

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 65 OF 2014

MAHARASHTRA STATE FINANCIAL
CORPORATION REP.

BY ITS AUTHO. OFFICER

SHRI. PRAVIN BHAMOIKAR

..... PETITIONER

V/S

ASST. REGISTRAR OF CO-OPERATIVE
SOCIETIES AND 7 ORS.

.....RESPONDENTS

Mr. Raunaq Rao, Advocate for the Petitioner.

Mr. J. P. Mulgaonkar, Advocate for Respondent no.2.

Mr. Ashwin D. Bhobe, Advocate for Respondents no.3, 6 and 7.

CORAM: M. S. SANKLECHA, J.
DATE: 6TH APRIL, 2015.

ORAL ORDER:

This petition under Article 226 and 227 of the Constitution of India seeks to challenge the order dated 7/1/2005 passed by the Assistant Registrar of Co-operative Societies under the Multi- State Co operative Societies Act, 2002. By the impugned order dated 7/1/2005, the petitioner was held to be jointly and severally liable to pay the dues owed by respondent no.3-Goa Capsules (P) Ltd.

(Principal Debtor) to respondent no.2-Mapusa Urban Co-operative Bank Ltd.

2. The short facts relevant to the present controversy are-

(a) Respondent no.3- Goa Capsules Private Ltd. had in 1984 taken a loan of Rs.8.48 lakhs from respondent no.2-Mapusa Urban Co-operative Bank of Goa Ltd.. The loan was granted by respondent no.2 to respondent no.3 (principal debtor) inter alia, on the basis of the petitioner giving an undertaking to pay over to respondent no.2 bank, the amount of the subsidy loan which respondent no.3 was entitled to receive through the petitioner, on the subsidy loan granted as a part of Central Investment Subsidy on the same being approved by the State Level Committee. This commitment on the part of the petitioner is reflected in two letters dated 21/8/1984 and 24/10/1984 addressed by the petitioner to respondent no.2-bank.

(b) It appears that there was a default on repayment of the loan by respondent no.3 (principal debtor) to respondent no.2-bank. This led to respondent no.2-bank raising a dispute against respondent no.3, the petitioner herein and two other sureties to the sanction of loan to respondent no.3 before the Assistant Registrar of Co operative Societies. By the impugned order dated 7/1/2005 the Assistant

Registrar held that the petitioner as well as the respondent no.3 (principal debtor) and the two other sureties are jointly and severally responsible to pay to respondent no.2-bank, the outstanding amount of Rs.4,78,000/- along with interest thereon.

(c) The impugned order dated 7/1/2005 was challenged in appeal by respondent no.3 (Principal Debtor) and the petitioner before the Registrar of Co operative Societies. The two appeals were allotted separate numbers. The one filed by the respondent no.3 (Principal Debtor) was numbered as Cooperative Appeal no.1/2005 and the one filed by the petitioner was numbered as Co operative Appeal No.2/2005. After hearing the parties, the Registrar of Co operative Societies by an order dated 16/11/2006 allowed the appeal of respondent no.3 (Principal Debtor) in its entirety while the appeal of the petitioner was dismissed while holding it alone to be responsible to pay the dues of respondent no.2.-bank.

(d) The petitioner accepted the order dated 16/11/2007 of the Registrar of Co operative Societies as it did not challenge the same. However, the respondent no.2-bank preferred a writ petition being Writ Petition no.177/2007 in this Court challenging an order dated 16/11/2006 passed by the Registrar of Co operative Societies. The petition was admitted and at the final hearing of the petition on

1/7/2013, the respondent no.3-principal debtor sought liberty to withdraw the appeal preferred by it before the Registrar of Co operative Societies, as according to respondent no.3-principal debtor no appeal by it lay to the Registrar under the Multi- State Co operative Societies Act 2002. In view of the aforesaid statement made on behalf of respondent no.3-principal debtor, this Court by order dated 1/7/2013 passed the following order by consent of parties as under:

“ (i) The impugned Judgment dated 16/11/2006, is quashed and set aside. The Appeal preferred by the Respondents being Co-operative Appeal No.1/2005, is dismissed as withdrawn.

(ii) The petitioners are always at liberty to file any proceedings challenging the Judgment of the Assistant Registrar dated 7/1/2005, if so advised, in accordance with law. All contentions of the petitioner and the respondents in any such proceedings are left open.

(iii) Rule is made absolute in the above terms.

(iv) Petition stands disposed of accordingly."

(e) Once the petition bearing no.177/2007 was disposed of by this

court on 1/7/2003, the present petition was filed challenging the impugned order dated 7/1/2005 in December 2013. This was without having challenged the order dated 16/11/2006 of the Registrar of Co operative Societies passed in appeal.

3. On the aforesaid facts, Mr. Rao the learned counsel of the petitioner was asked to explain the delay in challenging the impugned order dated 7/1/2005 and the sustainability of the challenge to the same. This is particularly so when the order passed in appeal dated 16/11/2006 is accepted.

4. Mr. Rao, the learned counsel for the petitioner submits that there is no delay in challenging the impugned order dated 7/1/2005, as the same is challenged in December 2013 after this Court disposed of the Writ Petition no.177/2006 on 13/7/2013. Further it is submitted that there is no need to challenge the order of the Registrar in Appeal dated 16/11/2006 as the same has been quashed and set aside by the virtue of the order of this Court dated 1/7/2013 in Writ Petition no.177/2006. Consequently, the petitioner is not required to challenge an order that does not exist. On merit, Mr. Rao submitted that the impugned order dated 7/1/2005 is unsustainable as in fact no

undertaking was given by the petitioner to respondent no.2-bank to pay over the subsidy loan to it.

5. As against the above, it was urged by Mr. J. P. Mulgaonkar, learned counsel on behalf of respondent no.2 and Mr. A. D. Bhobe, learned counsel on behalf of respondent no.3 that this Court should not entertain this petition on the ground of delay and laches alone. This is so as the challenge to the order dated 7/1/2005 by this petition was filed in December 2013. Besides it is submitted that the order dated 16/11/2006 of the Registrar of Co operative Societies passed in Appeal no.2/2005 (filed by the petitioner) is undisturbed, final and binding upon the petitioner. The order dated 1/7/2013 passed by this Court only sets aside the order of the Registrar passed in respect of Co operative Appeal no.1/2005 filed by respondent no.3. In particular, attention was drawn to the petition filed by respondent no.2-bank being writ petition no.177/2007, where what was impugned is the order passed by the Registrar in appeal no.1/2005 i.e. the order passed in case of the appeal filed by respondent no.3-principal debtor before the Registrar. It was also submitted that the impugned order dated 7/11/2005 has no independent existence so far as the petitioner is concerned, as the

same stands merged in the order dated 16/11/2006 passed by the Registrar in in Co operative Appeal no.2/2005. Thus this petition be dismissed at the very threshold on ground of laches. On merits also it is submitted that the impugned order dated 7/1/2005 cannot be faulted with as the loan was sanctioned by the respondent no.2-bank to respondent no.3-principal-debtor on the basis of the petitioner's undertaking to pay over the subsidy loan to the respondent no.2-bank.

6. Just as I was to commence dictating the order, Mr. Rao sought leave to amend the petition to challenge the order of the Registrar dated 16/11/2006. However, the same was declined by me as it was made at the conclusion of the hearing which lasted for over an hour during which time he contended that there is no reason to challenge the order dated 16/11/2006 of the Registrar as it does not exist..

7. The jurisdiction under Articles 226 and 277 of the Constitution of India of this Court is an extra ordinary jurisdiction. Although there is no specified period of time within which one has to approach the Court in its writ jurisdiction from the date of the cause of action, yet a writ Court would refuse to exercise its jurisdiction in

case of gross delay or laches in moving the Court. This is particularly so when the delay is not satisfactorily explained. A party moving this Court in its extraordinary jurisdiction is expected to move the Court with reasonable expedition as the Court will not encourage litigation of stale claims, where issues are settled. In the present facts the impugned order is dated 7/1/2005. The explanation for the delay as offered is that in view of the order of this Court dated 1/7/2013 passed in writ petition no.177/2007 the occasion to challenge the order dated 7/1/2007 arose. This explanation offered by the petitioner is not satisfactory. First of all the order dated 1/7/2013 passed by the Court in Writ Petition no.177/2007 only granted liberty to the Respondent no.2-Bank (Petitioner therein) to challenge the order dated 7/1/2005. Further from the facts, it is clear that the petitioner had challenged the impugned order dated 7/1/2005 in appeal before the Registrar of Co operative Societies being appeal No.2/2005 in the year 2005 itself. In 2006, the Registrar of Co operative Societies after hearing the parties held that the respondent no.3-principal debtor is not liable to pay the debt to respondent no.2-bank but the only person liable to pay respondent no.2-bank is the petitioner herein. The petitioner accepted the order dated 16/11/2006 of the Registrar of Co operative Societies and chose not to challenge

the order dated 16/11/2006 of the Registrar before any higher forum and thus accepted the same. Consequently, the order dated 16/11/2006 of the Registrar became final so far as the petitioner is concerned.

8. The petitioner next submitted that the order dated 16/11/2006 is without jurisdiction and therefore it must be ignored cannot be accepted in the absence of the same being so declared by an appropriate forum. As observed by the Supreme Court in the case of “*Krishanadevi M. Kamathia Vs. Bombay Environmental Action Group*” reported in 2011 (3) SCC 363. “Thus, from the above it emerges that even if the order/notification is void/voidable, the party aggrieved by the same cannot decide that the said order/notification is no binding upon it. It has to approach the Court for seeking such a declaration..... The order may be void for one purpose or for one person, it may not be so for another purpose or another person”. So far as the submission that the order of this Court dated 1/7/2013 in Writ Petition no.177/2006 set aside the impugned order dated 16/11/2006 in its entirety and therefore the occasion to challenge the impugned order dated 1/7/2006 arose only after the order of this Court dated 1/7/2013 that the cause of action arose, is not correct.

This is so as in Writ Petition no.177/2006 the challenge was to the order dated 16/11/2006 passed in co operative appeal no.1/2005 filed by respondent no.3 (principal debtor) and not the order passed in case of petitioner's appeal being appeal no.2/2005. Although the order was a common order, the order itself disposes of two appeals and what was impugned in the writ petition no.177/2007 filed by respondent no.2-bank was the order dated 16/11/2006 passed by the Registrar in Co-operative Appeal no.1/2005 filed by respondent no.3 (Principal debtor) not the order passed in Cooperative Appeal No.2/2005 filed by the petitioner. Thus the petitioner having chosen to accept the order dated 16/1/2006 passed in appeal which in fact has merged the impugned order dated 7/1/2005 into it. The petitioner cannot now re-agitate the issue after a gap of almost 8 years and unsettle a settled issue. The petitioner may have remedy available to them under law to proceed against respondent no.3 (Principal debtor). However in view of the petitioner's conduct in having accepted the order dated 16/11/2006 passed by the Registrar of Co operative Societies in its Co operative Appeal no.2/2005, entertaining the petition would revive issues which stand settled and it would be exhuming issues which are not only dead but long buried.

9. In the above view, I decline to entertain the present petition under Articles 226 and 227 of the Constitution. Accordingly, the petition is dismissed. No order as to costs.

M. S. SANKLECHA, J.

Ap/-