IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9695 OF 2013

Liquidator, Vasantdada Shetkari
Sahakari Bank Ltd. .....Petitioner
V/s.
1. Sai Construction Co. & Ors. .....Respondents

* * * * *

Mr. S.S. Patwardhan, Advocate for the petitioner.

Mr. Umesh R. Mankapure, Advocate for respondents no.1 to 4.

Mr. S.D. Rairikar, AGP for respondents no.5 and 6.

CORAM :- SMT. R.P. SONDURBALDOTA, J.

7TH JUNE, 2016.

P.C. :-

1). The petitioner is the Liquidator of Vasantdada Shetkari Sahakari Bank Ltd which was placed under liquidation on 16th February, 2009. Respondents no.1 to 4, are the borrower members of the bank who had availed of loan. When that loan became a non-performing asset, the Society applied for Recovery Certificate under Section 101 of the Maharashtra Co-operative Societies Act, 1960 for recovery of Rs.2,33,45,301/- alongwith interest. The application was heard by respondent no.5, the Deputy Director of Co-operative Societies and by the order dated 23rd August, 2010 he issued Recovery

Certificate in favour of the petitioner for a sum of Rs.2,33,45,301/- alongwith interest at the rate of 18% p.a. from 1st September, 2008. Respondents no.1 to 4 have not challenged the Recovery Certificate. Consequently, it became final. Having issued the Recovery Certificate, respondent no.5, acting in excess of his powers granted facility of equal quarterly installments to respondents no.1 to 4 with direction that the first installment of Rs.50,00,000/- shall be paid within one month. In case of default of any installment, the entire amount was to become due for recovery.

2). Since respondent no.5 did not have jurisdiction to grant installments, the petitioner challenged that part of the Recovery Certificate by filing Revision Application under Section 154 of the Maharashtra Co-operative Societies Act, 1960. The notice of that revision was served upon respondents no.1 to 4 but they failed to appear before the Revisional Authority. By the order dated 30th June, 2011 respondent no.6, the Revisional Authority decided the Revision Application. It held that, the Deputy Director of Co-operative Societies, did not have jurisdiction to grant installments. It also took note of the fact that, the Revision preferred by the petitioner was limited only to part of the order i.e. the part granting installments. But instead of setting aside that part of the order under challenge, it set aside the entire order including issuance of the Recovery Certificate and granted liberty to the petitioner to proceed against respondents no.1 to 4 in accordance with law. The order does not state any reasons as to why the entire Recovery Certificate was being set aside. Therefore, the petitioner filed the application dated 27th

April, 2012 seeking modification of the order by adding words "to the extent of granting installments only" to the operative part of the order. Respondent no.6, by the order dated 16th August, 2012 dismissed the application stating that he had the authority/power to modify or refuse certificate issued by the subordinate officer.

3). Undoubtedly, respondent no.6 has power to modify or refuse Certificate issued by the subordinate officer. But that power must be exercised judiciously. Even if, for some reason, respondent no.6 desired to set aside the Recovery Certificate, though the challenge to the order granting the Certificate was very limited, it was necessary for him to state reasons therefor. In the circumstances, the impugned order cannot be sustained at all.

4). Mr. Mankapure, the learned Advocate appearing for respondents no.1 to , concedes to the position in law as regards the powers of respondent no.5. He, however, seeks to submit that the order may be set aside and the Revision Application be remanded to respondent no.5 for fresh consideration. There is no case made out for remand. Hence, the petition is allowed in terms of prayer clauses (a), (b) and (c).

(SMT. R.P. SONDURBALDOTA, J)