IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6157 OF 2015

M/s. Jacquline International (Int.) Wadding ..Petitioner

Vs.

Sahebrao Deshmukh Co-operative Bank Ltd. ..Respondents

Mr. P. G. Pandey for the Petitioner
Mr. V. C. Ghosalkar i/b Mr. A. D. Parsekar for the Respondents

CORAM : R. M. SAVANT, J.
DATE : 6th July, 2015

P.C.

1 There is a concurrent finding recorded by the Courts below against the Petitioner as regards its entitlement for any reliefs in the dispute in question being CC-II/423/1998. The Petitioner was a borrower of the Respondent No.1 who had obtained loan under various heads i.e. machinery loan, cash credit and term loan. On the Petitioner defaulting in the payment of the said loans that the proceedings under Section 101 of the Maharashtra Co-operative Societies Act, came to be initiated against the Petitioner. The said proceedings culminated in recovery certificates dated 19-9-1997 and dated 7-9-1998 being issued by the concerned Assistant Registrar of Co-operative Societies. It seems that the Petitioner challenged the said certificates by taking recourse to Section 154 of the said Act. The said challenge failed before the

Divisional Joint Registrar who dismissed the Revision Application by order dated 14-1-2000. It appears that thereafter the properties i.e. 5 galas were attached and were put to auction which auction proceeding was also completed on 4-6-2006. It is pending the said Revision Application that the instant dispute came to be filed in the year 1998. The substantive reliefs sought in the dispute are to the following effect.

> “(b) It be ordered and declare that the Disputant is not entitled to pay any amount to the Bank.
>
> (c) It be ordered and declared that the Disputant is entitled to receive about the amount of Rs.18 Lakhs as a compensation from the Opponent.
>
> (d) To release the co-lateral security of flat No.301/32, Himgiri, Lokhandwala Complex, Andheri West, Mumbai – 400 053 obtained by the Bank.”

2 The compensation sought vide prayer clause (c) of the dispute was on the basis that since the bank had not released the documents in respect of the 5 galas, the Petitioner could not apply to the appropriate authorities for licence and therefore could not start the business. For the alleged loss caused, the Petitioner claimed the amount of Rs.18 lacs as compensation from the Respondent No.1 bank. The Petitioner has also sought the release of the collateral security which he had executed in favour of the bank as security for loans taken., After following the gamut of permitting the parties to complete

their pleadings and lead evidence, the Trial Court having regard to the material on record dismissed the Dispute by Judgment and Order dated 26-11-2013.

3 The gist of the reasoning of the Trial Court was that the Petitioner had availed of loans on which he had defaulted resulting in the proceedings being initiated under Section 101 of the said Act which resulted in the recovery certificates being issued, and the Revision Application filed by the Petitioner being dismissed and therefore the Respondent No.1 Bank was entitled to recover the amount. The Trial Court further held that the Respondent No.1 bank could not be blamed for non starting of the business of the Petitioner. As regards the copies of the documents which were not allegedly furnished to the Petitioner, the Trial Court has held that no such material was placed on record to show that the Petitioner had asked for copies but the Bank had refused. The Trial Court in fact had observed that copies in fact were furnished earlier but the Petitioner was asking for fresh copies. The Trial Court has also observed that since there are still outstanding dues from the Petitioner, the relief of release of collateral security could not be granted and it is expected of the Respondent No.1 bank that it would act in accordance with law, if the outstanding amounts have been paid by the Petitioner.

4 The Petitioner aggrieved by the said judgment and order dated 26-11-2013 filed an Appeal before the Co-operative Appellate Court being Appeal

No.188 of 2013. The Co-operative Appellate Court considered the said Appeal and has by the impugned Judgment and Order dated 30-4-2015, dismissed the same. The Co-operative Appellate Court has reiterated the findings recorded by the Co-operative Court in so far as the entitlement of the Petitioner for damages is concerned. The Co-operative Appellate Court also observed that the collateral security could not be released as there is still substantial outstanding from the Petitioner according to the Respondent No.1 bank. The Co-operative Appellate Court held that the Co-operative Courts order does not suffer from any error of law or fact. The Co-operative Appellate Court as indicated above accordingly dismissed the Appeal.

5 The Learned Counsel appearing for the Petitioner Mr. Pandey sought to question the attachment of the property in question pursuant to the certificates issued under Section 101 of the said Act. The Learned Counsel would draw this Court's attention to the statement of account prepared by the Petitioner which is appearing as part of the synopsis of the Petition and on the said basis seeks to question the amount which the Respondent No.1 claims i.e. outstanding from the Petitioner and therefore contends that the collateral security be released.

6 In my view, it is not possible to accept the said contentions urged on behalf of the Petitioner. It is required to be noted that it is pursuant to the

Section 101 certificates issued under the said Act that the property in question came to be auctioned in execution thereof. The submission as regards the alleged wrongful attachment of the property etc., was available to the Petitioner at the time when the properties were attached and the auction was to take place. However, they could not be entertained at this point of time long after the auction is completed in the year 2006. In so far as the aspect of collateral security is concerned, the Co-operative Court as indicated above has observed that the bank is entitled to deal with the collateral security in accordance with law. The said finding has been reiterated by the Co-operative Appellate Court by observing that if the liability is discharged by the Petitioner then the bank cannot use the collateral security.

7 In my view, in the light of the findings recorded by the courts below no case for interference in the Writ Jurisdiction of this Court is made out, the Writ Petition is accordingly dismissed.

8 At this stage, the Learned Counsel for the Petitioner prays for stay of the instant order. In the facts and circumstances of the case, the said prayer is rejected.

[R.M.SAVANT, J]