

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2567 OF 2016

Ramesh M. Ahuja .. Petitioner
vs.
Rajaram N. Gavali and ors. .. Respondents

Mr. Ashutosh Kulkarni for the Petitioner.
Ms Anjali S. Baxi for Respondent No.1.
Ms V.S. Nimbalkar for Respondent No.2.
Mr. S.D. Rayrikar, AGP for Respondent No.4.

CORAM : M. S. SONAK, J.
DATE : 19 OCTOBER 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 petitioner challenges the order dated 20 January 2016 made by the Divisional Joint Registrar, Cooperative Societies, Kolhapur remanding the matter to the Liquidator of the Miraj Urban Cooperative Bank Ltd. for refund of amount of Rs.1 Lac to respondent No.1.

3] There is dispute between the petitioner and respondent No.1 with regard to the agreement for sale of a certain property. It is the case of the petitioner that he had deposited an amount of Rs.1 Lac in the bank account of respondent No.1 with Miraj Urban Cooperative Bank Ltd., Sangli (Bank). Thereafter, since the sale do not fructify, it is the case of the petitioner that such amount is required to be refunded by respondent No.1 to the petitioner.

4] In the meanwhile, the bank has gone into liquidation. Respondent No.1 applied to the Liquidator for the payment of amount of Rs.1 Lac to him, since, it was lying in his account. It appears that the petitioner has objected to such payment on the ground that such amount, according to him, is required to be refunded to the petitioner. The Liquidator, by the order dated 25 March 2015 declined to take any decision in the matter by observing that the issue as to whether the terms and conditions of the agreement for sale between the parties is complied with or not, is required to be determined. Respondent No.1, aggrieved by this order of the Liquidator instituted Revision Application No. 261 of 2015 before the Divisional joint Registrar Cooperative Societies, Kolhapur, who has made the impugned order. The operative portion of the impugned order reads thus:

“ORDER

The revision application is hereby partly allowed.

The letter dated 25/3/2015 is hereby set aside and matter is remanded back to the opponent no.1 for refund of amounts to the applicant on undertaking.

No order as to costs.”

5] Mr. Kulkarni, learned counsel for the petitioner, submits that the amount of Rs.1 Lac is required to be paid to the petitioner and not refunded to respondent No.1. On the other hand, Ms Anjali Baxi, learned counsel for respondent No.1, submits that respondent No.1 owes no money to the petitioner and in any case, since, the amount was in the bank account of respondent No.1, the same has rightly been ordered to be refunded to respondent No.1.

6] In my view, neither of the contentions of learned counsel for the parties can be completely accepted. In the first place, neither Liquidator nor the Divisional Joint Registrar are the proper authorities to determine the disputes arising out of the agreement of sale of property as between the petitioner and respondent No.1. The proper forum for determination of such disputes is Civil Court and not the authorities under the Maharashtra Cooperative Societies Act, 1960 (said Act). Secondly, the bank is admittedly under liquidation. If this be so, there is no question of the Divisional Joint Registrar directing that the amount of Rs.1 Lac be refunded to respondent No.1, at this stage. Such a direction would amount to grant of some sort of a preference or amount to making any preferential payments to respondent No.1, who, at the highest, is a creditor alongwith possibly several other creditors/account holders of the bank, which is presently under liquidation. There is no question of awarding any priority or preference to respondent No.1, which is precisely what the impugned order has done.

7] The impugned order is therefore, modified. The matter is remanded to the Liquidator, who, shall consider the claim of respondent No.1 together with the claims of all other creditors of the bank, in accordance with law and on their own merits. The directions in the impugned order that the amount be refunded to respondent No.1 upon his furnishing of undertaking, at the very outset is set aside. Instead, the Liquidator is directed to consider the claim of respondent No.1 together with claims of all other creditors of the bank and thereafter to make payments on *pro rata* basis at the appropriate stage.

8] Insofar as, the disputes between the petitioner and respondent No.1 are concerned, both parties are at liberty to resolve the same by approaching the Civil Court or any other appropriate forum. There is no question of the Liquidator or the revisional authority entertaining such civil disputes between the petitioner and respondent No.1. Liberty in this regard is therefore, granted to both parties. All contentions of all parties in this regard are kept open.

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

(M. S. SONAK, J.)

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