

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION (STAMP) NO.247 OF 2015

Anil Gulabrao Deshmukh

.. Petitioner

Versus

Maratha Sahakari Patsanstha Ltd. and others

.. Respondents

Mr. A. J. Kenjale, for the Petitioner.

CORAM : R.M. SAVANT, J.

DATE : 3rd AUGUST, 2015

PC.

1. The Writ Jurisdiction of this Court is invoked against the order dated 20.11.2014 passed by the Learned Member of the Maharashtra State Co-operative Appellate Court, Mumbai, Bench at Pune, by which order the Appeal filed by the Respondent No.1 Credit Society came to be allowed and resultantly, the order dated 05.09.2014 passed by the Co-operative Court came to be quashed and set aside and the Application Exh.29 filed by the disputant resultantly, came to be rejected.

2. The Petitioner herein has availed of two loans from the Respondent No.1 Credit Society being a loan of Rs.3 lakhs and the second loan i.e. of Rs.1.25 lakhs in the year 2002. On the default being committed by the Petitioner herein in respect of the repayment of the said loan

amount, the Respondent No.1 initiated recovery proceedings under Section 101 of the Maharashtra Co-operative Societies Act. It seems that the said certificate under Section 101 came to be issued and pursuant thereto the Respondent No.1 took steps to execute the recovery certificates which were in its favour against the properties of the Petitioner. However, it seems that the sale which was carried out by the Respondent No.1 was set aside by this Court and it is the contention of the Learned Counsel for the Petitioner that this Court had directed to initiate fresh recovery proceedings against the Petitioner i.e. how the instant proceedings being No.568 of 2005 came to be filed by the Respondent No.1 for recovery of the amounts due from the Petitioner. After the said recovery proceedings were filed, according to the Petitioner that the instant dispute came to be filed by the Petitioner for relief of a negative declaration that the Respondent No.1 is not entitled to recover any amount from the Petitioner. The Petitioner had also sought two other reliefs that the amount in respect of the two loans was not correct and proper. The Petitioner filed an application Exh.29 to stay the recovery proceedings. The Trial Court by its order dated 05.09.2014 granted the said application and thereby restrained the Respondent No.1 from effecting recovery till the decision of the dispute. The Respondent No.1 aggrieved by the said order passed by the Trial Court filed an Appeal before the Co-operative Appellate Court

being Appeal No.55 of 2014. The Co-operative Appellate Court having regard to the relief sought in the dispute which as indicated above is in the negative form held that the Co-operative Court had erred in granting the said relief to the Petitioner as a declaration in the negative form could not be sought having regard to Section 34 of the Specific Relief Act. It is required to be noted that though the Petitioner has sought the reliefs which have been adverted to herein above, what the Petitioner is in fact seeking is the stay of the recovery proceedings initiated under Section 101 of the Maharashtra Co-operative Societies Act. In the event, the certificate is issued under Section 101, the Petitioner has a remedy by way of a Revision before the Revisionary Authority under Section 154 where it is open for the Petitioner to take such contentions as are available in law. Reliance is placed on behalf of the Learned Counsel for the Petitioner on a Division Bench Judgment of this Court reported in 2009(2) Mh.L.J. 216 in the matter of Shri. Basaveshwar Co-operative Credit Society Ltd. Kolhapur Vs. Jayant Shivpal Banchhode. In the facts of the present case, the said judgment would have no application as what the Petitioner by filing the dispute is seeking is to restrain the Respondent No.1 from proceeding with the recovery proceedings and not for protecting his rights pursuant to any certificate which has been issued under Section 101. In my view, therefore, the order passed by the Appellate Authority setting

aside the order passed by the Trial Court cannot be taken exception to. Hence, no case for interference in the Writ Jurisdiction of this Court under Article 227 is made out. The Writ Petition is accordingly dismissed.

[R.M. SAVANT, J]