

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1160 OF 2015
WITH
WRIT PETITION NO. 1161 OF 2015

Shri Arun Babu Laykar

...Petitioner

vs.

Gopinath Patil Parsik Janta Sahakari Bank
Ltd. And Ors.

...Respondents

.....

Mr. Sanjeev P. Kadam for the petitioner (in both the petitions)
Mr. Amol P. Mhatre for respondent no.1 (in both the petitions)
Mrs. V.S. Nimbalkar AGP for the state.

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CORAM : A.K. MENON, J.
DATE : 5th OCTOBER, 2015.

P.C.:

1. These two writ petitions challenge the orders dated 17/07/2014 passed by the Revisional Joint Registrar in Revision Application no. 441 of 2013 and 442 of 2013, by which the revision applications came to be rejected for want of compliance, with provisions of section 154 2A of the Act (Maharashtra Co-operative Societies Act, 1960). The facts in brief reveal that two recovery certificates dated 03/03/2008 were issued inter alia against the petitioner under section 101 of the Act (Maharashtra Co-operative Societies Act, 1960). It is the case before the revisional authority that after service of notice although

the opponent has appeared, he has not complied with provision of 154 (2A) in, as, much as he was required to deposit 50% of the amount of the recovery certificate which he had omitted to do. Thus, having failed to comply with the provision of section 154 (2A) in not having deposited 50% amount of the deposit of recovery certificate under challenge, the revisional authority rejected the application.

2. It is the petitioners case that he has been given discharge from his obligation as surety under the loan transaction and that the property offered by him as security was also subjected to a deed of re-conveyance dated 02/03/2006 copy of which appears at Exhibit "B" to the present petition.

3. According to the petitioner a reading of the deed of re-conveyance will reveal that the bank has released the security since the loan has been repaid. The learned counsel for the petitioner submits that the mandatory provisions of the Act such as section 154 (2A) will not apply to the facts of the present case.

4. Admittedly, the loan has been repaid and the security has been released. The bank cannot now act upon the loan documents. It is the case of the petitioner that in respect of some other loan with which the petitioner had no concern the bank had obtained certain loan documentation wherein the petitioner was shown as surety. According

to the petitioner no such loan surety documents were executed by him.

5. Learned counsel for the respondent bank pointed out that the subsequent recovery proceedings being dispute no. S.C.C.K. No. 239 of 2010 was filed before the Judge, Co-operative Court-II Kolhapur for recovery of amount under the second loan transaction wherein the present petitioner had taken out an application for declaration and injunction that he is not liable to make any payments to the respondent bank. In view of the fact, the principal debtor has already repaid loan and the security offered by the present petitioner had been re-conveyed hereby discharging the petitioner from liability.

6. The petitioner had moved on the aforesaid application before the Co-operative Court Kolhapur and an order came to be passed on 20/04/2013 inter alia recording that the petitioner had not made out any case for relief. The Co-operative Court came to a finding that a separate application for loan has been made and that re conveyance executed in respect of the loan of the year 2002 did not affect the subsequent loan disbursed by the bank. It is a matter of record that different sets of documents were executed and although it was the petitioners case that the earlier loan were taken in the year 2002 documents filed with the bank revealed that the second loan which was being enforced was based on such documents including the one

appearing at Sr.no.3 wherein the stamp paper seems to be purchased on 23/08/2005. There was challenge to this order till date.

7. Prima facie there appears to be second set of document and as there is a controversy raised by the petitioner whether those documents are binding upon the petitioner. It is not possible for this Court to look into these aspects of the matter in its jurisdiction under Article 226 and therefore this is not a case which calls for interference. The petitioner may adopt alternative remedies available to them if so advised after complying with provision of the act and particularly Section 154 (2A) before taking further steps.

8. Accordingly, I pass the following order:

ORDER

- (i) The petition is rejected.
- (ii) There will be no order as to costs.

(A.K. MENON, J.)

CERTIFICATE

“Certified to be true and correct copy of
original signed Judgment/Order.”