

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AURANGABAD

WRIT PETITION NO. 2034 OF 2016

Samta Nagari Sahakari
Patsanstha Maryadit, Kopergaon,
Dist. Ahmednagar,
through its Manager,
Sachin s/o Shankarlal Bhattad,
aged 37 years, occ. Service,
r/o Kopergaon, Dist. Ahmednagar

...Petitioner

VERSUS

- 1) The State of Maharashtra,
through the Secretary to the
Government of Maharashtra in
Co-operation, Marketing and
Textile Department, Mantralaya,
Fort, Mumbai -32,
- 2) The Divisional Joint Registrar,
Co-operative Societies,
Nashik Division, Nashik,
- 3) The Assistant Registrar,
(Deputation), Ahmednagar,
District Credit Co-operative
Societies Federation, Ahmednagar,
- 4) Dr. Swadhin s/o Kisanrao Gadekar,
aged 30 years, occ. Medical Practitioner,
R/o C/o Dr. Gadekar Hospital,
Rahata, Dist. Ahmednagar,
- 5) Sow. Dr. Mangala w/o Kisanrao Gadekar,
aged 54 years, occ. Medical Practitioner,
R/o C/o Dr. Gadekar Hospital,
Rahata, Dist. Ahmednagar,
- 6) Ramesh s/o Ananda Kalokhe,
aged 37 years, occ. Business,

R/o Sadaphal Building, Nhavi Galli,
Rahta, Dist. Ahmednagar,

- 7) Dr. Kisanrao s/o Yadavrao Gadekar,
aged 55 years, occ. Medical Practitioner,
R/o C/o Dr. Gadekar Hospital,
Rahata, Dist. Ahmednagar ...Respondents

...
Advocate for Petitioner : Mr. Bhavar Nitin R
AGP for Respondents 2 and 3: Mr. S.M.Ganachari
Mr. Talhar Ajay G., Advocate For R/4 To 7
...

CORAM : N.W.SAMBRE, J.

DATED : 17th November, 2017

PER COURT : -

The petitioner, a Co-operative Society is undertaking the financing by advancing loans. Respondent Nos.4,5 and 7 have taken loan for which respondent No.6 stood as a guarantor.

2. Since the loan remained unpaid, proceedings under Section 101 of the Maharashtra Co-operative Societies Act, 1960 (for short 'Act') came to be initiated by the petitioner before Assistant Registrar, Co-operative Societies, Ahmednagar.

3. Respondent No.3 – Assistant Registrar ordered issuance of recovery certificate in Application No. 101/591/14, which was questioned by the respondents before Divisional Joint Registrar, Co-operative

Societies, Nashik, in Revision No.R-49/2015, pursuant to the provisions of Section 154 of the Act.

4. The aforesaid revision preferred by the borrowers came to be allowed for following reasons :-

(A) Rules 86(A) to (F) of the Maharashtra Co-operative Societies Rules are not followed.

(B) The effect of judgment of the Division Bench of this Court at Nagpur in the matter of **Top Ten and anr. Vs. State and others**, reported in **2012 (1) Mh.L.J. 347** is not considered.

(C) Non-speaking order is passed.

(D) Dispute under Section 91 of the Act is pending.

5. As such, the petitioner – Society has preferred this petition questioning the order passed by the revisional authority remanding the matter back to the Assistant Registrar.

6. The fact necessary for decision of the present petition are as under:-

The petitioner, a co-operative society, registered under the Act was approached by respondent Nos.4, 5 and 7, who are its members, seeking loan of Rs.1 Crore towards working capital/ cash credit for

expansion of their business. The loan was disbursed in August, 2011 against execution of the registered mortgage deed dated 1st August, 2011, in regard to the agricultural land.

7. Since the amount was not repaid within the time stipulated i.e. one year and the cheques issued by respondents-borrowers towards repayment were disordered, the petitioner and respondents engaged in proceedings under Section 138 of the Negotiable Instruments Act before the competent criminal Court.

8. The petitioner claims that, having noticed that the respondents are not repaying the loan, initiated proceedings under Section 101 of the Act. As stated earlier, a certificate came to be issued against the respondents on 22nd July, 2014, which was upset in revision on 2nd January, 2016.

9. The order in revision is questioned by the petitioner on the ground that merely for asking respondent-revisional authority has passed an order of remand without considering the scheme of Section 154 of the Act, particularly the scope thereof. He also submits that the provisions of Section 101 of the Act are misinterpreted by the learned revisional authority, particularly having regard to the scope and powers of the Registrar while issuing recovery certificate. He would urge that the respondents have not demonstrated as to the manner and mode in which

Rules 86(A) to (F) of the Maharashtra Co-operative Societies Rules are violated. According to him, the order of the Registrar issuing certificate is in accordance with the provisions of the scheme under Section 101 of the Act. By inviting attention of this Court to the dispute initiated under Section 91 of the Act by the respondents-borrowers, a submission is canvassed that the borrowers have admitted the debt and liability and in view thereof, the proceedings under Section 101 of the Act were very much maintainable. According to him, neither Section 101 nor Section 91 of the Act puts an embargo on right of petitioner to initiate proceedings for issuance of recovery certificate against a borrower when the liability of loan is not disputed. He would then urge that the act on the part of the Registrar in issuing recovery certificate under Section 101 is in accordance with the provisions of the Act and the judgment of this Court in the matter of Top Ten and anr. (supra).

10. Per contra, learned Counsel appearing on behalf of respondent Nos. 4 to 7 would invite attention of this Court to the reply filed by the respondents to Section 101 proceedings, as according to them, the proceedings itself were not maintainable, as prior in point of time a dispute was already raised by respondents-borrowers under Section 91 of the Act before the Co-operative Court in regard to the liability. So as to substantiate his contention, learned Counsel would take me through copy of the dispute which is produced at page 75 (annexure 'C' to the petition). In addition, learned Counsel for respondent Nos.4 to 7 would submit that a

plea to frame a preliminary issue as regards the liability is not gone into by the Registrar while exercising powers under Section 101 of the Act. He would then urge that since the revisional authority has noticed that the order impugned of issuance of recovery certificate lacks merit and reasons, was rightly set aside. He would then urge that it is open for the petitioner to file a dispute under Section 91 of the Act for recovery of dues, if any, or may establish the liability pursuant to the reasons recorded by the revisional authority in the order of remand. He sought dismissal of the petition.

11. Normally, in exceptional case the Court in exercise of powers under Articles 226 and 227 of the Constitution of India interferes with the order of remand and the present case appears to be one which calls for interference as could be noticed from the reasons recorded herein after.

12. The respondents-borrowers filed Dispute No.140 of 2013 and the pleadings in the said dispute in clear terms, admit the loan facility availed by the respondents-borrowers from the petitioner- society. In the said dispute, the borrowers have come out with a categorical prayer that the amount of repayment be settled qua the loan account and the loan of Rs.50,00,000/- is without any surety or guarantee. It is also claimed that the notice dated 22nd June, 2013 issued by the bank be not acted upon and the petitioner be restrained from taking out recovery proceedings. The respondents also moved application for injunction on 28th June, 2013,

restraining the petitioner from taking recourse to the recovery proceedings under Section 101 of the Act.

13. It appears that the petitioner issued notice dated 22nd June, 2013 against the respondents-borrowers calling upon them to repay the loan outstanding against them. The reference of the same notice could be found in the proceedings initiated by the petitioner under Section 101 of the Act. The respondents-borrowers raised an objection to the maintainability of Section 101 certificate on the ground that the dispute in relation to the liability of respondents to repay the amount is *sub judice* before the competent Co-operative Court.

14. Thereafter, the present respondents moved an application seeking framing of preliminary issue on the maintainability of the recovery proceedings, in view of pendency of the dispute at the behest of the borrowers. The learned Assistant Registrar, while exercising powers under Section 101 of the Act, instead of framing a preliminary issue, proceeded to decide the proceedings initiated under Section 101 of the Act on its merits. While doing so, the claim of the respondents-borrowers for framing of preliminary issue based on pendency of dispute before the Co-operative Court being Dispute No.140 of 2013 for rendition of accounts was taken into account. The Assistant registrar noticed that since the proceedings to be decided are summary in nature, he rightly held that there are no powers to frame any preliminary issue and proceeded to

decide application under Section 101 of the Act on its merits. The Assistant Registrar, while passing order under Section 101, having regard to the scope of said section and the law laid down by this Court in the matter of Top Ten & anr. (supra), also considered the statement of account produced by the bank and proceeded to direct issuance of recovery certificate for amount of Rs.44,34,778/-, in addition to expenses of Rs.11,657/-, as on 1st November, 2013.

15. What is required to be noted is, plain reading of Section 101 with that of Section 91 of the act does not put an embargo on the right of the co-operative society to initiate proceedings under Section 101 of the Act if the matter ancillary to the claim made under Section 101 of the Act is sub judice before the Co-operative Court. The fact remains that the Assistant Registrar, while dealing the claim for issuance of recovery certificate is required to ascertain the statement of account produced by the co-operative society and amount, if any, disputed. The only scope which is permissible qua the powers vested with the Assistant Registrar while issuing a certificate under Section 101 of the Act is restricted to above extent qua analysis of claim to be made. Appropriate support can be drawn from paragraphs 18 and 19 of the Division Bench judgment of this Court in the matter of Top Ten and anr. (supra).

16. As stated herein above, since the respondents – borrowers have admitted the liability as reflected in the pleadings in dispute by their

two letters addressed to the Bank i.e. dated 26th June, 2013 and 9th June, 2013, the Assistant Registrar has rightly entertained the proceedings and ordered issuance of recovery certificate. The claim raised by the respondents-borrowers that the preliminary issue should have been framed, is without any legal basis, as on plain reading of Section 101 of the Act, no such provision could be noticed and having regard to the scope of Section 101 dealt with in the Division Bench judgment of this Court in the matter of Top Ten & anr.

17. While considering the claim of the respondents qua the liability to repay the amount, the order of the Assistant Registrar may not be happily worded to the satisfaction of the respondents-borrowers, however, in view of the restricted inquiry contemplated in exercise of powers under Section 101 of the Act, I hardly notice any infirmity or illegality with the order of the Assistant Registrar issuing recovery certificate against respondents-borrowers.

18. It is also required to be noted that the Assistant Registrar relied upon the extract of the loan account and having noticed that the same is appropriate, has proceeded to order issuance of recovery certificate.

19. The Assistant Registrar, as such, has rightly proceeded without being impressed by the pendency of the dispute under Section 91

of the Act.

20. So far as violation of provisions of Rules 86 (A) to (F) of the Maharashtra Co-operative Societies Rules is concerned, the respondents neither before the Assistant Registrar nor before this Court are able to establish the case though an opportunity was offered to that effect. Apart from above, it could be noticed that the respondents are able to stall the recovery proceedings for last last about three years, when in fact, it was always open for them to get their dispute decided expeditiously, which is also pending for more than four years.

21. In the wake of above, I hardly notice any justifiable reason in the order of the revisional authority in remanding the matter back to the Assistant Registrar.

22. For the reasons aforesaid, the petition stands allowed in terms of prayer clause (B).

[N.W.SAMBRE, J.]

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