IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5939 OF 2012

Changdeo s/o Kisan Bargal,
Age: 34 years, Occ: Nil,
R/o. At post Sonai, Tq. Newasa,
Dist. Ahmednagar. ..PETITIONER

VERSUS

1. The State of Maharashtra
Through its Principal Secretary
Co-operative Marketing and
Textile Department, Mantralaya,
Mumbai-32.

2. The District Deputy Registrar,
Co-operative Societies,
Ahmednagar

3. The Joint Registrar,
Co-operative Societies,
Nashik Division,
Nashik

4. The Deputy Registrar,
Co-operative Societies,
Nagar Taluka, Nagar,
Ahmednagar

5. Raosaheb Patwardhan Credit
Co-operative Society Ltd.,
Ahmednagar, Branch at Sonai,
Tq. Newasa, Dist. Ahmednagar,
Through its Manager/Chairman

6. Ratnakar Pandharinath Badakh,
Age: 47 years, Occu: Manager,
R/o. Sukhsagar Colony,
Near Wani Nagar, Pipeline Road,
Ahmednagar, Dist. Ahmednagar

7. Raosaheb Patwardhan Credit
Co-operative Society Ltd.(old name)
Pravara Nagri Sahakari Patasanstha
Maryadit, (new name)
Branch at Pipeline Road,
Ahmednagar, Dist. Ahmednagar,
Through its Administrator ..RESPONDENTS

Mr A.C. Darandale, Advocate for petitioner;
Mr S.M. Ganachari, A.G.P. for respondent Nos. 1 to 4;
Mr Ajinkya Deshmukh, Advocate h/f Mr A.V. Hon, Advocate for respondent Nos. 5 to 7

WITH
WRIT PETITION NO.6029 OF 2012

Pankaj s/o Dattatray Chintamani,
Age: 32 years, Occ: Service,
R/o. Plot No.55, Waiduwadi Chouk,
near Maruti Temple, Savedi,
Ahmednagar. ..PETITIONER

VERSUS

1. The State of Maharashtra
Through The Principal Secretary
Cooperation Department,
Mantralaya, Mumbai-32.

2. The Joint Registrar,
Co-operative Societies,
Nashik Division,
Nashik

3. Deputy Registrar,
Co-operative Societies,
Ahmednagar

4. Raosaheb Patwardhan Co-operative
Credit Society Ltd., Pipeline
Road, Savedi,

Through its Manager,
Ratnakar Pandharinath Badakh,
Age: 55 years, Occu: Service
R/o. As above

5. Raosaheb Patwardhan Credit
Co-operative Society Ltd.(old name)
Pravara Nagri Sahakari Pata sanstha
Maryadit (new name)
Branch at Pipeline Road,
Ahmednagar, Dist. Ahmednagar,
Through it's Administrator ..RESPONDENTS

WITH
WRIT PETITION NO.6037 OF 2012

Anil Narsinha Chintamani,
Age: 51 years, Occ: Business,
R/o. Lahane Galli, Nalegaon,
Dist. Ahmednagar ..PETITIONER

VERSUS

1. The State of Maharashtra
Through The Principal Secretary
Cooperation Department,
Mantralaya, Mumbai-32.

2. The Joint Registrar,
Co-operative Societies,
Nashik Division,
Nashik

3. Deputy Registrar,
Co-operative Societies,
Ahmednagar

4. Raosaheb Patwardhan Co-operative
Credit Society Ltd., Pipeline
Road, Savedi,
Through its Manager,
Ratnakar Pandharinath Badakh,
Age: 55 years, Occu: Service
R/o. As above

5. Raosaheb Patwardhan Credit
Co-operative Society Ltd.(old name)
Pravara Nagri Sahakari Pata sanstha
Maryadit (new name)
Branch at Pipeline Road,
Ahmednagar, Dist. Ahmednagar,
Through it's Administrator ..RESPONDENTS

Mr A.C. Darandale, Advocate h/f Mr N.P. Ghanwat, Advocate for petitioners;
Mr S.M. Ganachari, A.G.P. for respondent Nos. 1 to 3;
Mr Ajinkya Deshmukh, Advocate h/f Mr A.V. Hon, Advocate for respondent Nos. 4 & 5

CORAM : NITIN W. SAMBRE, J.

DATE : 4^{th} SEPTEMBER, 2017

ORAL ORDER :

In all these petitions, the petitioners claimed to be employees of respondent No.7-credit society. Respondent No. 7 proceeded against the present petitioners pursuant to the provisions of Section 101 of the Maharashtra Co-operative Societies Act for issuance of recovery certificate by taking out appropriate proceedings before Deputy Registrar (Co-operative Societies), Ahmednagar.

2. It appears that present proceedings had a chequered history as this appears to be second round of litigation. However, suffice it to observe that the claim of respondent No.7 employer for issuance of recovery certificate was rejected by the Deputy Registrar vide order dated 28th February, 2011. The said order was subject matter of challenge in three revisions preferred before Divisional Joint Registrar (Co-operative Societies) Nashik, wherein the order passed by the Deputy Registrar (Co-operative Societies) refusing to issue recovery certificate in exercise of powers under Section 101 of the Maharashtra Co-operative Societies Act was assailed. The revisional authority after considering the claim, partly allowed all three revisions and directed the Deputy Registrar (Co-operative Societies), who is vested with the powers under Section 101 of the Maharashtra Co-operative Societies Act to re-conduct inquiry and pass fresh order. As such, these petitions.

3. Heard respective Counsel for some time. My attention is invited to the reply filed by respondent-Co-operative Society and application seeking production of certain documents in relation to the alleged loan transaction between the petitioner and respondent No.7. The prayer made in the application for production of the document was resisted by respondent No. 7 stating that the documents of which details are sought to be produced before the authority are spoiled/destroyed due to heavy rain, however, audit report is sought to be relied upon for that purpose.

4. In addition, learned Counsel for the petitioner would invite attention of this Court to the Division Bench judgment of this Court in the matter of ***Top Ten, a partnership Firm and another vs. State of Maharashtra and others,*** reported in ***2012(1) Mh.L.J. 347*** so as to submit that the powers exercised under Section 101 of the Maharashtra Co-operative Societies Act do not contemplate detail investigation/inquiry. According to him, the

Division Bench has observed that the wordings 'arrears and due' as are appearing in Section 101 of the Maharashtra Co-operative Societies Act pre-supposes adjudication on the arrears and dues, if any. He would rely upon paragraphs-18 to 21 of the above referred judgment in the matter of ***Top Ten, a partnership Firm and another,*** which read thus :

> *"18. Use of both words i.e., "arrears and due" together in Section 101 is itself manifestation of very limited inquiry felt necessary under Section 101 before issuing the certificate. In plain English, both words may be synonymous. New Oxford Advanced Learner's Dictionary gives following meaning of these words. "Arrears" means a money which has not been paid at right time. "Due" is stated to mean it must be paid immediately, owed to somebody as it is their right or they have done something to deserve it. In Chambers 20th Century Dictionary, word "Arrear" means that which remains unpaid or undone. Word "Due" means - owed, that ought to be paid to another. Blacks Law Dictionary (9th Ed.) states "Arrears" means the state of being behind*

in payment of a debt or the discharge of an obligation, an unpaid or overdue debt, Word "Due" means immediately enforceable, owing or payable, constituting a debt. Advanced Law Lexicon by P. Ramanatha Aiyyar 3rd. Ed. also shows same meaning of word "Due". It also points out that said word has different meanings and that meaning has to be put on it which fits in with the context. Meaning of arrears shows that which remains unpaid though due. T.P. Mukherjee's Law Lexicon states "Arrears" means payment remaining unpaid at the due time. It also explains "due" to mean amount which has matured and is in arrears.

1975 Mh.L.J.(SC) 22 = AIR 1974 S.C. 1613 (Dhan Singh Ramkrishna Chaudhuri v.Laxminarayan Ramkrishan) shows that arrears means money unpaid at due time. Here, it is beyond doubt that both these words do not signify same state of affairs i.e., non-payment. Word "Due" therefore is not duplication of what is conveyed by word "arrears". It indicates that amount which is found or determined to be outstanding and hence, recoverable. Thus statement of accounts and other facts essential under Rules to be disclosed by the concerned

Society and to be looked into by the Registrar reveal that said amount of arrears has to be "due" i.e., payable. This quasi-judicial exercise is made final by legislature and not kept open under Section 91 only because of possibility of determination of the limited aspect about arrears due without adjudication on any disputed questions of facts. Such factual disputes can not and have not been subjected to and fall out side the procedure under Section 101. Thus, either the arrears are already declared due by some authority or then can be ascertained on the basis of statement of accounts and other material on record by Registrar. Moment it is demonstrated to Registrar that a bonafide and genuine defense about said arrears is raised which calls for a finding on disputed facts, need for cross examination surfaces and Section 101 ceases to apply. Procedure laid down for enquiry under Section 101 itself manifests said legislative intention. It can not be even urged that legislature made that certificate final while denying the right to dispute the facts cardinal for its determination and intended to fasten the recovery as liability upon a person having *bonafide and valid defence. Section 101(2) again indicates this as it expects the Registrar to be satisfied about the failure of concerned society to take steps under its Sub-section (1) in respect of any amount "due as arrears".*

19. Thus very small types of disputes in which only limited question is of quantification of arrears due, is to be looked into by such Registrar while undertaking enquiry under Section 101. Importance therefore, is to statement of accounts. The enquiry undertaken is only aimed at ascertaining whether amount disclosed in statement of accounts as arrears, is correct and due. The limited opportunity of defence is, therefore, extended to the borrower like petitioners. The correctness of amount shown as arrears can be verified from the accounts and from accounts of the society and from receipts produced by other side. Denial of cross examination in this situation only shows legislative intent that if a genuine and disputed question of facts is found arising by the Registrar, he cannot proceed to resolve that question. The concerned society, in such circumstances, has to take *recourse to filing of a dispute under Section 91, where such disputed questions can be gone into. Hence, a bonafide defence being raised by a borrower or other person against whom such certificate is sought, cannot be resolved by the Registrar under this jurisdiction. If he finds such dispute arising, he has to deny the recovery certificate by passing appropriate judgment under Rule 86F.*

In Ramchandra and another .vrs. Collector, Nagpur and others (supra), the Division Bench of this Court has looked into the provisions of Section 137. Section 137 [1] was earlier a provision pari materia with provisions of Section 101. Section 137[1] enables the Registrar to make such enquiry 'as he deems fit.' Section 101 was also containing same phrase till 10.05.2006. On that date, the said words have been replaced and Registrar, is obliged to conduct enquiry in such manner as may be prescribed. Thereafter, Chapter VIII-A has been added to 1961 Rules, prescribing the mode of enquiry. Thus, said Division Bench judgment is no longer relevant for interpreting the scheme of Section 101. Paragraph 26 of this Division

Bench judgment on which the petitioners have placed reliance, however, does not show any express finding about need of extending an opportunity of cross examination. Moreover, there is no provision either in 1960 Act or in 1961 Rules, prohibiting such cross examination in Section 137 enquiry. This judgment, therefore, is of no assistance in present situation.

20. We may now briefly refer to some other judgments which may have bearing on the present adjudication.

In 2011 (2) LJ Soft (URC) 166 (Ravindra Waman Ingle .vs. Sahakar Mitra), the learned Single Judge of this Court has held that when dispute under Section 91 is already instituted before application under Section 101 came to be filed, the Registrar has to take into account said factor to find out the desirability of continuing Section 101 proceedings.

In 2010 (7) Mh.L.J. 538 = 2010 (6) All MR 550 (Sundeep Polymers Pvt Ltd. .vrs. State of Maharashtra), the Division Bench has found that when Registrar issues *certificate ex-parte, without following the procedure prescribed in Chapter VIII-A of 1961 Rules, the certificate is unsustainable.*

In 2011 (2) Mh.L.J. 194 (Vithal Laxman Fatangade and another .vrs. State of Maharashtra and others), the learned Single Judge of this Court has found recovery certificate issued without following due procedure and ensuring proper notice to opponents, as bad.

21. We have not seen any repugnancy or inconsistency inter-se between Section 91 and Section 101 of 1960 Act. Section 91 is a general remedy and general law covering all disputes; while Section 101 governs extremely a small type or nature therefrom, where only possible dispute is about the quantum of arrears demonstrated to be due. If any other type of dispute requiring an adjudication arises, it is not possible for the Registrar or his delegate functioning under Chapter VIII-A to entertain such application and the application in that event needs rejection. The concerned society has then to move the Cooperative Court under Section 91 for said recovery.

Language of both the provisions is plain and unambiguous and both the provisions can be construed harmoniously in this manner. Both the provisions begin with non obstante clause and do not militate with each other, but proceed to advance the legislative intention of enabling a society to have a speedy remedy for recovery of arrears due as land revenue. Therefore, only the legislature has envisaged very limited verification, which even does not call for any cross examination of either of the parties. The express bar of such cross examination under Rule 86E is because of this very narrow scope of enquiry open to the Registrar under Section 101 read with Chapter VIII-A of 1961 Rules. As already held above, if the scope of enquiry is required to be enlarged, the legislative intent will itself get frustrated. If the Registrar or his delegate finds disputed questions of facts, genuinely arising in such proceedings, and the same cannot be resolved without cross examination, it is apparent that the application under Section 101 itself cannot be entertained. In that event it has to be held that claim made by the concerned applicant-society is not in respect of arrears due to it as envisaged *under Section 101 of the 1960 Act."*

5. According to him, in the wake of above adjudication as is ordered by learned Deputy Registrar (C.S.) while rejecting the claim for issuance of recovery certificate under Section 101 is just and proper, as appropriate remedy to the present respondent-Co-operative Society is that of one under Section 91 by preferring Dispute before the Co-operative Court.

6. Per contra, learned Counsel for the respondent-Co-operative Societies would urge that the claim for recovery, particularly issuance of certificate under Section 101 is based on the audit report findings. Such audit report has statutory recognition under Section 81 of the Maharashtra Co-operative Societies Act, 1960. According to him, once the auditor, upon scrutiny, noticed that certain amount towards loan is due against the petitioner, same can always be formed basis for issuance of recovery certificate. According to him,

based on same, it is always open for the Deputy Registrar (C.S.) to issue certificate for recovery of the amount and as such, the order of remand passed by the Divisional Joint Registrar is just and proper.

7. Considered rival claims. The fact that the documentary evidence which could demonstrate that the present petitioner had obtained financial assistance from respondent No.7 is admittedly not available for perusal, consideration and analysis of the authority, so as to record findings that there exists legally payable dues and arrears against the present petitioner. In case, the petitioner would have admitted the liability but disputed the quantum, the Authority could have taken into account the documentary evidence for determining the same.

8. Apart from above, the fact remains that Deputy Registrar while refusing to issue certificate under Section 101 of the Maharashtra

Co-operative Societies Act has taken note of non-availability of loan record and further noticed that there exists disputed question of facts. In the matter of liability, the present petitioners to repay the alleged amount of loan, particularly, when the liability was disputed by the petitioners, remedy under Section 91 of the Maharashtra Co-operative Societies Act appears to be only viable. The fact remains that apart from audit notes, there is no other material to summarily adjudicate outstanding dues to be paid by the present petitioners. The audit report is formed to be basis by co-operative banking institution. A party in compliance with the principle of natural justice and statutory rights can always seek production of documents so as to establish the claim by Co-operative institution as regards outstanding arrears and dues. Same can be done only in dispute under Section 91 of Maharashtra Co-operative Societies Act and not under proceedings under Section 101 of the said Act.

9 So far as proceedings under Section 101 of the Maharashtra Co-operative Societies Act are concerned, what was expected of the authority is to decide outstandings to be recovered from the borrower, unless there are already finding recorded by any authority on the issue of such arrears. While taking recourse to proceedings under Section 101 of the said Act, what is expected of the authority is, the authority must consider the record for reaching to a conclusion that there exists arrears due. The enquiry under Section 101 contemplates a very restrictive enquiry and bona fide defence, if any, raised by the borrower against whom the certificate is sought to be issued, is required to be looked into. It is always open to the Registrar to reach to a conclusion that the dispute cannot be resolved before him and he may direct the parties to take recourse to the provisions of Section 91 of the said Act. The scope of enquiry under Section 101 of the said Act cannot be widened and when it comes to recording of evidence, the fact remains that the

provisions of Section 101 of the Act cannot be taken recourse to.

10. In the present case, respondent-financial institution has in clear terms admitted that the documents which are basis for inferring loan transaction between the petitioners and respondent - financial institution are destroyed. In such eventuality, in my opinion, Deputy Registrar, while passing order refusing to issue recovery certificate was justified in relegating the parties to the Co-operative Court so as to establish the recoverable claim under Section 91.

11. Learned Counsel for the petitioners is right in inviting attention of this Court to the judgment of the Division Bench of this Court in the aforesaid matter, particularly paragraphs-18 to 21 thereof, as narrated herein before.

12. In the backdrop of aforesaid observations made in foregoing paragraphs, in my opinion, the issues raised can be ably decided by the

Co-operative Court, particularly, reasons for which, the parties were relegated to the Co-operative Court. For the purpose of establishing the claim for recovery of amount of loan, order of the Registrar appears to be just and proper of relegating the parties to the dispute.

13. In view of above, in my opinion, the impugned order passed by the Divisional Joint Registrar, Co-operative Societies, Nashik Division, Nashik on 24th May, 2012 in Revision Application No. R-Nil of 2011 (Raosaheb Patwardhan Nagari Sahakari Patsanths Limited, Pipe Line Road, Ahmednagar vs. Mr. Changdeo Kisan Bargal & ors) and other two companion revisions is not sustainable and as such is quashed and set aside and it is ordered that the parties shall be governed by the order dated 28th February, 2011 and 30th August, 2011 passed by the Deputy Registrar, Co-operative Societies, Ahmednagar in Recovery Proceedings Nos.1284 of 2007, 1286 of 2007 and 1285 of 2007.

14. It is made clear that respondent No.7 – Co-operative Society will be at liberty to approach the Co-operative Court with a Dispute under Section 91 of the Maharashtra Co-operative Societies Act for recovery of its dues.

15. Time spent in prosecuting the present proceedings be considered, in case issue of limitation is raised.

16. With above observations, writ petitions are disposed of.

(NITIN W. SAMBRE, J.)

Tupe