

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 6431 OF 2013

1) Govindlal Zumbarlal Tiwari,
Age:- 56 Years, Occ:- Business,
R/o. Moti Nagar, Latur.

2) Mrs. Savita Govindlal Tiwari,
Age:- 50 years, Occ:- Household,
R/o. Motinagar, Latur.

**... WRIT PETITIONERS
(Original Appellants /
disputants)**

VERSUS

1) The Janata Sahakari Bank Ltd., Pune,
Through its authorized Officer,
Bajirao Road, Pune.

2) Pune Janata Sahakari Bank Ltd.,
Through Branch Managar,
Latur Branch, Latur.

3) Vithal Vyankatrao Chitte,
Age:- Major, Occ:- Business,
R/o. Cooperative Industrial Estate,
Latur, District:- Latur.

4) The Assistant Registrar,
For Cooperative Societies,
Latur.

...RESPONDENTS

...

Mr. U.R.Kulkarni, Advocate for Petitioner
Mr. S.V. Natu, Advocate for Respondent No.2
Mr. Prabhakar K. Joshi, Advocate for Respondent No.3
Mr. N.B.Patil, AGP for Respondent No.4

...

CORAM: R.M.BORDE

AND

P.R.BORA, JJ.

Date of reserving
the Judgment : 20/8/2015
Date of pronouncing
the Judgment: 3/12/2015

...

JUDGMENT (Per P.R.Bora, J.)

1. Heard. Rule. Rule made returnable and heard forthwith with the consent of learned Counsel for the parties.

The petitioners have filed the present Petition seeking the following reliefs:

"A) The rule may be issued.

B) The impugned judgment and order dated 01.03.2012 passed by the Maharashtra State Cooperative Appellate Tribunal Bench at Aurangabad in Appeal No.179 of 2011, confirming the order passed by the Cooperative Court, Nanded in Dispute No.201 of 2010 (Govindlal Tiwari and others Versus Janata Sahakari Bank Ltd. Pune and Others) may be quashed and set aside.

C) By appropriate writ, order or direction the matter may be remanded back to the Cooperative Appellate Tribunal, Bench at Aurangabad for fresh hearing i.e. Appeal No.179/2011 may be remand back.

D) The Record and proceedings of Dispute No.201 of

2010 from the Cooperative Court, Nanded and the record of Appeal No.179 of 2011 from the Cooperative Appellate Tribunal, Aurangabad may be called for.

- E) During the pendency of this writ petition, the respondent Nos. 1 to 3 may be restrained by appropriate preventive order from creating any third party interest by way of alienation, sale or any other means, they may be further restrained from disturbing the possession of the petitioner over the suit house bearing Municipal House No.7-268 R Survey No.9903. H-68 Moti Nagar, Latur.
- F) Ad-interim relief in terms of prayer clause "E" may kindly be passed.
- G) By an appropriate writ, order or direction the Assistant Registrar Cooperative Societies Latur may be directed to pass a final award and make a final decree in the dispute filed by the Bank under Section 101 of MCS Act by giving an opportunity to the petitioners for defending the case by leading the evidence.
- H) The impugned judgment and order of the DRT Aurangabad in appeal No.32 of 2009 may be quashed and set aside as void one and without jurisdiction.

- I) By an appropriate writ, order or direction the bank may be direction to implement the terms and conditions of the One Time Settlement Scheme sanctioned, approved and acted upon by the petitioners, and the Bank, excluding the penal clause in the said scheme.
- J) The respondent No.1 may be restrained from creating any third party interest or executing any sale certificate of the auction sale in respect of the suit property i.e. Municipal House No.7-268 R Survey No.9903, H-68 Moti Nagar, Latur.
- K) Costs of the petition may be awarded.
- L) Any other suitable and equitable relief to which the petitioner is entitled in law and equity may kindly be granted."

2. Heard Mr. U.R.Kulkarni, Advocate for Petitioner, Mr. S.V. Natu, Advocate for Respondent No.2, Mr. Prabhakar K. Joshi, Advocate for Respondent No.3, and Mr. N.B.Patil, AGP for Respondent No.4. Perused the documents filed on record.

It is not in dispute that the petitioners had filed Writ Petition No.6861/2012, challenging the judgment and order dated 1st March, 2012, passed by the Maharashtra State Cooperative Appellate Tribunal, Bench at Aurangabad, in Appeal No.179/2011, whereby it had confirmed the order passed by the Cooperative Court, Nanded, in Dispute No.201/2010. The

learned Single Judge vide order dated 6.2.2013, has dismissed the said writ petition by stating elaborate reasons therefor. It is further undisputed that the petitioners have not challenged the order dated 6.2.2013, passed in Writ Petition No.6861/2012. The said order has thus attained the finality. In view of the above, the prayers made by the petitioners in the present writ petition in prayer clause (b)(c) and (d) are liable to be rejected at the threshold and are accordingly rejected.

3. Vide prayer clause G, the petitioners have sought directions against the Assistant Registrar, Cooperative Societies, Latur, respondent no.4 in the present petition, to pass a final award and make a final decree in the Dispute filed by respondent No.2 Bank under Section 101 of the Maharashtra Cooperative Societies Act by giving an opportunity to the petitioners for defending the case by leading the evidence. The aforesaid order was passed by respondent no.4 on 30th of August, 2002.

The prayer so made by the petitioners has lost its significance in view of the subsequent events. The material on record demonstrates that after passing of the aforesaid order by respondent no.4, the petitioners have moved the proposal to the Bank seeking one time settlement of their loan account. The proposal so moved by the petitioners was considered by respondent nos. 1 and 2 and one time settlement was arrived at between the parties. Accordingly, letter dated 27.10.2006 was issued by the Chief Branch Manager of respondent no.2 to the petitioners wherein the terms of settlement are incorporated. According to the said one time settlement arrived at between the parties, the petitioners were required to pay by 15th of March, 2008 the amount of Rs.25,00,000/- (Rs.

twenty five lacs) and the simple interest in the intervening period from 1.10.2006 till repayment of the entire amount at the rate of 10.50 per cent, as well as an amount of Rs.38,125/- towards the expenses. The material on record shows that the petitioners did not comply with the terms of one time settlement, and eventually, the said settlement was cancelled by respondent nos. 1 and 2.

4. The material on record further reveals respondent nos. 1 and 2 had claimed the amount of Rs.87,98,070/- from the petitioners for which the proclamation of sale of attached immoveable property under Rule 8 (5) (c) of the Security Interest (Enforcement) Rules, 2002, was published. The record further demonstrates that on 18.11.2008, the petitioners visited the respondent Bank and requested to postpone the auction sale. Earlier to that, the aforesaid auction was challenged by the petitioners by filing Writ Petition No.6658/2008, however, the said Writ Petition was dismissed vide order passed by the Division Bench of this Court on 14.11.2008. The letter submitted by the petitioners to the respondent Bank on 18.11.2008 shows that the petitioners had accepted the legality and validity of all the actions taken by respondent Bank under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred as Securitisation Act, 2002), in respect of the house property. The record further shows that the petitioners had permitted the respondent Bank to auction the property even by private treaty in the event of their failure to repay the amount on or before 31st January, 2009. In such circumstances, the respondent Bank conducted the auction by private treaty on 26.2.2009. In the premise of

these subsequent events, the prayer now made in the present petition seeking direction against the Assistant Registrar of Cooperative Societies, Latur, to pass a final award does not deserve any consideration.

5. In so far as prayer made in prayer clause 'H' is concerned, it is a matter of record that the order passed in S.A.No.32/2009 by the Debt Recovery Tribunal, Aurangabad, was challenged by the petitioners before the Debt Recovery Appellate Tribunal by filing an Appeal No.179/2011. It is not in dispute that the appeal so filed by the petitioners was dismissed by the Debt Recovery Appellate Tribunal on 1/3/2012 in default. The petitioners did not challenge the said order nor made any attempt to get restored the appeal which was dismissed in default. In the circumstances, the prayer now made in the present petition to quash the order passed by the Debt Recovery Appellate Tribunal is liable to be rejected.

6. Vide prayer clause 'I', the petitioners have prayed for a direction to the respondent Bank to implement the terms of one time settlement arrived at between the parties. The prayer so made also does not deserve consideration in view of the fact that the petitioners have failed in honouring the terms of the said settlement as a result of which the Bank has cancelled the said settlement.

7. The prayers made in prayer clauses 'E and 'J' also do not deserve any consideration in view of the fact that the respondent Bank has already issued the sale certificate of the subject property in favour of respondent no.3 which the said respondent has purchased in auction. Though the petitioners

have contended that they are still in possession of the subject property, they have failed in placing on record any such evidence so as to draw a concrete conclusion that they are still in possession of the subject property. As against it, respondent no.3, in his affidavit in reply, has categorically averred that the Bank has given vacant possession of the subject property to him and he is in absolute possession of the said property since 16.3.2009. The respondents have also placed on record the sale certificate dated 16.3.2009. The respondent Bank in its affidavit in reply has corroborated the fact stated by respondent no.3 that on 16.3.2009, the Bank has delivered the possession of the subject property to respondent no.3 and that since then respondent no.3 is in possession of the subject property. In the circumstances, the prayers made in prayer clause 'E' and 'J' are liable to be rejected.

8. In support of their contentions, the petitioners have relied on the following judgments:

- (i) **(2014) 6 SCC 1**
Harshad Govardhan Sondagar
Vs.
International Assets Reconstruction
Company Limited and others.
- (ii) **(2014) 5 SCC 610**
(Mathew Varghese Vs. M.Amritha Kumar and others)
- (iii) **(2014) 5 SCC 660**
(Vasu P. Shetty v. Hotel Vandana Palace)

Considering the facts and the ratio laid down in the aforesaid judgments in the premise of the facts involved in the present petition, we do not find that the decisions rendered in any of the aforesaid matters would be of any help to the

petitioners.

9. For the reasons stated above, though no relief is liable to be granted in favour of the petitioners, and consequently, the writ petition is liable to be dismissed, we wish to clarify that the dismissal of the present petition would not come in the way of the petitioners as well as the respondent Bank if any further attempt is made of amicable settlement of the loan account of petitioner no.1. Petitioner no.1 has shown his bona fides for repayment of the loan amount by depositing a substantial sum of Rs.12,00,000/- (Rs. twelve lacs) in this court. In the circumstances, if the respondent Bank reconsiders the request of petitioner no.1 for one time settlement of his loan account, it would be open for respondent Bank to consider such request on its own merits.

10. Respondent no.2 Bank is at liberty to withdraw the amount of Rs.12,00,000/- (Rs. twelve lacs) deposited by the petitioners in this Court and the same shall be adjusted towards the loan account of petitioner no.1.

11. The Writ Petition stands dismissed. Rule discharged. No order as to costs.

(P . R . BORA)
JUDGE

(R . M . BORDE)
JUDGE

...