

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

924 WRIT PETITION NO.10393 OF 2012

Pramod Dattatraya Kand ... **Petitioner**

Versus

State of Maharashtra & others ... **Respondents**

...
Mr. A.C.Darandale, Advocate for Petitioner
Mrs.V.N.Patil-Jadhav, AGP for Respondent Nos.1 to 3
Mr. S.D.Munde h/f Mr. R.R.Karpe, Adv. for Respondent Nos.4 & 5
Mr. P.S.Dighe, Advocate for Respondent No.6
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CORAM : T.V.NALAWADE, J.

DATED : 4th July, 2017

PER COURT :-

1. The petition is filed to challenge the order made by Assistant Registrar Co-operative Societies, Ahmednagar, in a proceeding No.1877/2006. The said proceeding was filed by Respondent / Co-operative Society for getting certificate under Section 101 of the Maharashtra Co-operative Societies Act, 1960. The certificate issued by the Assistant Registrar was challenged by filing Revision Application before Divisional Registrar, Co-operative Societies, Nashik. The revision application came to be dismissed as

50% of the amount due to the society was not deposited by the present petitioner. Thus, the revision was not entertained and it was not decided on merit. In spite of these circumstances, the order made by Revisional Authority is challenged in the present proceeding. Both sides are heard.

2. It appears that, before the Assistant Registrar, present petitioner did not file reply to the application filed by Co-operative Society. Instead of filing reply, the petitioner made an application and requested to stay the proceeding as he had given a complaint to police against the office bearers of Co-operative Society to the effect that they had created false record of loan. Respondent No.2 in the said proceeding, the wife of present petitioner Smt. Vidya had filed reply and she had denied that, she had signed on the record of surety.

3. After considering the record, account extract, the contents of the application and other record like affidavit filed in support of the contents of the application certificate is issued by the Assistant Registrar.

4. The learned counsel for the petitioner submitted that, there is a manipulation of record and when application was made for

getting credit loan of Rs.50,000/-, by scoring the figure and by doing over writing, the amount is shown as Rs.5,00,000/-. It was submitted that the amount shown to be withdrawn from that account was not actually withdrawn and so these aspects ought to have been considered by the Assistant Registrar. He placed reliance on the provision of Rule 86-E of Maharashtra Co-operative Societies Rules, 1961 and observations made by Division Bench of this Court in case reported in “***Top Ten, A Partnership Firm & another Vs. State of Maharashtra & others, [2012(1) Mh.L.J., 347]***”. This court has carefully gone through the observations made by this court. The observations were with regard to different context and the right of the opponent to cross-examine the witness who had filed the affidavits. Observations are also made with regard to the nature of power given to Assistant Registrar, who is considering the matter of issuing certificate under Section 101 of the Act. It is observed by this Court that, the power is limited to the dispute where only the quantum of arrears is in dispute. It is observed that, when the Assistant Registrar finds that, there is another “genuine” dispute which is not covered by Section 101, then such dispute cannot be entertained and the Assistant Registrar needs to direct the parties to take the dispute before Co-operative Court under Section 91 of the Act. There cannot be any dispute over this proposition. The provision shows that, it is

subjective satisfaction of the Assistant Registrar on the basis of which certificate needs to be issued and finding as to whether the dispute is “genuine” as mentioned in the Rule also needs to be given by Assistant Registrar. In this matter, the Assistant Registrar formed opinion that, such dispute was not made out and so he decided the matter on the basis of the material before him. Considering all these aspects, whether the Assistant Registrar ought to have directed the parties to go to the Co-operative Court could have been considered by the Revisional Authority. That remedy is not availed as the matter itself was not entertained by Revisionary Authority. In view of these circumstances, it can be said that, the appropriate remedy is not availed and on factual aspects in the present matter also, there is no possibility of interference.

5. When the certificate was issued on 16.03.2007 the proceeding before the Joint Registrar was filed in the year 2011 and further the present petitioner had not filed reply to make aforesaid contentions before the Assistant Registrar. Submission was made that the petitioner was founder member of the respondent/co-operative society and for many years he was Director of society. He is admitting that, he had made an application for loan though he is contending that, the amount was only Rs.50,000/-. Even when he is

admitting that, he had made an application for loan of Rs.50,000/-, he is contending that, the signature of his wife appearing on record was not made by her. In view of the nature of defence taken by him, it can be said that, the other defences are imaginary and he tried to create only complications to see that, the certificate was not issued by the Assistant Registrar. He got almost 10 years by playing such tactics.

6. In view of above, this Court holds that, it is not possible to interfere in the order made by the learned Assistant Registrar, which is on merits. The petition stands dismissed. Amount already deposited in this Court by petitioner is to be handed over to the Respondent / Co-operative Society. The observations are for the purpose of present proceedings.

(T.V.NALAWADE, J.)

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