IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3790 OF 2016

Kusum Rajaram Waghchavare & Ors. ..Petitioners
V/s.
Deputy Registrar, Co-operative
Society Solapur (On Deputation),
Solapur District Urban Co-operative
Bank Association Ltd. & Ors. .. Respondents

Mr.S.S.Inamdar for the Petitioners.
Mr.A.B.Tajane for Respondent No.2.
Mrs.Vaishali Nimbalkar AGP for the Respondent No.1-State.

CORAM : M.S. SONAK, J.
DATE : 21st APRIL, 2016.

P.C.

1. Heard the learned counsel for the parties.

2. The challenge in this petition is to the recovery certificate dated 09-02-2016 made by the Deputy Registrar, Co-operative Societies demanding from the petitioner approximately Rs.44.11 lakhs or thereabouts.

3. As against the impugned Recovery Certificate, the petitioner's have a alternate and efficacious remedy by way of

instituting a Revision Petition under section 154 of the Maharashtra Co-operative Societies Act, 1960 (Said Act). Mr.Inamdar learned counsel for the petitioner, relying upon the decision of the Division Bench of this Court in the case of Sundeep Polymers Pvt. Ltd. & Others V/s. State of Maharashtra & Others (2010 BCI-222), however, submitted that where a recovery certificate under Section 101 of the said Act has been issued without any compliance whatsoever with the procedure prescribed in Chapter VIII-A of the Maharashtra Co-operative Societies Rules, 1961 (Said Rules), the bar of alternate remedy need not apply. Mr.Inamdar also submitted that in the present case loan documents has also various supporting documents very clearly indicates that the loan amount sanctioned and disbursed was hardly Rs.9.47 lakhs. Despite this, the respondent-society has raised an inflated claim of Rs.30.47 lakhs. In these circumstances, Mr.Inamdar submitted, that this Court should interfere with the impugned Recovery Certificate, without relegating the petitioners to avail alternate remedy under section 154 of the said Act, particularly as the condition prescribed in sub-section 2A of Section 154 of the said Act is quite onerous. In the facts and circumstances of the present case, Mr.Inamdar submitted that it will be quite unjust and unfair to require the petitioners to comply with the said condition, in order to obtain effective redress against impugned Recovery Certificate.

4. Mr.Tajane learned counsel for the respondent-society submitted that reference to the amount of Rs.30.47 lakhs as the loan amount advanced, was an inadvertent error. The amount of Rs.30.47 lakhs represents the amount due and payable by the petitioner's, on the date when the claim was lodged. Mr. Tajane submits that the Deputy Registrar has taken this aspect into consideration while issuing the impugned Recovery Certificate. Relying upon the decisions of this Court in the case of Maharashtra Nagri Sahakari Bank Ltd. V/s. Ravindra S/o Prabhakar Kulkarni [2011-1-MHLJ-930] and Kedarling Vikas Seva Scy Ltd. V/s. Dinkar Bhimrao Raut [2003-1-AllMR-66], Mr.Tajane submitted that in view of the availability of alternate and efficacious remedy, this Court, may not exercise its extra ordinary jurisdiction to interfere with the

impugned Recovery Certificate.

5. Having heard the learned counsel for the parties and perused the record, in my judgment, there is no case made out to entertain the present petition, in view of the alternate and efficacious remedy available to the petitioners in the matter of challenge to the impugned Recovery Certificate. In this case, the petitioners have not made out any case for the departure from the usual rule in the matter of relegating the parties to avail alternate remedies, rather than exercise the extra ordinary jurisdiction under Article 226 and 227 of the Constitution of India. The decision in the case of Sundip Polymers Pvt. Ltd. (Supra) is clearly distinguishable. In the said case there was total non-compliance with the procedure prescribed under Chapter VIII-A of the said Rules. There was total violation of principles of natural justice and non-compliance with procedure, even, though, Rules 86A and 86F of the said rules clearly provide for such compliance. The Recovery Certificate in the said case, was issued without minimum compliance with principles of natural justice. The

Recovery Certificate was not preceded with any reasoned order. In these peculiar facts and circumstances, this Court, did not deem it necessary to relegate the parties in the said case to avail the alternate remedy under section 154 of the said Act.

6. In the present case, there has been substantial compliance with the provisions contained in Chapter VIII-A of the said Rules. The impugned Recovery Certificate takes into consideration the submission of both the parties and thereafter, states reasons for issuance of the Recovery Certificate. This is hardly the stage to decide whether such reasons are valid or not. However, it cannot be said that even prima-facie, there is no compliance with the prescribed procedure under Chapter VIII-A of the said Rules or that the impugned Recovery Certificate is totally unreasoned. The respondent bank has also offered explanation with regard to the claim of Rs.30.47 lakhs, when infact, the loan documents make reference to loan sanctioned amount as Rs.9.47 lakhs. This issue also appears to have been considered by the Deputy Registrar while issuing the impugned Recovery Certificate.

7. Accordingly, there is no case made out to entertain the present petition in view of the availability of the alternate, efficacious and statutory remedy in the form of Section 154 of the said Act. This Court, has already held that the provisions contained in Sub-section 2A of the Section 154 of the said Act are mandatory, apart from being intra vires the Constitution of India. In these circumstances, the petitioners, cannot be permitted to by-pass such statutory remedy, merely because they wish to avoid compliance with the mandate contained in section 154(2A) of the said Act. There is no question of permitting the writ jurisdiction of this Court to be made use of for the purposes of by passing such mandatory provisions.

8. For the aforesaid reasons the present petition is not entertained. However, it is made clear that this Court has not adverted to the merits of the matter. Even the observations made in this order are only prima-facie and the Revisional Authority, if approached, need not be influenced by such observations at the stage of deciding the Revision Application, if instituted, on merits.

9. The petition is accordingly dismissed. However, the petitioners are granted liberty to avail alternate remedy, no doubt, upon due compliance with the conditions prescribed for the purposes of availment of alternate remedy.

10. The facts and circumstances of the present case there shall be no order as to costs.

11. All concerned to act on authenticated copy of this order.

(M.S. SONAK, J.)