

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

WRIT PETITION NO. 8324 OF 2016

Hina Shahin Co-operative
Urban Bank Ltd., Beed

...Petitioner

VERSUS

Mirza Ansar Baig s/o Sujat Baig

...Respondent

WITH

WRIT PETITION NOS. 8332 & 8334 OF 2016

.....
Shri M.P.Gude, advocate for petitioners in all WPs
Shri H.V.Tungar, adv. for respondents in Wps 8332/8334
.....

CORAM : S.V.GANGAPURWALA, J.

DATED : 16th January, 2017

O R D E R :-

Respondent/Disputant has filed Dispute under Section 91 of the Maharashtra Co-operative Societies Act (for short, 'the Act') challenging the notice issued by the liquidator of the Society purportedly under Section 105 of the Act. The Dispute is partly allowed thereby directing the

liquidator to reconstruct the loan account as per the loan documents by giving effect to the payment made by the Disputant to his loan account and then the Bank is entitled to recover legal dues, if any, by following due procedure of law. The said order is passed in a Dispute in Writ Petition No.8324 of 2016; whereas in Writ Petition Nos. 8332 and 8334 of 2016 the Disputes are allowed. The Bank filed appeal before the appellate Court. The appeals are dismissed. The appellate Court in all the matters has observed that the Co-operative Court has given liberty to the Bank to recover legitimate dues after reconstruction of respective loan accounts and on that count has refrained from interfering in the judgment of the Co-operative Court. The Bank has assailed the said judgment in the present petitions.

2. Mr. Gude, learned counsel for the petitioners strenuously contends that the notice is issued by the liquidator of the Society under Section 105 of the Act. The same could not have

been assailed before the Cooperative Court in dispute under Section 91 of the Act. The learned counsel submits that the liquidator after verifying the accounts has issued notices under Section 105 of the Act. There was no reason for the Cooperative Court to verify the genuineness of the contents of the said notice. The liquidator has power to hear and determine the same. The same having not been done, the Cooperative Court ought not to have exercised jurisdiction.

3. Mr. Tungar, learned counsel for the respondent in Writ Petition Nos. 8332 and 8334 of 2016 submits that the payment made by the Disputants were not shown in the credit of the loan accounts. The original receipts were produced. After having verified the same and considering the evidence of the Ex-Chief Executive Officer of the Society, the Cooperative Court has rightly passed the order. No illegality has been committed.

4. I have considered the submissions canvassed by the learned counsel for the respective parties. So also, I have gone through the judgments delivered by the Cooperative Court and the appellate Court.

5. It is not in dispute that prior to filing of the Dispute under Section 91 of the Act, the Disputant has taken permission from the Registrar, Co-operative Societies for filing the Dispute. In view of that, there was no impediment for the Co-operative Court to entertain the said Dispute. It is also a matter of fact that the liquidator has not adjudicated the claim. He had only issued notice to the petitioners calling upon them to pay the amounts. It cannot be said to be adjudicated claim. The petitioners were not heard before the action under Section 105 of the Act was purportedly initiated by the liquidator.

6. The Court has observed about the receipts being produced by the Disputants and the credit of

the same not having been given. The Court has not adjudicated with regard to the amount being paid by the Disputants, however, from evidence on record it is found that some original receipts of repayment have been produced, which does not appear to have been considered by the liquidator. The said course adopted does not appear to be erroneous.

The appellate Court on the ground that Co-operative Court in all these matters have directed the present petitioner to reconstruct the loan accounts has refrained from entertaining appeals.

7. The documents produced by the petitioners are not adjudicated by the Cooperative Court in its order, however, the only caution is given to the petitioners to consider the original receipts/documents that would be produced by the Disputants before taking any action against the petitioners.

8. In view of that, I do not think it

necessary to interfere in the present Writ Petitions, however, one clarification is necessary in Writ Petition No.8332 of 2016 and 8334 of 2016 to the effect that the liquidator shall consider the documents, that would be produced by the disputants before it and shall consider the said documents and thereafter reconstruct the loan accounts and still if it finds that there is some amount due and payable by the respondents, then only shall proceed against the Disputants in accordance with law. This clarification is being given in Writ Petition Nos.8332 and 8334 of 2016, because such order is not passed in Disputes concerned in the said Writ Petitions.

9. With the above clarification, all the Writ Petitions are disposed of. No costs.

(S.V.GANGAPURWALA, J.)