

GAHC010135222021



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/4601/2021

THE CO-OPERATIVE CITY BANK LTD.
HAVING ITS HEAD OFFICE AT U.N. BEZBARUAH ROAD, SILPUKHURI,
GUWAHATI 781003 REPRESENTED BY THE MANAGING DIRECTOR (I/C)

VERSUS

THE STATE OF ASSAM AND 5 ORS.
REPRESENTED BY THE SECY. GOVT. OF ASSAM, CO OPERATIVE DEPTT.,
ASSAM SECRETARIAT, DISPUR, GUWAHATI 6

2: THE DIST. DEPUTY REGISTRAR OF CO OPERATIVE SOCIETIES

KAMRUP
GUWAHATI 5

3: THE BAKIJAL OFFICER/CERTIFICATE OFFICER OF THE CO OPERATIVE
SOCIETIES

BHANGAGARH
GUWAHATI 5

4: THE DEPUTY COMMISSIONER

BAKIJAL BRANCH
KAMRUP (M)
GUWAHATI 1

5: JIBAN HAZARIKA
SRCS
GUWAHATI (RETIRED)
VILL. CHARALA BORUAH CHUK
P.O. SOOTEA

DIST. BISWANATH CHARIALI
ASSAM
PIN 784175

6:RUPAM BARMAN

S/O LATE PHANIDHAR BARMAN
R/O BRINDABAN APARTMENT
FLAT NO. 402
CHACHAL
SIX MILE
GUWAHATI 22
DIST. KAMRUP (M)
ASSAM

Advocate for the Petitioner	: Mr. G. Das, Advocate
Advocate for the Respondents	: Ms. R. Bora, SC Cooperation Deptt. Mr. K. Gogoi, Addl. Sr. Govt. Advocate

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

Date of Hearing : 14.08.2023

Date of Judgment : 14.08.2023

JUDGMENT AND ORDER (ORAL)

Heard Mr. G. Das, the learned counsel for the petitioner and Ms. R Bora, the learned Standing Counsel, Cooperation Department as well as Mr. K. Gogoi, the learned Additional Senior Government Advocate for the State respondents

2. The instant writ petition has been filed by the Co-operative City Bank Ltd. seeking an appropriate writ, direction and order for setting aside the order dated 11.07.2019 passed by the respondent No.3 in Bakijai Case No.B-324/2019 as well as the letter dated 21.09.2019 issued by the respondent No.3 and for a direction upon the respondents to hear and dispose of the Review and/or the Appeal filed by the petitioner.

3. The facts involved in the instant proceedings are that the respondent No.6 had availed a cash credit limit of Rs.50 lakh from the Beltola Branch of the petitioner's Bank. On account of non-payment of the outstanding dues, the Loan Account No.07174000002 of the respondent No.6 became overdue on 05.04.2015. Thereafter, various notices, reminders as well also a demand notice were issued. However, the respondent No.6 failed to regularize the Loan Account. The petitioner, thereupon, filed the requisition for certificate under Section 5 of the Bengal Public Demand Recovery Act, 1913 (for short, 'the Act of 1913') before the respondent No.3 for recovery of Rs.29,27,108.88 against the respondent No.6 as well as the guarantor, i.e. the wife of the respondent No.6. The said case was registered and numbered as Bakijai Case No.B-324/2019. The respondent No.3, thereupon, issued notice to the respondent No.6 as per Section 7 of the Act of 1913 along with a certificate of public demand for recovery of the outstanding amount of Rs.29,15,808.88. The respondent No.6 appeared before the Bakijai/Certificate Officer but did not file any petition under Section 9 of the said Act of 2013. However, to the utter surprise of the petitioner, the Bakijai/Certificate Officer unilaterally settled the matter on 11.07.2019 by waiving a huge amount of Rs.21,99,598.88 from the outstanding dues of Rs.29,15,808.88 and the respondent No.3 further directed the petitioner on 21.09.2019 to issue Clearance Certificate against the respondent No.6 on payment of a mere amount of Rs.7,27,828.00. It is also averred in the writ petition that the respondent No.3 had also waived unilaterally an amount of Rs.40,117.24 and Rs.64,164.67 in respect to other two matters of the petitioner and the respondent No.3 was misusing his power for which the petitioner Bank sustained a loss of Rs.23,03,880.79p. It was also mentioned that the respondent No.5, who was then performing his duty as respondent No.3, had signed the impugned order on 11.07.2019 just on the eve of his retirement, i.e. on 21.09.2019.

4. The petitioner on coming to learn about the order dated 11.07.2019; on 30.09.2019 lodged the formal objection against the same before the Assistant Registrar of Cooperative Societies, Bhangagarh highlighting how the Bakijai/Certificate Officer, just on the eve of his superannuation, passed the impugned order dated 11.07.2019 unilaterally to subserve his

personal interest and also acted against the Act of 1913. The District Deputy Registrar of Cooperative Societies took cognizance of the matter on 12.03.2020 to review the same and fixed 24.03.2020 for hearing. However, on 05.09.2020, the petitioner was informed unilaterally by the respondent No.2 that the hearing in the matters stood cancelled as a Departmental Enquiry was initiated against the then Bakijai Officer concerned, i.e. the respondent No.5. The petitioner having left with no alternative thereupon filed an appeal under Section 51 of the Act of 1913 along with an application for condonation of delay before the Deputy Commissioner, Kamrup (Metro), Guwahati on 18.09.2020, the receipt of which was duly acknowledged by the Office of the respondent No.4. It was also alleged that the respondent No.4, i.e. the Deputy Commissioner, Kamrup (Metro), Guwahati did not take any steps in respect to the said Appeal for which the petitioner filed an application under the RTI Act, 2005 on 06.01.2021 seeking information regarding the status of the said appeal as well as the delay condonation petition. To the utter surprise of the petitioner, it was informed that no application was received in the Office of the respondent No.4. It is under such circumstances that the petitioner has approached this Court under Article 226 of the Constitution.

5. This Court also finds it relevant to take note of Annexure-10 to the writ petition which is a photocopy of the Memo of Appeal filed by the petitioner before the Deputy Commissioner, Kamrup (Metro), Guwahati and there is a seal of the Office of the Deputy Commissioner, Kamrup (Metro), Guwahati issued by the Central Receipt Section on 18.09.2020.

6. This Court had issued notice vide an order dated 17.03.2022 and it was further observed that the pendency of the writ petition shall not be a bar for consideration and disposal of the appeal. It reveals from the record that the respondent No.4, i.e. the Deputy Commissioner, Kamrup (Metro), Guwahati had filed an affidavit-in-opposition through the Additional Deputy Commissioner, Kamrup (Metro), Guwahati. In paragraph No.4 of the said affidavit-in-opposition it has been mentioned that the said appeal petition and the prayer for condonation of delay filed on 18.09.2020 was not received by the Bakijai Branch

till then and it is under such circumstances in the reply to the RTI application, it was stated that the Appeal petition was not received. It was further mentioned that the petitioner Bank submitted the Appeal petition in the Central Receipt Section and not in the Bakijai Branch for which the Branch was not aware of any such Appeal petition. Further, it was mentioned that if the petitioner Bank so desires, it may submit the Appeal petition to the Bakijai Branch and necessary steps would be taken to initiate Bakijai Case as per the provision of the Act of 1913 for recovery of the defaulting amount.

7. To the said affidavit-in-opposition, the petitioner submitted a reply stating inter-alia that the Appeal Memo along with the application for condonation of delay was received by the Central Receipt Section of the Office of the Deputy Commissioner, Kamrup (Metro), Guwahati on 18.09.2020. It was further mentioned that at that relevant point of time, on account of COVID, there were various restrictions for entering the premises of the Deputy Commissioner-cum-District Collector, Kamrup (Metro), Guwahati for which the petitioner was asked to file the appeal and delay condonation application in the Central Receipt Section of the Office of the Deputy Commissioner, Kamrup (Metro), Guwahati. It was also informed that the Central Receipt Section would in turn forward the Appeal and delay condonation application to the respective Branches. It was also mentioned that the Deputy Commissioner-cum-District Collector, Kamrup (Metro), Guwahati has a common set up of his Office without distinct separation earmarked for filing petition, application, appeal etc. under different statutes and on account of the callousness in the internal management of the duties, the respondent No.4 is apparently responsible and cannot shun his responsibilities by evasive replies.

8. This Court further finds it relevant to take note of the affidavit-in-opposition filed by the respondent No.3. This Court finds it relevant to quote paragraph No.4 of the said affidavit-in-opposition filed by the respondent No.3 as the said has due relevance to the dispute involved which is reproduced herein under:-

“4. That with regard to the statements made in paragraph No. 4 of the writ petition the deponent begs to state that it is a fact that the then Bikijai Officer Sri Jiban Hazarika (since

retired) has served demand Notice to Sri Rupam Barman a Certificate Debtor for Rs.29,27,108.88/including Court fee against Bakijai Case No.324/2019 for which a hearing was scheduled on 09.05.2019. That the records reveal that the then Bakijai Officer Sri Jiban Hazarika (since retired) has issued notice to the Certificate Holder (i.e. the Cooperative City Bank) and Certificate Debtor (Sri Rupam Barman) to attend the hearing on 09.05.2019. The records also reveal that both the Certificate Holder and Certificate Debtor have attended the hearing as per attendance on record. However as per the file record, the statement of both the parties along with their signatures seems to have been not recorded by the then-Bakijai Officer. That the deponent begs to submit that the numbering of papers in the file are found to be in order hence there is no scope of misplacing any statement. Only a note sheet where the then Bakijai Officer has stated his submission in view of the hearing without any supporting statements of both the parties have submitted his statement whimsically in defence of the Certificate Debtor is seen and exemption of huge amount of Rs.21,99,598.88 without his authority is seen to have been considered.”

9. The respondent No.6 had also filed an affidavit-in-opposition thereby defending the order passed by the Bakijai Officer on 11.07.2019.

10. This Court has duly heard the learned counsels for the parties and perused the materials on record. From the perusal of the materials on record, it transpires that the petitioner had filed an Appeal on 18.09.2020 along with an application for condonation of delay. The said Appeal was duly submitted in the Office of the Deputy Commissioner, Kamrup (Metro), Guwahati which was duly received by the Central Receipt Section on 18.09.2020. This Court cannot also be unmindful of the fact that during the time when the appeal was filed, there were COVID restrictions, and as such, the stand so taken by the petitioner in the affidavit-in-reply seems to be correct. Be that as it may, against the order dated 11.07.2019, an appeal lies under Section 51 of the Act of 1913 and the said appeal along with the application for condonation of delay was duly filed. The question as to whether it should have been filed before the Central Receipt Section or in the Bakijai Branch of the Office of the Deputy Commissioner, Kamrup (Metro), Guwahati is not much of relevance taking into account that the Appeal along with the application for condonation of delay was duly filed. It is also seen from the affidavit-in-opposition filed by the

respondent No.4 that if the petitioner resubmits the petition to the Bakijai Branch, necessary steps would be taken to initiate a Bakijai Case as per the provision of the Act of 1913 for recovery of the defaulting amount.

11. In that view of the matter, it would not be proper to decide the legality and validity of the order dated 11.07.2019 by this Court passed by the respondent No.3 that too when an appeal has already been filed before the Deputy Commissioner, Kamrup (Metro), Guwahati.

12. This Court is of the opinion that the interest of justice would be met if the petitioner is permitted to submit a fresh Memo of Appeal along an application for condonation of delay within 30 days from the date of passing of the instant order and the same if filed within the time so granted, shall be considered as being filed on 18.09.2020. The Deputy Commissioner, Kamrup (Metro), Guwahati shall thereupon decide the Appeal as per the provisions of law. The appeal be decided as expeditiously as possible and preferably within a period of 3 (three) months from the date of submission of the Memo of Appeal along with the condonation application.

13. With the above observations and directions, the instant petition stands disposed of.

JUDGE

Comparing Assistant