

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1430 OF 2016

Santosh Anand CHS Ltd. ... Petitioner
Vs.
Shankar M. Raje ... Respondent

WITH
WRIT PETITION NO.1431 OF 2016

Santosh Anand CHS Ltd. ... Petitioner
Vs.
Mohan Shankar Menon ... Respondent

Mr. V. Y. Sanglikar for Petitioner in both the Petitions.
Mr. A. A. Siddiqui for Respondent in both the Petitions.

CORAM : R. G. KETKAR, J.
DATE : MARCH 17, 2017

P.C. :

Heard Mr. Sanglikar, learned Counsel for petitioner and Mr. Siddiqui, learned Counsel for respondent in both the Petitions at length.

2. Writ Petition No.1430 of 2016 takes exception to the judgment and order dated 15.09.2015 passed by the learned Member, Maharashtra State Co-operative Appellate Court at Mumbai (for short 'appellate Court') in Appeal No.56 of 2015. By that order, the appellate Court allowed the appeal preferred by the respondent, hereinafter referred to as 'member', and quashed and set aside the judgment and order dated 07.07.2015 passed by the learned Judge, Co-operative Court No.2, Mumbai in Dispute No.13 of 2014. The appellate Court remitted the matter to the Co-operative Court for its decision according to law. By order dated 07.07.2015, the Co-operative Court had allowed the application exhibit-9 made by the petitioner, hereinafter referred to as

'society', under Section 9-A and Order VII, Rules 10 and 11 of the Code of Civil Procedure, 1908 (for short 'C.P.C.') and held that Co-operative Court has no jurisdiction to entertain and try the dispute filed by the member.

3. Writ Petition No.1431 of 2016 takes exception to the judgment and order dated 15.09.2015 passed by the appellate Court in Appeal No.57 of 2015. By that order, the appellate Court allowed the appeal preferred by the respondent, hereinafter referred to as 'member', and quashed and set aside the judgment and order dated 07.07.2015 passed by the learned Judge, Co-operative Court No.2, Mumbai in Dispute No.14 of 2014. The appellate Court remitted the matter to the Co-operative Court for its decision according to law. By order dated 07.07.2015, the Co-operative Court had allowed the application exhibit-9 made by the society, under Section 9-A and Order VII, Rules 10 and 11 of 'C.P.C.' and held that Co-operative Court has no jurisdiction to entertain and try the dispute filed by the member.

4. Rule. Mr. Siddiqui waives service. Having regard to the narrow controversy raised in these Petitions as also at the request and by consent of the parties, Rule is made returnable forthwith and the Petitions are taken up for final hearing. As the common questions of law and fact arise in these Petitions, the Petitions can conveniently be disposed of by this common order. For appreciating the controversy raised between the parties in these Petitions, facts from Writ Petition No.1430 of 2016 are considered.

5. Society initiated recovery proceedings against the member under Section 101 of the Maharashtra Co-operative Societies Act, 1960 (for short 'Act'). On 04.08.2004, recovery certificate was issued by the

Deputy Registrar, Co-operative Societies, MHADA, Mumbai. Initially, member instituted Suit No.3766 of 2004 in the City Civil Court challenging the recovery certificate. By order dated 10.08.2004, the Suit was dismissed. Aggrieved by that decision, Member instituted Writ Petition No.2440 of 2004 in this Court, which was also dismissed on 01.11.2004. Member thereafter instituted revision application challenging the recovery certificate dated 04.08.2004. By order dated 15.01.2009, Divisional Joint Registrar set aside the order dated 04.08.2004 and remitted the matter to the Deputy Registrar. It is not in dispute that the order dated 15.01.2009 passed by the Divisional Joint Registrar was not challenged either by the society or by the member.

6. Member thereafter instituted dispute under Section 91 of the Act on 24.12.2013 challenging the bills for maintenance issued by the society. Society filed application under Section 9-A read with Order VII, Rules 10 and 11 of C.P.C. challenging the maintainability as also jurisdiction of the Co-operative Court on the ground that powers of the Co-operative Court under Section 91 are distinct and different from the exercise of jurisdiction by the Registrar under Section 101 of the Act. By order dated 07.07.2015, the learned trial Judge upheld the objection and held that it has no jurisdiction to entertain and try the dispute. Aggrieved by that decision, member preferred appeal before the appellate Court. By the impugned order, the appellate Court allowed the appeal and remitted the matter to the trial Court for deciding the dispute in accordance with law. It is against this order, society has instituted the present Petition.

7. In support of this Petition, Mr. Sanglikar invited my attention to the prayers made in the dispute. He submitted that perusal of the prayers made by member clearly shows that member has challenged 3 bills at exhibit-B for the months of October to December 2013 with the past

arrears as shown therein. Member has also prayed for issuing direction to the society to give the true and correct accounts of the amounts since May 1977 upto December 2013. Mr. Sanglikar submitted that prayers made in the dispute and the proceedings initiated by the society for issuing recovery certificate under Section 101 are overlapping. In other words, he submitted that the amounts covered by the bills, which are challenged by the member in the dispute, are covered by the recovery certificate proceedings. He submitted that in the case of ***Vijay Vs. S. M. J. N. S. P. S. Maryadit*, 2010 (4) Mh.L.J. 381**, the Division Bench of this Court has considered the decision of the learned Single Judge of this Court in ***Uttam Vs. O. J. Sahakari Bank Limited*, 2010 (1) Mh.L.J. 641** and it was observed that the learned Single Judge in ***Uttam*** (*supra*) had placed reliance on the judgments referred hereinabove to hold that powers of Co-operative Court under Section 91 are distinct and different from the exercise of jurisdiction by the Registrar under Section 101 of the Act. In paragraph 24, the Division Bench recorded a categorical finding that the legality of the proceedings under Section 101 of the Act as also legality of a certificate issued under the said Section, cannot be challenged by filing a dispute under Section 91. He also relied upon the following decisions of this Court:

- a. ***Kedarling Vikas Seva Scy. Ltd. Vs. Dinkar Bhimrao Raut*, 2003 (1) ALL MR 66**; and
- b. ***Vasant Vs. B.O.I. S.S. Co-op. Hsg. Socy. Ltd.*, 2004 (4) Mh.L.J. 1093**.

8. Mr. Sanglikar has tendered statements showing dues outstanding as on 31.03.2017 in respect of both the members. The same are taken on record and marked 'X colly.' for identification. He submitted that in November 2004, member Raje had deposited Rs.89,439/-. Member Menon had deposited Rs.1,06,567/- in November 2004. After November 2004, both the members have not deposited any amount

towards maintenance charges. He submitted that as the prayers made in the dispute are covered by proceedings initiated under Section 101 of the Act, the dispute instituted by the members is not maintainable and the appellate Court committed serious error in interfering with the order passed by the trial Court.

9. On the other hand, Mr. Siddiqui supported the impugned order. He submitted that in the present case, admittedly, recovery certificates were issued on 04.08.2004. Aggrieved by this decision, members instituted revision applications before Divisional Joint Registrar. By order dated 15.01.2009, Divisional Joint Registrar remitted the matter to the Deputy Registrar. In other words, after setting aside the recovery certificates dated 04.08.2004, the matter was remitted to the Deputy Registrar. Recovery certificates are not in existence in the eyes of law. It, therefore, cannot be said that the amounts in the bills challenged by the members are part of the recovery certificates.

10. Mr. Siddiqui also relied upon the decision of the learned Single Judge of this Court in **Uttam's case** (*supra*) wherein it is held that where the dispute was filed prior to issuance of recovery certificate and at the stage when recovery proceedings were initiated and the same were in progress, the dispute under Section 91 is maintainable. He, therefore, submitted that no case is made out for invocation of powers under Article 227 of the Constitution of India.

11. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. From the material on record, following facts are not in dispute:

a. Society had initiated recovery proceedings against the members before the Deputy Registrar Co-operative Societies under Section 101 of

the Act. On 04.08.2004, recovery certificates were issued. Members instituted revision applications before the Divisional Joint Registrar and the Divisional Joint Registrar set aside the orders dated 04.08.2004 and remitted the matter to the Deputy Registrar. In my opinion, as the Divisional Joint Registrar has set aside the orders dated 04.08.2004 that clearly means the recovery certificates issued under Section 101 of the Act are set aside. It is also not in dispute that the recovery proceedings initiated under Section 101 of the Act are pending before the Deputy Registrar.

12. In the case of **Vijay** (*supra*), Division Bench of this Court considered the decision of **Uttam** (*supra*) rendered by the learned Single Judge. In paragraphs 23 and 24, it is observed thus,

“23. The last judgment on which reliance is placed by the learned Counsel for the appellants is that of a learned Single Judge of this court, in the case of *Uttam s/o. Pandurang Sabde and others Vs. Osmanabad Janta Sahakari Bank Ltd., Latur and another* (2010(1) Mh.L.J. 641). The learned Single Judge has placed reliance on certain observations made in the judgment referred to herein above, to hold that powers of Cooperative Court under Section 91 are distinct and different from the exercise of jurisdiction by the Registrar under Section 101 of the Act. In the facts of the case before the learned Single Judge, a dispute was filed under Section 91 by the borrower for settling the accounts, when no recovery certificate was issued under Section 101 of the Act and hence, the question as to whether a certificate issued under Section 101 can be questioned by filing a dispute under Section 91, did not arise for consideration of the learned Single Judge. The judgment rendered by the learned Single Judge being in different set of facts, has no bearing on the question raised in these appeals. We do not propose to go into the correctness or otherwise of the view taken by the learned Single Judge, as the issue raised before the learned Single Judge is outside the controversy raised in these appeals.

24. For the reasons recorded by us, in the body of this judgment, we have no difficulty in reaching a conclusion, that legality of the proceedings under Section 101 of the Act, so also, legality of a certificate issued under the said Section, cannot be challenged by filing a dispute under Section 91. Hence, the appeals deserve to be dismissed.”

13. A perusal of paragraph 24 extracted hereinabove clearly shows **that the legality of the proceedings under Section 101 of the Act**, so also legality of the certificate issued under Section 101 of the Act **cannot be challenged by filing a dispute under Section 91**. In other words, in dispute filed under Section 91, the legality of the proceedings under Section 101 cannot be challenged.

14. Mr. Sanglikar submitted that the recovery proceedings initiated by the society under Section 101 and the bills challenged by the disputant are overlapping. In other words, the amount specified in the bills challenged by the members in the disputes is covered by the recovery proceedings initiated under Section 101 of the Act. In view of the categorical finding recorded by the Division Bench in paragraph 24, the legality of the recovery proceedings under Section 101 cannot be challenged by filing dispute under Section 91. Prayers (a) to (d) of the dispute read thus,

“(a) That the Hon'ble Court be pleased to declare the 3 bills at Exhibit B herein for the months of October to December 2013 with the past arrears as shown therein are illegal, bad in law and ipso facto null and void and the opponent Nos.1, 2 & 3 are legally not entitled to recover the alleged amount covered by the said 3 bills.

(b) That the Hon'ble Court be pleased to declare that the Opponent Nos.1, 2 and 3 are not entitled to recover any amount for and on behalf of Opponent Nos.4 and 5.

(c) That the Hon'ble Court be pleased to further direct the Opponents to give the true and correct accounts of the amounts as collected by Opponent Nos.1, 2 and 3 for and on behalf of Opponent No.4 and 5 since May 1977 upto December 2013.

(d) That the Hon'ble Court be pleased to restrain the Opponent Nos.1, 2 & 3 by an order of injunction from and in any manner acting upon the 3 bills for the months of October to December 2013.”

15. In view of the statement made by Mr. Sanglikar that the bills

disputed by the members are also covered by the recovery proceedings initiated under Section 101 of the Act, the disputes instituted by the members itself are not maintainable in view of the categorical finding recorded by the Division Bench in paragraph 24 of **Vijay's case** (*supra*). In view thereof, it has to be held that the appellate Court has committed serious error in interfering with the order passed by the learned trial Judge. In my opinion, the learned trial Judge rightly held that the disputes under Section 91 are not maintainable.

16. Apart from that, it has come on record that after depositing amount in November 2004, both the members have not deposited / paid any amount towards society's maintenance charges as is evident from the statements at exhibit 'X' colly. In view thereof also this is a fit case for exercising powers under Article 227 of the Constitution of India. In the light of the aforesaid decision, the impugned orders cannot be sustained, and as such, are liable to be set aside and are accordingly set aside. The orders dated 07.07.2015 passed by the learned trial Judge in both the disputes are restored. Disputes filed by the members stand dismissed. Rule is made absolute accordingly with no order as to costs.

(R. G. KETKAR, J.)

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