

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1826 OF 2013

Shri. Gajanan Maruti Chaudhari

.. Appellant

Versus

The Kolhapur District Central

Co-operative Bank, Kolhapur and others

.. Respondents

Mr. P S. Bhavake for the Appellant.

Mr. R. R. Badi for the Respondent Nos.1 and 2.

CORAM : R.M. SAVANT, J.

DATE : 14th JULY 2016

PC.

1 The above First Appeal challenges the order dated 04.05.2013 passed by the Learned Adhoc District Judge-1, Kolhapur, by which order, the application filed by the Appellant under Section 8(2) of the Hindu Minority and Guardianship Act, 1956 (For short "the said Act") came to be rejected. The Appellant is the natural guardian of his son one Amar. It seems that the Applicant has purchased land admeasuring 2 Hectors 97.5 Ares in Gat No.589 in the name of his son. With a view to raise finance for improvement of the said land that the applicant filed an application under Section 8(2)(a) of the said Act for mortgage of the said lands to Warna Sahakari Bank Ltd. In support of the said application, the Applicant had

relied upon a certificate dated 05.03.2013 issued by one Mahatma Jotirao Phule Vividh Karyakari Sahakari Seva Sanstha which certificate was to the effect that there is no outstanding from the minor Amar Gajanan Chaudhari. It seems that pursuant to the public notice which is required to be issued, the Kolhapur District Central Co-operative Bank appeared and filed a reply to the said application. In the reply, the amounts due from the family members of the Applicant Gajanan Chaudhari were mentioned. It was stated in the said reply that an amount of Rs.32.51 lakhs was due from the entire family and in respect of the minor Amar an amount of Rs.2,70,000/- was due. The Trial Court i.e. the Learned Adhoc District Judge-1, Kolhapur considered the said application filed by the Appellant and by the impugned order dated 04.05.2013 has rejected the same. Since in terms of Section 8(5)(c) of the said Act, Appeal lies to this Court. The Appellant has filed the instant First Appeal.

2 The gist of the reasoning of the Trial Court is that the application is bereft of particulars to the extent mentioned in paragraph 5 of the impugned order. The Trial Court found the application to be without particulars as to the nature of improvements that the Applicant desired to carry out in the land. The Trial Court also held that at the relevant time there was a drought in the State and therefore no useful purpose would be served by raising a loan. The other shortcomings have also been

mentioned in the said paragraph. It is not necessary for this Court to dilate further on the said aspect.

3 In view of the recording made in paragraph 5 of the order which is also on the basis that at the relevant time when the application was considered there was drought in the State of Maharashtra and since the position has now changed from the year 2013, the Learned Counsel for the Appellant submitted that the Appellant would make a fresh application under Section 8(2)(a) of the said Act.

4 Upon this, the Learned Counsel appearing on behalf of the Kolhapur District Central Co-operative Bank Ltd. Mr. R. R. Badi submitted that the certificate of the primary society on which reliance is sought to be placed by the Appellant is questionable as the signatory to the said certificate is the Applicant himself. The Learned Counsel also sought to endeavour to point out the shortcomings in the application that was filed including the aspect that the minor Amar has already availed of the benefit of a loan from Jyotirling Patsanstha Ltd.

5 In my view, it is not necessary to go into the said aspects having regard to the fact that the Appellant desires to file a fresh application for mortgage of the property. It is therefore not necessary to

interfere with the impugned order. However, if any such fresh application is filed which is referable to Section 8(2)(a) of the said Act, needless to state that the same would be considered on its own merits and in accordance with law uninfluenced by the impugned order dated 04.05.2013. The contentions of the parties on all aspects are kept open for being urged before the concerned Court.

6 Further needless to state that if any fresh application is filed the procedure that is required to be followed would be followed by the District Court. With the aforesaid directions, the First Appeal is disposed of.

[R.M. SAVANT, J]