

THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4005 OF 2016
WITH
WRIT PETITION NO. 4006 OF 2016

M/s Ankit Plastics Pvt. Ltd. and others .. Petitioners

versus

Deogiri Nagari Sahkari Bank Limited and ors. .. Respondents

Mr. K. C. Sant, Advocate h/f Mr. D. D. Choudhari, Advocate for the petitioners

Mr. S. V. Adwant, Advocate for respondent no. 1

Mr. M. B. Bharaswadkar, Assistant Government Pleader for respondents no. 2 and 3.

CORAM : SUNIL P. DESHMUKH, J.

Date : 16th August, 2017

ORDER :

1. Heard learned counsel for the petitioners, learned counsel for respondent no. 1 and learned Assistant Government Pleader for respondents no. 2 and 3.

2. Petitioners pose a challenge to the remand order passed by revisional authority – Divisional Joint Registrar, Co-operative Societies, Aurangabad, on 06-11-2015 in review applications no. 17 of 2013 and 18 of 2013.

3. It appears that proceedings under section 101 of the Maharashtra Co-operative Societies Act, 1960 initiated by respondent no. 1 against the petitioners have been opposed on the ground that there are various aspects and disputed questions arising in the matter which would trial and having regard to rule 86-E of the Maharashtra Co-operative Societies Rules, 1961, the authority deciding such proceedings would not be able to proceed with the matter.

4. According to learned counsel Mr. Sant, it had been properly held by Deputy Registrar (Co-operative Societies), Aurangabad that there are disputed questions of facts and therefore returned the papers to respondent-bank for filing dispute before appropriate forum, however, the revisional authority has remitted the matter to the Deputy Registrar (Co-operative Societies) again for reconsideration, erroneously observing that the Deputy Registrar (Co-operative Societies) had not properly scanned the documents. He submits that certain observations appearing in the order of remand are likely to hamper petitioners' interest and may foreclose their resistance on the ground that looking at that the defence being taken in the proceedings, since rule 86-E would not let

the parties to cross examine the witnesses which would be possible under a regular trial, would be taken away.

5. Learned counsel for respondent no.1 – bank Mr. Adwant, however, submits that there are various documents indicating that there has been a loan sanctioned and relationship between petitioners and respondent no. 1 of debtor and borrower emerges between the parties. He submits that the petitioners are trying to an easy way out to avoid them from action under section 101 proceedings by making allegations. There is not only relationship of debtor and creditor but there is also disbursement of loan and as such liability to repay to the respondent-bank by the petitioners cannot be whisked away by simply saying there are disputed questions. The Registrar (Co-operative Societies) had generally gone through the objections taken to section 101 proceedings save one purportedly referred to in the order by him. He submits that the documents show liability of petitioners to repay loan to respondent-bank.

6. Both the sides purported to rely on certain decisions. Petitioners in support of their contention refer to the case of *Top Ten, A partnership firm and another vs. State of Maharashtra and other* reported in 2012 (1) Mh. L. J. 347 and submit that having regard

to observations therein the trial shall ensue and is imminent as defence of petitioners cannot be foreclosed merely by production of accounts.

7. Whereas, learned counsel for respondent no. 1 refers to decision of the supreme court in the case of *Priyanka Srivastava and another vs. State of Uttar Pradesh and others*, reported in (2015) 6 SCC 287 and places emphasis on paragraph 1 of the same. He submits that the observations in this judgment would apply on all fours to the facts in the present matter as the petitions and the petitioners are devoid of honesty.

8. Be that as it may, looking at that by the order impugned, the revisional authority has only remitted the matter for reconsideration without putting any barrier for defences being taken by the petitioners and as such, writ petitions do not require consideration.

9. In the circumstances, writ petitions are not being entertained and are dismissed, making it clear that it would be open for the parties to take up all defences as are possible including one taken before this court by petitioners about maintainability of proceedings u/s. 101 of Maharashtra Co-

operative Societies Act, 1960 against petitioners under the circumstances referred to by petitioners and the authority may take the same into consideration while deciding the matter.

SUNIL P. DESHMUKH
JUDGE

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