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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10545 OF 2012

Rajkumar Sunil Khot

..Petitioner.

V/s.

Authorized Officer, the Kolhapur Urban Coop.

Bank Ltd. and Ors.

..Respondents

Mr. A.S. Khandeparkar i/by Mr. Sandeep Koregave for the petitioner.
Mr. M.P. Rege a/w Ms. Shyama Parkar i/by M/s. M.P. Rege and Co. for
the respondent no. 1.

Mrs. M.P. Thakur, AGP for the respondent no.2.

CORAM : A.S.OKA AND

V.L.ACHLIYA, JJ.

DATED : 29TH SEPTEMBER, 2015

P.C. :-

1. We have heard the learned counsel for the petitioner and the learned counsel for the first respondent as well as the learned AGP for the second respondent State.

2. The substantive prayer in this petition filed under Article 226 of the Constitution of India is for a declaration that the invocation of the provisions of the Securities and Reconstruction of Financial Assets and Enforcement of Security Interest Act of 2002 (for short "the Said Act") by the first respondent-the Kolhapur Urban Co-operative Bank Limited is ultra vires, void ab initio and ex facie illegal.

3. It is pointed out in the petition that the Kolhapur Urban Bank is a co-operative bank registered under the Maharashtra Cooperative Societies Act, 1960 (for short "the said Act of 1960"). A notice under sub section 2 of section 13 of the said Act was issued by the said Bank to the borrowers and guarantors. As far as the petitioner is concerned, the case made out in the petition is that the petitioner had filed a suit for partition against the borrower (fourth respondent) and the said suit was decreed. The contention of the petitioner is that the borrower has paid substantial amount towards the repayment of the loan. The fifth respondent is one of the guarantors. The suit for partition was filed by the petitioner and others in respect of the secured assets.

4. The petitioner has pointed out that an application was made by the said Bank before the District Magistrate at Kolhapur under section 14 of the said Act. The petitioner objected to the said application by filing an objection cum application. A relief was sought under section 14 by the said Bank in respect of a residential house, more particularly described in the said application. In the said application, the petitioner relied upon the suit for partition filed by him. The petitioner pointed out that the proceedings for final decree are pending and the shares are being divided by metes and bounds.

5. The learned counsel for the petitioner has heavily relied upon the decision of a Division Bench of Gujarat High Court dated 22nd April, 2015 in Special Civil Application No. 930 of 2011 and other connected matters. In the petition filed before the Gujarat High Court, there was a challenge to the notification issued by the Union of India on 28th January, 2003 under section 2(1)(c)(v) of the said Act by which co-operative Banks were brought within the purview of the said Act. By the said decision, the Division Bench of Gujarat High Court declared the said notification dated 28th January, 2003 as ultra vires, unconstitutional and void ab initio.

6. The learned counsel for the petitioners fairly invited our attention to the two decisions of the Division Bench of this Court. The first decision is in the case of M/s. Khaja Industries Vs. State of Maharashtra and another¹ and Shaikh Mehmood Shaikh Bibhan Vs. Authorized Officer, Narayan G. Mendon, the Mogaveera Cooperative Bank Limited². He pointed out that both the decisions of this Court hold that the provisions of the said Act are applicable to the Co-operative Banks. Both the decisions rely upon the same notification which was dealt with by the Gujarat High Court. He pointed out that the Division Bench of Gujarat High Court has taken into consideration both the said decisions of this Court. He urged that in view of the principles laid down by the Apex Court in the

1 2007 (6) ALL MR 887

2 2011(4) Mh.L.J.262

case of Kusum Ingots & Alloys Limited Versus Union of India and another¹ what will bind this Court is the law laid down by the Division Bench of Gujarat High Court. He pointed out that the decision of this Court in the case of Khwaja Industries is also a subject matter of challenge in a Special leave Petition before the Apex court in which leave has been granted. He also pointed out that for challenging another decision of this Court taking the same view, another special leave petition has been preferred before the Apex Court in which the Apex Court has granted interim stay of the proceedings under the said Act. He urged that though the Apex Court has not stayed the operation of both the decisions of this Court, in the appeal preferred against the decision in the case of Khaja Industries, the Apex Court has stayed further proceedings under the said Act. He, therefore, urged that in the light of the interim orders passed by the Apex Court, in the present case the respondent will have to stay their hands. He urged that in any event, when the issue is at large before the Apex Court in the pending appeals, it will be appropriate if this petition is kept pending till the appeals are disposed of by the Apex court.

7. Learned counsel for the first respondent in addition to the aforesaid two decisions of this Court also relied upon the decision of this Court in the case of New Hariyana Dal Mill Vs.

1 (2004)6 Supreme Court Cases 254

Union of India⁴ He pointed out that the said Division Bench of this Court specifically held that the aforesaid notification which was the subject matter of challenge before the Gujarat High Court was intra vires. He urged that what binds this Court is the law laid down by the three Division Benches of this Court. He, therefore, submitted that no interference is called for.

8. We have given careful consideration to the submissions. In the case of Khaja Industries, what was challenged was the applicability of the said Act to the Co-operative Banks registered under the said Act of 1960 and to the constitutional validity of the said Act. In Paragraph 5 of the said decision, the Division Bench specifically referred to the notification dated 28th January, 2003 which was the subject matter of challenge before the Division Bench of Gujarat High Court. The Division Bench specifically held that the provisions of the said Act are applicable to the Co-operative Banks. As far as the decision of the Division Bench in the case of Shaikh Mehmood is concerned, the issue raised was regarding the applicability of the provisions of the said Act to the co-operative banks. The Division Bench relied upon the earlier decision of this Court in the case of Khaja Industries and held that the said Act was applicable to the said category of Banks.

4 2010 (1) Mh.L.J.620

9. As far as the decision of the Division Bench in the case of New Hariyana Dal Mills is concerned, the perusal of the said decision shows that there was a specific challenge to the said notification dated 28th January, 2003 before this Court. By a detailed judgment after considering the decision of the Apex Court in the case of Greater Bombay Cooperative Bank Private Limited and Others⁵, the Division Bench upheld the validity of the said notification. The Division Bench upheld the power of the Union of India of issuing such a notification.

10. It is true that the Gujarat High Court has held that the said notification is illegal. However, what binds this Court is the law laid down by the Coordinate Division Benches of this Court in the aforesaid three cases.

11. The reliance placed by the learned counsel for the petitioner on the decision of the Apex Court in the case of Kusum Ingots will not help the petitioner. The decision will apply when any High Court in exercise of jurisdiction under Article 226 of the Constitution declares any statutory provision to be unconstitutional. The Apex Court in view of clause 2 of Article 226 of the Constitution has held that the order passed by the High Court will have effect throughout the territory of India. In the

⁵ 2007 (3) Mh.L.J. (S.C.) 434

present case, the issue is not a validity of any statutory provision. The issue is of the legality and validity of the notification dated 28th January, 2003 and therefore, the decision in the case of Kusum will not help the petitioner. Moreover, the decision of Gujarat High Court has not yet become final.

12. We have perused the orders of the Apex Court wherein the challenge is to the view taken by this Court upholding the applicability of the said Act to co-operative Banks. We find that the effect of any of these judgments of this Court has not been stayed by the Apex Court. As the effect of the said decisions has not been stayed by the Apex Court, this Court is bound by the view taken by the three Division Benches of this Court and in particular the Division Bench in the case of New Hariyana Dal Mill.

13. Therefore, we are unable to uphold the challenge to the validity of the notification dated 28th January, 2003. In view of the law laid down by this Court, we hold that the provisions of the said Act are applicable to the Co-operative Banks registered under the said Act of 1960. Accordingly, there is no merit in the writ petition and the same is rejected.

14. At this stage learned counsel for the petitioner seeks continuation of the ad interim relief granted on 2nd November,

2012. The prayer is opposed by the learned counsel for the first respondent. As the ad interim relief is operative for more than two years, we direct that the said ad interim relief will continue to operate for the period of eight weeks from today.

(V.L.ACHLIYA, J.)

(A.S.OKA. J.)