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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5354 OF 2014

The Amalner Co-operative Urban Bank Ltd.,
 Amalner, Taluka - Amalner,
 District - Jalgaon
 Through its Manager / C. E. O.
 Shri. Amrut s/o Rambhau Patil,
 Age - 50 years, Occ - Service
 R/o Amalner, Taluka - Amalner
 District - Jalgaon

PETITIONER

VERSUS

1. The State of Maharashtra
 Through the Secretary for
 Co-operation Department,
 Mantralaya, Mumbai
2. The Divisional Joint Registrar,
 Co-operative Societies,
 Nashik Division, Nashik
3. The Assistant Registrar,
 Co-operative Societies, Amalner
 Taluka - Amalner,
 District - Jalgaon
4. Sitaram Yantramag Vinkar
 Sahakari Sanstha, Amalner
 Through its Chairman,
 Narendra Sitaram Patil,
 Age - 66 years, Occ - Business
 R/o Utkarsha Nagar,
 Dhule Road, Amalner,
 Taluka - Amalner, District - Jalgaon

RESPONDENTS

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Mr. V. D. Hon, Sr. Advocate i/b Mr. A. V. Hon, Adv. for petitioner
 Mrs. Y. M. Kshirsagar, AGP for respondent State
 Mr. V. D. Salunke, Advocate for respondent No.4

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WITH
WRIT PETITION NO. 5355 OF 2014

The Amalner Co-operative Urban Bank Ltd., PETITIONER
Amalner, Taluka - Amalner,
District - Jalgaon
Through its Manager / C. E. O.
Shri. Amrut s/o Rambhau Patil,
Age - 50 years, Occ - Service
R/o Amalner, Taluka - Amalner
District - Jalgaon

VERSUS

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| <ol style="list-style-type: none"> 1. The State of Maharashtra
Through the Secretary for
Co-operation Department,
Mantralaya, Mumbai 2. The Divisional Joint Registrar,
Co-operative Societies,
Nashik Division, Nashik 3. The Assistant Registrar,
Co-operative Societies, Amalner
Taluka - Amalner,
District - Jalgaon 4. Mauli Textiles, Amalner,
Through its Proprietor,
Ms. Pallavi Amol Borse,
Age - 33 years, Occ - Business
R/o Utkarsha Nagar,
Dhule Road, Amalner,
Taluka - Amalner, District - Jalgaon | <p>RESPONDENTS</p> |
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Mr. V. D. Hon, Sr. Advocate i/b Mr. A. V. Hon, Adv. for petitioner
Mrs. Y. M. Kshirsagar, AGP for respondent State
Mr. P.S.Dighe h/f Mr. V.R.Dhorde, Advocate for respondent No.4

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 24th AUGUST, 2015

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally with consent of learned advocates for the parties.
2. The petitions have been moved by the bank against orders dated 17th October, 2013 passed by Assistant Registrar, Co-operative Societies, Amalner and dated 5th May, 2014 passed by respondent No.2 – revisional authority in the proceedings which ensued at the behest of the petitioner – bank, for recovery of loan advanced to respondent No.4.
3. Learned senior advocate for the petitioner has submitted that in the initial round of litigation, the matters were remanded by the revisional authority for reconsideration of the application by the petitioner. He contends that the matters had been remanded for fresh hearing and trial to the Assistant Registrar, Co-operative Societies. He relies on observations of the revisional authority as are appearing at page 23 which read thus-

"It is observed that when applicant has filed recovery proceedings under section 101 of the M. C. S. Act, 1960 before Assistant Registrar, it was obligatory on the part of Assistant

Registrar to scrutinize entire loan documents executed by and between the parties in view of applications submitted for issuance of recovery certificates properly. The proceedings under section 101 of the M. C. S. Act, 1960 are separate and Assistant Registrar is fully vested in powers to deal and decide recovery proceedings for issuance of correct and proper recovery certificates after considering say of applicant and respondents. Assistant Registrar has created more difficulties for recovery of dues from defaulting members and borrowers.

In my opinion, it is necessary and desirable and to protect the interest of applicant public at large, such as members, depositors, and hence these two matters requires to be remanded back for fresh hearing and trial in respect of recovery proceedings filed by applicant. Assistant Registrar is directed to scrutinize and verify original loan documents of respondents executed in favour of applicant and after due verification of the same, appropriate and suitable orders may be issued in the subject matters on its own merits and in accordance with the provisions of law under the provisions of the M. C. S. Act, 1960."

4. Learned senior advocate submits that initiation of

proceedings had been before Assistant Registrar, the post was then assumed by a person, who had been an erstwhile employee of the petitioner who had been entertaining certain grudge against his erstwhile employer.

5. He goes on to submit that perusal of the order passed in second round by him cannot be said to comply with the considerations for which the matters had been remitted.

6. Assistant Registrar, Co-operative Societies, Amalner, appears to have declined the request under the application to issue certificate pursuant to section 101 of the Maharashtra Co-operative Societies Act, for, according to him, lot of intricate legal questions arise and as such, the request would not be entertained.

7. The petitioner points out that against said order of the Assistant Registrar dated 17th October, 2013, the petitioner had been before this court in two writ petitions bearing No. 9575 of 2013 and 9561 of 2013. Said petitions came to be disposed of with liberty to the petitioner to avail of alternate remedy.

8. The revisional authority also, for the matters, which cannot be said to be exactly germane for consideration, appears to have

gone by the decision of the Assistant Registrar. He, therefore, submits that when pursuant to section 101 of the Maharashtra Co-operative Societies Act, 1960 (Hereinafter will be referred to as the "MCS Act") relevant account statement along with prescribed documents were before the authority, there was no hitch to consider the request for issuance of certificate under section 101 of the MCS Act. He submits that the authorities, however, purported to consider the matter with pedantic approach, which was uncalled for under the events and facts. According to learned senior advocate, the authorities have failed to take into account events and facts, which ordinarily would and ought to have been considered summarily. He, therefore, urges this court to direct the authorities to issue certificate under section 101 of the MCS Act by setting aside the impugned orders, the one by the Assistant Registrar dated 17th October, 2013 and the other by the revisional authority passed on 5th May, 2014 as referred to hereinabove.

9. Learned advocates for the respondents, however, purport to view the matter from other angle, in the sense that lot of disputed questions arise in the matter. According to them, apart from disputed questions, the matter does not rest only on statement of accounts, but host of questions crop up for

consideration of the authorities *inter alia*, rate of interest, without determination upon that certificate cannot be issued.

10. Learned advocates for the respondents have taken me through the relevant extracts of the impugned order and submit that under the circumstances no fault can be found with the orders passed.

11. On perusal of the judgment, various aspects appear to have been involved in the matter, particularly since contentions have been raised in respect of authenticity of the rate of interest as appearing on the documents, which are alleged to be altered. The authority appears to have considered that this may require leading of evidence. It further appears that if evidence is to be lead, having regard to rules, particularly rule 86E of the Maharashtra Co-operative Societies Rules, 1961, it prohibits the cross examination. The authorities have further considered that there are some facts about which also evidence would be required viz., hypothecation of cloth, its possession, subsequently it's catching fire and then about insurance claim in respect of the same.

12. As such, having regard to these as well as other aspects, which have weighed with the authorities, the matter does not

appear to be confined only to the statement of accounts and prescribed documents, as are referred under rules 86A to 86D of the Maharashtra Co-operative Societies Rules, 1961.

13. In the circumstances, I am not inclined to interfere with the impugned orders. Petitioner bank to make a proper approach for recovery, since the revisional authority has declined to interfere with order passed by the Assistant Registrar, leaving it open for the petitioner to take up appropriate proceeding.

14. In view of aforesaid, the writ petitions stand dismissed. Rule stands discharged. It is open for the petitioner - bank to avail of such legal remedy as would be available in law. If it comes to condonation of delay in this respect, due regard may be had to the pendency of the proceedings including these petitions.

15. Needless to refer to that all the points are kept open. The observations hereinbefore made are for the purpose of rejection of the writ petitions and do not have any further efficacy.

[SUNIL P. DESHMUKH, J.]