IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4574 OF 2016

Mrs. Usha J Uppal : Petitioner.
versus
Deccan Merchants Co-op. Bank Limited and ors. : Respondents

Mr. Vijay D Patil for the Petitioner.

CORAM : R. M. SAVANT, J.
DATE : 10th February 2017

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 18/11/2015 passed by the I/C President of the Maharashtra State Co-operative Court, Mumbai by which order the Appeal filed by the Petitioner came to be dismissed and resultantly the order dated 09/12/2014 passed by the Co-operative Court No.2 came to be confirmed.

2 The Petitioner herein is the wife of the Respondent No.2 herein i.e. Shri Jungbahadur Diwanchand Uppal. The Respondent No.2 is the borrower of a loan from the Respondent No.1 Bank. On default being committed by the Respondent No.2 in the re-payment of the loan amount, that the Respondent No.1 Bank initiated proceedings under Section 101 of the Maharashtra Co-operative Societies Act (for short "the said Act") for recovery of the outstanding loan amount which was in the sum of 1,26,18,866/-. Suffice it would be to

state that the said 101 proceedings culminated in the order dated 30/05/2013 passed by the Deputy Registrar of the Co-operative Societies thereby granting two Recovery Certificates in favour of the Respondent No1 Bank i.e. one for the sum of Rs.9360872/- and the other in the sum of the Rs.1990490/-. It is an undisputed position that Flat No.C-302 in the Respondent No.7 Society was purchased in the joint names of the Respondent No.2 and the Petitioner herein and that they were holding 50% share each in the said flat. A request was made by the Respondent No.1 Bank to put a lien on the flat in question to the Respondent No.7 Society which was turned down by the Respondent No.7 Society. It seems that the Respondent No.2 on 25/02/2013 executed a Gift Deed in respect of his 50% share in favour of his wife i.e. the Petitioner herein.

3 The Respondent No.1 Bank had invoked Section 91 of the said Act and filed a Dispute in the Co-operative Court which has been numbered as Case No.CC/II/217/2013, in the said Dispute the Respondent No.1 inter alia claimed the relief of declaration, that transfer of Flat No.C-302 in favour of the Petitioner (i.e. Opponent No.6 in the said Dispute) is bad in law, a further declaration that the Disputant is entitled to attach the said Flat No.C-302, another declaration that it be declared that the act of Respondent No.7 herein in not registering the lien of the Disputant Bank is bad in law, for an injunction to restrain the Opponent Nos. 1 and 6 in the Dispute (i.e. the Respondent No.2 and the Petitioner herein) from in any way creating third party interest in Flat

No.C-302, and permanent and mandatory injunction restraining the Opponent Nos.1 and 6 in the Dispute (i.e. the borrower and his wife) from disposing of the said flat.

4 To the said Dispute the Respondent No.1 Bank joined the Petitioner herein as Opponent No.6. The Petitioner was impleaded having regard to the reliefs sought in the said Dispute. After the notice was served upon the Petitioner herein, the Petitioner put in her appearance and an application under Section 9A of the Code of Civil Procedure was filed in the said Dispute questioning the maintainability of the said Dispute qua the Petitioner as also questioning the impleadment of the Petitioner on the ground that the Petitioner is neither the borrower nor has got anything to do with the loan transaction between the Respondent No.1 Bank and the Respondent No.2 herein. An objection was also raised on the ground that having regard to the nature of the reliefs sought that the Dispute was not maintainable qua the Petitioner under Section 91 of the said Act. The Respondent No.1 Bank filed its reply to the said application, and justified the filing of the said Dispute and also the arraying of the Petitioner as the Opponent No.6 in the said Dispute.

5 The Trial Court i.e. the Co-operative Court considered the said application and has by its order dated 09/12/2014 rejected the said application. The sum and substance of the reasoning of the Trial Court as can

be seen is that since the reliefs were sought in respect of Flat No.C-302 to the extent of 50% share held by the Respondent No.2 herein who is the borrower of the Respondent No.1 Bank, and since the said share has been gifted by the Respondent No.2 to the Petitioner, that the impleadment of the Petitioner was necessary. The Trial Court has observed in its order that the relief sought as regards declaration of the Gift Deed would not fall within its realm, but seems to have ruled upon the maintainability of the Dispute qua the Petitioner herein on the basis of other reliefs which are sought in the said Dispute.

6 The Petitioner aggrieved by the said order dated 09/12/2014passed by the Co-operative Court challenged the same by way of an Appeal being A.O. No.13 of 2015. The Co-operative Appellate Court has by the impugned order dated 18/11/2015 dismissed the said Appeal as it did not find any reason to interfere with the order passed by the Co-operative Court dated 09/12/2014 having regard to the fact that it is an undisputed position that the Respondent No.2 borrower has transferred 50% of his share in the said Flat No.C-302 in favour of the Petitioner herein and that the reliefs sought in the Dispute are revolving around the said Flat.

7 The learned counsel appearing on behalf of the Petitioner Shri V D Patil would reiterate the case of the Petitioner before the Courts below. It was the submission of Shri V D Patil that the Co-operative Court having expressed

that the relief in respect of the Gift Deed would not be falling within its realm, the Courts below have erred in rejecting the application as also rejecting the Appeal. It was also the submission of learned counsel that the Petitioner has nothing to do with the loan transaction between the Respondent No.2 and the Respondent No.1 Bank, and that the flat in question was not a secured asset of the Respondent No.1 Bank.

8 In my view, it is not possible to accept the contentions of the learned counsel Shri Patil. It is required to be noted that one of the reliefs sought in the Dispute is the relief as regards declaration in respect of the Gift Deed that is is bad in law. There are a number of other reliefs which have been sought by the Respondent No.1 Bank qua the said Flat No.C-302. Amongst the reliefs sought is the relief as regards refusal of the Respondent No.7 Society to put a lien of the Respondent No.1 Bank on the said Flat No.C-302. In the context of the Dispute under Section 91 of the said Act, it is required to be noted that 50% of the share in the said flat was of the borrower who is undisputedly a member of the Respondent No.1 Bank. The said share as indicated above has been transferred by way of a Gift Deed on 25/02/2013 which though is prior to the Certificates granted under Section 101 of the said Act on 30/05/2013. However, there is a close proximity between the Gift Deed executed by the Respondent No.2 in favour of the Petitioner herein and the issuance of the Certificates under Section 101 of the said Act. Obviously the

proceeding for recovery under Section 101 of the said Act were therefore going on when the Gift Deed was executed. It seems that the Respondent Bank had requested the Respondent No.7 Society wherein the flat in question is situated to put a lien of the Respondent Bank on the said flat, which request was turned down by the Society. Hence the Respondent Bank was perforce required to file the Dispute in question wherein it has arrayed the Petitioner as one of the parties and as indicated herein above had also sought various reliefs qua the flat in question. The Petitioner herein on account of the transfer of the 50% share held by the Respondent No.2 to her would therefore qualify as a person claiming through a member i.e. the Respondent No.2.

9 In my view, therefore, as regards the maintainability of the Dispute qua the Petitioner under Section 91 of the said Act as also her impleadment in the said Dispute, no exception could be taken to the orders passed by the Courts below. The issue as regards whether the Disputant i.e. the Respondent Bank would be entitled to any of the reliefs which are sought in the Dispute is concerned, it is for the concerned Co-operative Court to consider the same. This Court does not express any opinion in that respect. Hence by clarifying as above, and in the light of what has been stated herein above, no case for interference in the writ jurisdiction of this Court is made out. The above Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]