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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.498 OF 2011
WITH
WRIT PETITION NO.499 OF 2011

Win Chemicals Ltd. And 4 Ors. ...Petitioners
vs
The Assistant Registrar, Co-operative
Societies And 3 Ors. ...Respondents

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Mr. A.V. Anturkar, Senior Advocate, i/b. Aparna Shinde, for the Petitioner.

Mr. R.J. Mane, AGP, for Respondent Nos. 1 and 4.

Mr. Bhupesh Samant, for Respondent No.2.

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CORAM : S.C. GUPTE, J.

DATED: JULY 25, 2016

P.C. :

. The petitions, filed under Article 226 of the Constitution of India, challenge recovery certificates issued by the Assistant Registrar of Co-operative Societies (on deputation) – Respondent No.3 herein, under Section 101 of the Maharashtra Co-operative Societies Act ("Act"). The controversy concerns the authority of the Assistant Registrar to issue the recovery certificates in the face of the disputed questions concerning the dues owed by the Petitioners to the 2nd Respondent Co-operative Bank ("Bank").

2. The 1st Petitioner Company ("Company") is a constituent of the Bank, maintaining two current accounts. In the year 1997-98, the Bank sanctioned credit facilities of about 50 lacs to the Company as also certain additional facilities against the security of two premises, namely, office premises at Worli in Mumbai ("office premises") owned by the Company and also a flat owned by Smt. Gayatri Jajodia, one of the guarantors in respect of the credit facilities ("residential premises"). In November 2000, the Company claims to have suffered heavy losses in exports and imports and got embroiled in litigations. In pursuance of a requisition of the Bank, calling for a proposal for settlement of the Bank's dues, the Company, by its letter dated 21 May 2001, submitted its final offer for a One Time Settlement ("OTS") of a sum of Rs.70 lacs. By its letter dated 28 July 2001, the Bank provisionally accepted the OTS figure of Rs.70 lacs in full and final settlement of the amounts due under the two accounts of the Company. As for the payment of the OTS amount, what was provided was that the residential premises shall be sold for a sum of not less than Rs. 42 lacs and the entire amount of sale proceeds shall be deposited in the Bank in part payment of the OTS amount. As for the balance amount of Rs.28 lacs, the acceptance letter provided for payment thereof "*by selling the office premises and as per our instructions only*". It is the Petitioners' case that in pursuance of the OTS, on 20 September 2001, the residential premises were sold by the Bank for a sum of Rs.42.04 lacs and the entire sale proceeds were appropriated towards part payment of the OTS amount. The Petitioners also claim to have surrendered a few FDRs aggregating to a sum of Rs. 4 lacs to the Bank towards further part payment, which amount was also appropriated by the Bank towards part payment of the dues. As for the

remaining balance of Rs. 24 lacs, it is the Petitioners' case that, despite the particular term of the OTS agreement, the Bank did not take any steps or issue any instructions for sale of the office premises. Instead, it is submitted that on 17 July 2002, the Bank sent its recall notice claiming a sum of Rs.1.34 crores from the Petitioners with further interest. In reply, relying on the OTS, the Company by its letter dated 26 August 2002, called upon the Bank to withdraw its recall notice. The Bank, instead of withdrawing the recall notice, proceeded to apply for recovery certificates, under Section 101 of the Act, for recovery of about Rs.1.08 crores and Rs.25.26 lacs in respect of the two accounts, aggregating to a total sum of about Rs.1.34 crores. By a common order-cum-recovery certificate, the Assistant Registrar partly allowed the recovery applications of the Bank and issued a recovery certificate for a sum of Rs.24,12,836/-. This recovery certificate was challenged by the Bank before the Divisional Joint Registrar, who remanded the matters back to the Assistant Registrar for a fresh hearing in accordance with law. By his impugned orders and recovery certificates dated 8 March 2010, the Assistant Registrar allowed the Bank's applications for recovery certificates for an amount aggregating to Rs.1,34,01,862.13 together with further interest.

3. The main contention of the Petitioners at the hearing of the petition was that the Assistant Registrar had no jurisdiction, power or authority to consider disputed questions of law and fact regarding the merits of the Bank's claim for a recovery certificate. It is submitted that the Petitioners' defence to the recovery applications necessitated leading of oral and documentary evidence involving cross-examination of

witnesses, which could not have been undertaken by the Assistant Registrar in exercise of his powers under Section 101 of the Act. Learned Counsel, relying on a Division Bench judgment of this Court in the case of **Top Ten & Another vs. State of Maharashtra & Others**[1], submits that the moment it is demonstrated that a bonafide and genuine defence exists concerning the arrears of dues claimed by the applicant co-operative society, which calls for a finding on disputed facts, a need for cross-examination surfaces, and Section 101 ceases to apply; the parties, in that case, necessarily have to be relegated to taking recourse under Section 91 of the Act before a co-operative court, which alone can go into the disputed questions. Learned Counsel for the Bank does not dispute the proposition of law advanced by the Petitioners. He, however, submits that, in the present case, there is no genuine or bonafide defence concerning the arrears claimed by the Bank. He submits that the Petitioners had, in their original written statement filed in the recovery application, not disputed the claim for arrears relying on the OTS agreement. He submits that in the original written statement filed by the Petitioners there was no reference to the OTS proposal or its acceptance by the Bank. It is only in the additional written statement that the Petitioners relied on the OTS agreement and raised a defence to the Bank's recovery applications on the basis of the OTS agreement. Learned Counsel relies on the judgments of the Supreme Court in the cases of **M/s. Modi Spinning & Weaving Mills Ltd. & Another vs. Ladha Ram & Co.**[2], **Heeralal vs. Kalyan Mal & Others**[3] and **S. Mala Reddy vs. Future Builders Co-operative Hsg. Society**[4] and urges that it

1 2012(2) Bom. C.R. 647
2 (1976) 4 Supreme Court Cases 320
3 (1998) 1 Supreme Court Cases 278
4 AIR 2013 Supreme Court Cases 3693

was not permissible to the Petitioners to either withdraw their admission in the written statement filed earlier or amend the same or bring in an additional written statement displacing the earlier admission. Counsel also relies on the judgments of the Supreme Court in the cases of **Bharat Sanchar Nigam Ltd. vs. Bhurumal**[5] and **Shalini Shyam Shetty vs. Rajendra Shankar Patil**[6] and submits that this Court, in its writ jurisdiction under Article 226 of the Constitution of India, can only interfere if there was any violation of a statutory duty on the part of the statutory authority or any infraction of a statute or malafide action. It is submitted that there is no case for interference by way of judicial review in a matter like this. Learned Counsel also submits that there is an alternative remedy by way of a revision under Section 154 of the Act available to the Petitioners and that this Court ought not to interfere with the impugned order in its writ jurisdiction.

4. The subject matter of controversy in the present petition raises an issue of jurisdiction and authority of the statutory authority, namely, Assistant Registrar of Cooperative Societies, to entertain an application for a recovery certificate, when the opponent raises a bonafide and genuine defence, which discloses disputed facts and calls for a trial involving oral evidence and cross-examination of witnesses. As I have noted above, the law on the subject laid down by the judgment of **Top Ten** (supra) is not in serious dispute. The judgment unequivocally lays down that only minor disputes involving quantification of arrears due are to be looked into by the Registrar whilst undertaking an enquiry under Section 101 of the Act. It is only

5 (2014) 7 Supreme Court Cases 177
6 (2010) 8 Supreme Court Cases 329

when the correctness of the amount shown as arrears can be verified from the accounts of the society as against the receipts produced by the other side that the Registrar can undertake an enquiry and determine the amount of arrears. The moment, however, it is demonstrated to the Registrar that a bonafide and genuine defence concerning the arrears is raised, which calls for a finding on disputed facts, a need for cross-examination arises and the Registrar cannot proceed to resolve that question under Section 101. The concerned Society, in such circumstances, has to take recourse to filing of a dispute under Section 91 of the Act and it is only the Co-operative Court exercising jurisdiction under Section 91, which can go into such disputed question. The real contest in the present case is only on whether or not such genuine and bonafide dispute is in fact raised.

5. At the outset, it is to be noted that the provisions of the Civil Procedure Code, including the rules as to pleadings and their amendments, do not apply to an enquiry before the Registrar under Section 101 of the Act. It is for the parties before the Registrar in an application under Section 101 to bring before the Registrar such material as would indicate the genuineness of the arrears or a defence to the arrears. If, on the basis of material produced before the Registrar, an arguable case is made out for determination of genuineness of arrears otherwise than by way of quantification of the arrears as a matter of accounts, the Registrar must hold his hands and relegate the parties to a dispute before the Co-operative Court under Section 91 of the Act. Learned Counsel for the Bank laid emphasis on the fact that the additional written statement for the first time raised a defence to the

claim of arrears on the ground of a purported OTS agreement. As would be apparent from the additional written statement, the Petitioners have not only raised a plea of an OTS agreement between the parties but also produced materials such as (i) the requisition of the Bank to the Company to submit a comprehensive proposal for an amicable settlement, (ii) the settlement proposal submitted on 21 March 2001, (iii) a revised proposal dated 21 May 2001, (iv) the acceptance indicated by the Bank on 28 July 2001, (v) confirmation by the Deputy General Manager of the Bank in a letter written under his hand on 2 August 2001 and (vi) the statement of account as of 20 September 2001 evidencing credit entry of Rs.42 lacs in the account of the Company, along with the necessary averments. The additional written statement together with the material produced therewith does indicate a clearly arguable defence of an OTS agreement between the parties duly acted upon. Not only is the OTS agreement evidenced by the letters of proposal and acceptance respectively of the Company and the Bank, but the same is actually followed up in close proximity by an actual sale of the guarantor's residential premises and crediting of sale proceeds in the overdue account of the Petitioners in accordance with the OTS agreement. This certainly raises a credible defence and needs to be gone into before the Bank's claim of arrears is accepted. Learned Counsel for the Bank submits that the letter of acceptance, purportedly issued by the Bank on 28 July 2001, is a fabricated letter. The plea, by its very nature, calls for a trial involving cross-examination of witnesses and suggests all the more reason why the matter ought to go to the Co-operative Court for determination of merits rather than be disposed of by the Registrar in a summary enquiry contemplated under Section 101.

6. The judgments on permissibility of inconsistent or contradictory pleas or permissibility of an amendment to the defence statement which has the effect of displacing an earlier admission, cited by learned Counsel for the Bank, need not detain us. It is sufficient for our purposes to note that the Registrar cannot determine these questions in an inquiry under Section 101. Whether or not an additional written statement raising a defence to the claim on the ground of OTS agreement, ought to be allowed or considered as offering a credible defence, is a matter reflecting on merits of the claim. It is not for the Registrar to either not allow the written statement or disregard the same on the ground that it is an afterthought. If the defence raised by it is bonafide, that is to say, arguable defence on a plea raised in good faith, the Register must fold up the inquiry and relegate the parties to a co-operative court. The argument of inconsistent and contradictory pleas is, in other words, for the court to appreciate and rule on and not for the Registrar to decide. For the same reason, it is not necessary for us to consider the Petitioners' explanation for not raising the plea of an OTS agreement earlier or its credibility in the face of the correspondence referred to by the Petitioners at the hearing.

7. Since the controversy in the present matter really concerns the jurisdiction of the Registrar to hold an enquiry under Section 101 in the face of a binding judgment of this Court in **Top Ten's** case, or in other words, the plea being of usurpation by a statutory authority of a jurisdiction, which does not exist, the existence of an alternative remedy by way of a revision under Section 154 of the Act, does not come in the

way of this Court exercising its writ jurisdiction.

8. In that view of the matter, the impugned order of the Assistant Registrar of Co-operative Societies, suffers from want of jurisdiction and is clearly illegal. The rule is, accordingly, made absolute and the impugned order of the Assistant Registrar is quashed and set aside. No order as to costs.

9. On the application of learned Counsel for the second Respondent, it is ordered that the amounts lying deposited with the second Respondent Bank in pursuance of interim orders passed by this Court in the Notices of Motion taken out in these petitions, shall be continued to be held by the Bank in accordance with the interim orders for a period of eight weeks from today.

(S.C. GUPTE, J.)