IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7934 OF 2003

The Greater Bombay Co-op. Bank Ltd. .. Petitioner
vs.
Oman International Bank, SAOG & Ors. .. Respondents

Mr. Sameer Bhalekar for Petitioner.
None for Respondents.

CORAM : M. S. SONAK, J.
DATE : 26 APRIL 2016

P.C :

1] Heard Mr. Bhalekar for the petitioner. The respondents, though served, are not represented by counsel at the stage of final hearing.

2] This petition challenges judgment and order dated 3 November 2003 made by the Divisional Joint Registrar, Co-op. Societies, Mumbai. The operative portion of the impugned judgment and order reads thus :

> *"Revision Application is hereby allowed.*
> *The impugned Recovery Certificate bearing No. 1792 dated 30.08.2001 is set aside. All the attachment orders and auction and sale proceedings initiated by Respondent No. 1 & 2 in respect of all the properties pursuant to the said Recovery Certificate stands withdrawn and vacated in view of the aforesaid. Respondent No. 1 & 2 are further directed to unseal the factory premises of Respondent No. 3 and handover possession forthwith."*

3] The aforesaid revision application no. 487 of 2003, by which the impugned judgment and order came to be made had been instituted by Oman International Bank SAOG (respondent no. 1) *inter alia* on the following grounds:

(A) That the petitioner bank, being a '*co-operative bank*' under the provisions of Maharashtra Co-operative Societies Act 1960 (MCS Act) was also covered under the provisions of the Recovery of Debts Due to Banks & Financial Institutions Act, 1993 (RDB Act). It was the case of the respondent no. 1 that in such a situation, the authorities under the MCS Act lacked jurisdiction to issue recovery certificate and the petitioner bank was required to institute proceedings under the RDB Act alone for the purposes of recovery of its dues. On this ground, it was urged that the recovery certificate bearing no. 1792 dated 30 August 2001 issued by the Assistant Registrar was without jurisdiction, null and void;

(B) That in any case, respondent no. 1 had first charge over the mortgaged property i.e. the factory premises at Taloja. The Assistant Registrar, whilst issuing the recovery certificate no. 1792 dated 30 August 2001 had in fact colluded with the petitioner and issued the recovery certificate, so as to defeat the rights of the respondent no. 1 who was the first charge holder in respect of the suit property;

4] If the impugned order is perused, it is clear that the recovery certificate has been mainly set aside by the Divisional Joint Registrar by relying upon the decision of the Division Bench of this Court in the case of ***Shamrao Vithal Co-operative Bank Ltd. & Anr. vs. Star Glass Works & Ors***.[1] , in which this Court has taken a view that the RDB Act was also applicable to co-operative banks and the Assistant Registrar had no jurisdiction to issue recovery certificate in such matters. The impugned order also incidentally alludes to the aspect of collusion between the Assistant Registrar and the petitioner, in the matter of issuance of the recovery certificate.

5] Mr. Bhalekar, learned counsel for the petitioner submits that there was absolutely no basis for making observations with regard to collusion between the Assistant Registrar and the petitioner, in the matter of issuance of recovery certificate. He submitted that even assuming that the respondent no. 1 had the first charge upon the mortgaged property, that by itself, was not a ground for denial of recovery certificate. At the highest, when it came to the execution of the recovery certificate, appropriate credence could have been given to the circumstance that the respondent no. 1 had the first charge. That apart, Mr. Bhalekar submitted that this issue has been rendered academic on account of subsequent developments.

1 (2003) 2 Mah. L.J. 1

6] In the aforesaid regard, Mr. Bhalekar submitted that the mortgaged property has already been sold and the respondent no. 1 has already recovered dues. From out of the surplus proceeds, even the petitioner has recovered amounts to the extent of approximately Rs.63,00,000/- or thereabouts. Therefore, Mr. Bhalekar submitted that the circumstance that the respondent no. 1 had the first charge over the mortgaged property, is no longer a circumstance sufficient for setting aside the recovery certificate, even qua respondent no. 1. Mr. Bhalekar submitted that the recovery certificate has attained finality qua the principal borrower / guarantors and execution proceedings are pending.

7] In view of the aforesaid subsequent developments, the second ground which persuaded the Divisional Joint Registrar to set aside the recovery certificate i.e. the circumstance that the respondent no. 1 was the first charge holder, really does not survive. In any case, there is also merit in the contention of Mr. Bhalekar that there was no bar to the issuance of recovery certificate by the Assistant Registrar, even assuming that the respondent no. 1 held the first charge over the mortgaged property. Ultimately, when it comes to execution of the recovery certificate, necessary credence is required to be given to the first charge.

However, existence of such first charge cannot, *per se* be a ground for refusal to issue a recovery certificate.

8] The view taken by this court in ***Shamrao Vithal Co-operative Bank Ltd.*** (supra) no longer represents the correct position in law in the light of the decision of the Hon'ble Supreme Court in the case of ***Greater Bombay Coop. Bank Ltd. vs. United Yarn Tex (P) Ltd. & Ors***.[2] In the said case, the two questions which arose before the Hon'ble Supreme Court were as follows :

> *"(a) Whether the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 ("the RDB Act") applies to debts due to cooperative banks constituted under the Maharashtra Cooperative Societies Act, 1960 ("the MCS Act, 1960"), the Multi-State Cooperative Societies Act, 2002 ("the MSCS Act, 2002") and the Andhra Pradesh Cooperative Societies Act, 1964 (for short "the APCS Act, 1964")?*
>
> *(b) Whether the State Legislature is competent to enact legislation in respect of cooperative societies incidentally transacting business of banking in the light of Schedule VII List Entry 32 of the Constitution?"*

9] At paragraphs 97 and 98, the Hon'ble Supreme Court has answered the aforesaid two questions in the following manner:

> *"97. For the reasons stated above and adopting pervasive and meaningful interpretation of the provisions of the relevant statutes and Entries 43, 44 and 45 of List I and Entry 32 of List II of the Seventh Schedule of the Constitution, we answer*

2 (2007) 6 SCC 236

the reference as under:

“Cooperative banks” established under the Maharashtra Cooperative Societies Act, 1960 (the MCS Act, 1960), the Andhra Pradesh Cooperative Societies Act, 1964 (the APCS Act, 1964), and the Multi-State Cooperative Societies Act, 2002 (the MSCS Act, 2002) transacting the business of banking, do not fall within the meaning of “banking company” as defined in Section 5(c) of the Banking Regulation Act, 1949 (the BR Act). Therefore, the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (the RDB Act) by invoking the doctrine of incorporation are not applicable to the recovery of dues by the cooperative from their members.

98. The field of cooperative societies cannot be said to have been covered by the Central Legislation by reference to Entry 45, List I of the Seventh Schedule of the Constitution. Cooperative banks constituted under the Cooperative Societies Act enacted by the respective States would be covered by cooperative societies under Entry 32 of List II of the Seventh Schedule of the Constitution of India.”

10] In view of the authoritative pronouncement of the Hon'ble Supreme Court in the case of ***Greater Bombay Coop. Bank Ltd.*** (supra), it is quite clear that '*cooperative banks'* established under the MCS Act transacting the business of banking, do not fall within the meaning of *'banking company'* as defined in Section 5 (c) of Banking Regulation Act, 1949, and therefore, the provisions of RDB Act, by invoking the *doctrine of incorporation* are not applicable to the recovery of dues by cooperatives from their members.

11] The view taken by the Divisional Joint Registrar in the impugned judgment and order is contrary to the law laid down by the Hon'ble Supreme Court in the case of ***Greater Bombay Coop. Bank Ltd.*** (supra). This is sufficient ground to interfere with the impugned order in exercise of jurisdiction under Articles 226 and 227 of the Constitution of India.

12] For the aforesaid reasons, the impugned judgment and order dated 3 November 2003 made by the Divisional Joint Registrar, Cooperative Societies is hereby set aside. Rule is made absolute in terms of prayer clause (b).

13] In view of the peculiar facts and circumstances, there shall be no order as to costs.

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

(M. S. SONAK, J.)

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