether an irreparable harm, grave and serious injustice, has been caused to the petitioner on account of the passing of the impugned order and which cannot be reviewed by an authority vested with statutory powers provided u/s 154 of the M.C.S. Act.

15. In the case of Top Ten (supra), the Division Bench has observed in paragraph No.19 as follows : -

"19. Thus very small types of disputes in which only limited question is of quantification of arrears due, is to be looked into by such Registrar while undertaking enquiry u/s 101. Importance therefore, is to statement of accounts. The enquiry undertaken is only aimed at ascertaining whether amount disclosed in statement of accounts as arrears, is correct and due. The limited opportunity of defence is, therefore, extended to the borrower like petitioners. The correctness of amount shown as arrears can be verified from the accounts and from accounts of the society and from receipts produced by other side. Denial of cross -examination in this situation only shows legislative intent that if a genuine and disputed question of facts is found arising by the Registrar, he cannot proceed to resolve that question. The concerned society, in such circumstances, has to take recourse to filing of a dispute u/s 91, where such disputed questions can be gone into. Hence, a bond fide defence being raised by a borrower or other person against whom such certificate is sought, cannot be resolved by the Registrar under this jurisdiction. If he finds such dispute arising, he has to deny the recovery certificate by passing appropriate judgment under Rule 86F."

16. It was a case, wherein it was noted by the Court that the correctness of arrears of loans and ascertaining whether the amount disclosed in the statement of accounts as arrears is correct and due, can be gone into by the Authority u/s 101. If a genuine and disputed question of fact is found emerging by the Registrar, he need not proceed to resolve that question. The same can then be looked into u/s 91 of The M.C.S. Act.

17. In the case on hand, the documents produced before the competent authority as well as this Court indicate the existence of a loan account of the year 2008. The account extract filed at Exh."X" indicates that the loan account has been utilized by the petitioner, in as much as, he has also repaid various amounts on various dates qua the loan account. This, according to the respondents, has been brought on record before the competent authority. The petitioner is disputing the correctness of this record as well.

18. As such, in my view, the petitioner's case would not fall within the ambit of paragraph No.19 of the Top Ten case (supra), since it was based on such a disputed question, which could not have been gone into by the Registrar u/s 101. Nevertheless, in order to avoid foreclosing the doors on the petitioner on this contention as well, I am of the view that all these submissions of the litigating parties can be looked into by the Revisional Authority.

19. The Apex Court in the case of Whirlpool (supra) has observed that though

existence of an alternate remedy is not a constitutional bar on the High Court's jurisdiction to entertain a petition filed directly, the High Court is under a self-imposed restriction. When the writ petition seeks enforcement of any of the fundamental rights or when there is violation of the principles of natural justice, the High Court can exercise its jurisdiction and entertain a petition. Paragraph Nos. 15 and 16 of the said judgment, relevant to this case, read as under : -

"15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions on of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.

16. Rashid Ahmed Vs. Municipal Board, Kairana laid down that existence of an adequate legal remedy was a factor to be taken into consideration in the matter of granting writs. This was followed by another Rashid case, namely, K.S.Rashid and Son Vs. Income Tax Investigation Commission, which reiterated the above proposition and held that where alternative remedy existed, it would be a sound exercise of discretion to refuse to interfere in a petition under Article 226. This proposition was, however, qualified by the significant words, "unless there are good grounds therefor", which indicated that alternative remedy would not operate as an absolute bar and that writ petition under Article 226 could still be entertained in exceptional circumstances."

20. In the Shireen Sami Gadiali's case (supra), similar view has been echoed by the Full Bench of this Court in paragraph No.14 of the said judgment dealing with the case u/s 154 of The M.C.S. Act, 1960. Paragraph No.14 reads thus : -

"The observations of the supreme Court in its judgment in the case of Everent Apartment's case care thus based on the unamended provisions of Section 154 when there was no right in a party to move the revisional authority by an application. In other words, provision was not made for invoking revisional jurisdiction of the State Government or the Registrar by making an application. But now because of the amendment in Section 154, a party has a right to move an application u/s 154 invoking revisional jurisdiction of the State Government and the Registrar. In our opinion, however, merely because a party has a right to make an application invoking the revisional jurisdiction of the Registrar and the State Government u/s 154, whether it can be treated as alternate remedy entitling the High Court to decline to exercise its writ jurisdiction is a question

which is not capable of being answered generally. That question has to be considered and answered in the facts and circumstances of each case. Firstly, because availability of alternate remedy is not a statutory bar to the exercise either of writ jurisdiction under Article 226 of the Constitution or supervisory jurisdiction under Article 227 of the Constitution. That is a rule of self discipline and therefore it is for the High Court to consider in each case whether in a particular case availability of revisional jurisdiction is an alternate remedy to the jurisdiction of this Court under Articles 226 or 227 or not. In a given case, because the revisional jurisdiction can now be exercised as a matter of right, it may be treated as alternate remedy. In another case it may not be so treated. For example, in a case the High Court may find that the question which is raised in the petition is covered by a finding precedent in favour of the petitioner, therefore may not ask the petitioner to exhaust the alternate remedy. The High Court will adopt the same course when it finds that the impugned order is passed in violation of the principles of natural justice or fundamental rights or is without authority of law or is obviously wrong or illegal. In another case, the High Court may find that the question raised in the petition is capable of being decided in revisional jurisdiction also and therefore the High Court may decline to entertain the petition. Thus, in our opinion, it can be definitely said that after its amendments in the year 1974, a remedy of revision u/s 154 is available to an aggrieved party as a matter of right. However no general rule where it will always operate as an alternate remedy to the remedy of filing a petition under Articles 226 and 227 of the Constitution of India can be laid down. That question will have to be considered and decided in each case on the facts and law peculiar to that case. Question No.2 is, therefore, answered accordingly."

21. As such, in my view, in the event of the petitioner raising an issue affecting his fundamental rights or making out a case of non adherence to the principles of natural justice, it may convince this Court to entertain a petition despite a remedy available. In the instant case, I find that the fundamental rights of the petitioner are not at issue. So far as the adherence to principles of natural justice are concerned, the petitioner had filed his written statement before the Authority below and was given an opportunity to deal with every contention of the respondent bank. Record indicates that he has fully participated in the said proceeding. In the light of the reasons assigned hereinabove, I answer issue No.1 in the negative by holding that this is not a fit case for being entertained directly by this Court.

22. Section 154 of The M.C.S. Act, 1950 reads thus :

154. Revisionary powers of State Government and Registrar. - (1) The State Government or the Registrar, suo motu or on an application, may call for and examine the record of any inquiry or proceedings of any matter, other than those referred to in sub -section (9) of section 149, where any decision or order has been passed by any sub ordinate officer, and no appeal lies against such decision or order for the purpose of satisfying themselves as to the legality or propriety of

any such decision or order, and as to the regularity of such proceedings. If in any case, it appears to the State Government, or the Registrar, that any decision or order so called for should be modified, annulled or reversed, the State Government or the Registrar, as the case may be, may, after giving the person affected thereby an opportunity of being heard, pass such orders thereon as to it or him may seem just.

(2) Under this section, the revision shall lie to the State Government if the decision or order is passed by the Registrar, the Additional Registrar or a Joint Registrar, and to the Registrar if passed by any other officer.

(2A) No application for revision shall be entertained against the recovery certificate issued by the Registrar u/s 101 unless the applicant deposits with the concerned society, fifty per cent amount of the total amount of recoverable dues.

(3) No application for revision shall be entertained, if made after two months of the date of communication of the decision or order. The revisional authority may entertain any such application made after such period, if the applicant satisfies it that he had sufficient cause for not making the application within such period.

(4) The State Government may, by order, direct that the powers conferred on it by this section shall, in such circumstances and under such conditions, if any, as may be specified in the direction, be exercised also by an officer of the rank of Secretary to Government.

23. Needless to state, Section 154 provides for the reversionary powers of the authority created by Law, that is the State Government or the Registrar. Section 154(2) provides that the revision was to lie to the State Government, if the decision or order is passed by the Registrar, Additional Registrar or a Joint Registrar and to the Registrar, if passed by the other Officer. The word used is "shall lie". "Shall" has been considered in catena of judgments to mean a mandate.

24. Therefore, in my view, preferring a Revision is not an alternate remedy u/s 154, but is a statutory remedy. Moreover, it gives the litigant one more opportunity of testing his case since the verdict of the revisional authority u/s 154 can be challenged before this Court in its Writ and supervisory jurisdiction.

25. This Court has taken a similar view in (a) Writ Petition No.843/2013 in the matter of Prashant Bhagwandas Khanore Vs. The State of Maharashtra and others, decided on 16/07/2013 (Coram : R.G.Ketkar, J.), (b) Jugalkishor Bhagwandas Agrawal and another Vs. The State of Maharashtra and others, dated 28/02/2014 in Writ Petition No.816/2012 and (c) Indumati Chandrakant Chaudhari Vs. The State of Maharashtra and others, Writ Petition No.9016/2011 dated 22/04/2014 (to which I am a party). It lays down a law that a remedy u/s 154 of the M.C.S. Act is an efficacious and expeditious remedy. It gives every opportunity to the petitioner/applicant to assail the impugned judgment. The issue of lack of jurisdiction by the Authority u/s 101, in my view, can also be

gone into in the said revisional proceedings.

26. In the light of the above, I answer issue No.2 in the affirmative by holding that Section 154 of the M.C.S. Act is a statutory remedy and not merely an alternate remedy.

27. In the result, these petitions stand dismissed.

28. The petitioner states that he has already preferred revisional proceedings before the competent authority on 06/11/2012. The same have been returned to the petitioner since the petitioner did not comply with sub section 2A u/s 154 of The M.C.S. Act.

29. As such, since the petitioner is desirous of availing of the remedy u/s 154 r/w section 2A of the M.C.S. Act, he shall have to deposit 50% of the amount with respondent No.5 Bank, from whom the loan has been obtained. On production of a receipt of depositing 50% of the amount, the revision shall be entertained by the competent authority.

30. Needless to state, the amount deposited by the petitioner in this Court pursuant to the orders of this Court in both these petitions, shall stand transmitted to the loan account of the petitioner with respondent No.5 Bank. In the event, the petitioner succeeds in making out a case of having not obtained any loan from respondent No.5 Bank in the year 2008, the said amount shall be returned to the petitioner with interest accrued thereon.

31. At this stage, the petitioner submits that as per the contention of the respondent, his residential property has been auctioned to an auction purchaser. However, the auction sale has not been confirmed under the interim orders of this Court. The same situation be maintained for a period of 3 months so that the petitioner would be able to take recourse to the remedy u/s 154 and have his revision petition decided at its earliest. Though the learned Advocate for respondent No.5 has vehemently opposed, I am inclined to accept the request of the petitioner and direct respondent No.5 Bank, not to finalize the auction sale for a period of 3 months from today. Needless to state, all contentions of the litigating parties are kept open to be agitated before the Revisional Authority.

32. Rule is discharged. No order as to costs.