

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8025 OF 2015

Shri Warana Sahakari Bank Ltd.
Warnanagar Taluka Panhala
Dist. Kolhapur

.. Petitioner

vs.

Vasant Fondu Dhond and ors.

.. Respondents

Mr. Vishwajeet S. Kapse for the Petitioner.

Mr. Faiz Khan F. Pathan for Respondent No.1.

Ms M.S. Bane, B-Panel Counsel for the Respondent Nos.3 to 5.

CORAM : M. S. SONAK, J.

DATE : 1 MARCH 2016.

P.C. :-

1] Rule. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.

2] The challenge in this petition is to the order dated 13 May 2015 made by the Minister (Cooperation) purporting to grant interim reliefs in relation to the letter dated 20 April 2015, by which, the Petitioner-Society was attempting to execute the Recovery Certificate dated 27 April 2010 issued by the Deputy Registrar.

3] In this case, the Deputy Registrar has issued a Recovery Certificate under Section 101 of the Maharashtra Cooperative Societies Act 1960 (said Act) on 27 April 2010. The Respondent

No.1, had in fact, challenged the Recovery Certificate by instituting an appeal under Section 152 of the said Act. It is the contention of the learned counsel appearing for Respondent No.1 that such appeal was in fact allowed by Maharashtra State Cooperative Appellate Authority, but the actual Recovery Certificate under Section 101 of the said Act was not quashed and set aside. Instead, the matter was remanded to the Cooperative Court at Kolhapur for determination of the dispute between the parties under Section 91 of the said Act. The proceedings before the Cooperative Court are still pending.

4] As of today, there is no order setting aside the Recovery Certificate dated 27 April 2010 made under Section 101 of the said Act. There is no interim relief either granted by Cooperative Court or any other Court insofar as the execution of Recovery Certificate is concerned. In fact, the Respondent No.1 had instituted a civil suit and applied for interim relief. However, such interim relief was declined to the Respondent No.1.

5] The Petitioner-society, thereupon, applied for execution of Recovery Certificate dated 27 April 2010. By letter dated 20 April 2015, the Deputy Registrar addressed a communication to the

Superintendent of Police seeking police assistance for the purposes of execution of Recovery Certificate.

6] The Respondent No.1, thereupon, has instituted a revision application under Section 154 of the said Act before the Minister (Cooperation). If the memo of revision application is perused, there is no clarity as to whether the Petitioner has challenged the Recovery Certificate under Section 101 of the said Act or whether the challenge is restricted only to the letter dated 20 April 2015.

7] The matter was adjourned for some time in order to enable the Respondent No.1 to make submissions on the aspect as to whether there is any challenge to the Recovery Certificate dated 27 April 2010 in the revision application instituted before the Minister (Cooperation). The learned counsel for the Respondent No.1 has submitted that the Respondent No.1 has challenged the legality and propriety of the proceedings before the Deputy Registrar, in which, the Recovery Certificate dated 27 April 2010 came to be issued.

8] Section 154 of the said Act, no doubt, entitles the revisional authority to satisfy itself as to the legality or propriety or even

regularity of the proceedings in which the impugned decision may have been taken. However, if the revisional authority ultimately comes to the conclusion that the proceedings were neither legal nor regular, ultimate relief granted to be set aside the decision itself. This is important because no party can, merely on the basis of its submission that it questioning the legality, propriety or regularity of the proceedings seek to escape complying with the jurisdictional requirement contained in Section 154(2A) of the said Act. This provision, *inter alia*, provides that no application for revision shall be entertained against the Recovery Certificate issued by the Registrar under Section 101, unless the applicant deposits with the concerned Society 50% amount of total recoverable dues.

9] The Respondent No.1, in the present case, cannot avoid compliance with the provisions of Section 154(2A) of the said Act upon spacious plea that he has not directly challenged the Recovery Certificate, but has merely challenged the legality, propriety and regularity of the proceedings in which such Recovery Certificate was issued by the Deputy Registrar on 27 April 2010. If this is permitted, the Respondent No.1 will achieve indirectly, what the law, has directly prohibited namely non-consideration of his revision

application unless, he deposits with the concerned Society 50% amount of the total recoverable dues.

10] In the present case, there was no question that the revisional authority exercising revisional jurisdiction without satisfaction as to compliance with the provisions contained in Section 154(2A) of the said Act. The interim order has been made after entertaining the revision application instituted by the Respondent No.1. In view of the provisions contained in Section 154(2A) of the said Act, revisional authority could not have entertained the revision application of this nature, unless the Respondent No.1 had deposited with the concerned society 50% amount of the total amount of recoverable dues. The impugned order is thus, without jurisdiction and required to be set aside on this ground alone.

11] Even otherwise, this is a matter where there is Recovery Certificate outstanding against the Respondent No.1. The Civil Court, had declined injunction to the Respondent No.1. The Respondent No.1 has not obtained any interim reliefs from the Cooperative Court. The Respondent No.1 did not even succeed in getting the Recovery Certificate dated 27 April 2010 set aside from

the appellate authority though the Respondent No.1 claims that his appeal was in fact allowed by the appellate authority. Considering these gross facts, there was obviously, no case made out for grant of any blanket or any unconditional stay by the revisional authority. Even if we are to proceed on the basis that the revision application without compliance with the provisions contained in Section 154(2A) of the said Act, was at all competent, the minimum that was required in a situation was to direct the Respondent No.1 to secure by way of deposit at least 50% amount of the total amount of recoverable dues. This is also an additional reason for interfering with the impugned order.

12] The learned counsel for the Respondent No.1 has submitted that the revisional authority has heard the revision on merits and the matter is now only posted for orders and therefore, this Court ought not to exercise its supervisory jurisdiction at this stage. To begin, this Court was inclined to accept this submission and dispose of this petition, perhaps with direction to the revisional authority to expeditiously dispose of the revision application. However, as noted earlier, unless there is compliance with the provisions of Section 154(2A) of the said Act, there is no question of the revisional

authority assuming jurisdiction in a matter of this nature. Even at this stage, the learned counsel for the Respondent No.1, was not in a position to make any statement as to whether the Respondent No.1 will indeed deposit with the Petitioner-society 50% amount out of the total amount of recoverable dues. Therefore, rather than permit the revisional authority to assume jurisdiction, when it has none and thereafter to make an order which will be a nullity, it will be appropriate that the supervisory jurisdiction is exercised, at this stage itself in the peculiar facts and circumstances of the present case.

13] Accordingly , the impugned order dated 13 May 2015 is set aside. The Respondent No.1 is however granted four weeks to comply with the provisions contained in Section 154 (2A) of the said Act. In case, the Respondent No.1 fails to comply, the revisional authority will obviously be dis-entitled to proceed any further in the matter and will have no option but not to entertain such revision application. Accordingly, the proceedings before the revisional authority are stayed for a period of four weeks from today, so that the Respondent No.1, if he choses to can comply with the provisions contained in Section 154(2A) of the said Act. If the Respondent No.1

complies with the requirement contained in Section 154(2A) of the said Act within a period of four weeks from today, then the stay now granted, shall stand vacated and the revisional authority shall be entitled to proceed to entertain the revision application instituted by Respondent No.1.

14] Rule is made absolute in the aforesaid extent. There shall however, be no order as to costs.

15] All concerned to act on the basis of authenticated copy of this order.

16] Parties are at liberty to file authenticated copy of this order before the revisional authority.

(M. S. SONAK, J.)

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