

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

923 WRIT PETITION NO. 2472 OF 2018

CHETAN NIRMAL TATIYA
VERSUS
THE ASSISTANT REGISTRAR CO OPERATIVE SOCIETIES,
JALGAON AND ANOTHER

AND
WRIT PETITION NO. 2479 OF 2018

MANISH NIRMAL TATIYA THROUGH GPA NIRMAL
ANANDRAJ TATIYA
VERSUS
THE ASSISTANT REGISTRAR CO OPERATIVE SOCIETIES,
JALGAON AND ANOTHER

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Advocate for Petitioner	: Shri R.R. Mantri,
AGP for Respondent No. 1	: Shri S. K. Tambe
Advocate for Respondent No.2	: Shri A.N. Nagargoje

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CORAM : RAVINDRA V. GHUGE, J.
DATED : 09th March, 2018.

PER COURT :-

1] The petitioners are aggrieved by an order dated 07/02/2018 passed by the Authority under Section 101 of the Maharashtra Co-operative Societies Act, 1960 (For short, the MCS Act, 1960), dated 02/02/2018 in case Nos. 189/2017-2018 and 188/2017-2018 respectively.

2] I have considered the strenuous submissions of the learned Advocate for the petitioners who are identically placed in these identical matters and the learned Advocate for respondent No.2/bank.

3] The learned AGP appears for respondent No.1 in both these matters.

4] I have considered the record available. Two cases under Section 101 of the MCS Act,1960 have been initiated for recovery of loan amount extended to these petitioners in two loan Account Nos.172/23 and 172/24. The bank has granted an amount of Rs. 10,00,000/- (Rupees Ten Lakhs only) and was extended as term loan in each of these accounts on 28/03/2016. As the loan amount was not fully repaid, the proceedings under Section 101 were filed against the petitioners. The thrust of the petitioners' contention is that the learned Division Bench of this Court has decided the matter in Writ Petition No. 11394/2017 between Galaxi Paper Industries, Dhule and the State of Maharashtra and others.

5] I find that these petitioners are neither the

partners nor the directors before the learned Division Bench. An amount of Rs. 50,00,000/- has been deposited by the said Galaxi Paper Industries as a condition on which the learned Division Bench had granted ad-interim protection. Since the business entity before the learned Division Bench is a result of the partnership of the family members, the pendency of the said Writ Petition was made a ground before the competent authority to stay the proceedings under Section 101 of the MCS Act, 1960. Specific applications were filed and the same has been rejected by the impugned orders dated 07/02/2018.

6] The respondent/bank has entered an affidavit-in-reply alongwith certain documents. It is pointed out that the petition pending before the learned Division Bench has no nexus with the proceedings in hand. The issue before the learned Division Bench is with regard to whether proceedings under Section 101 of the MCS Act, 1960 and under Section 13 of the The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, the SARFAESI Act, 2002) could be initiated by a financial institution simultaneously.

7] Upon considering the submissions of the learned Advocates and upon going through the affidavit-in-reply and the record available, I find that issue raised before the learned Division Bench is whether proceedings under Sections 101 of the MCS Act,1960 and under Section 13 of the SARFAESI Act could be simultaneously initiated. The issue in these two petitions is with regard to certain loans taken by Manish Nirmal Tatiya who is the petitioner herein. His guarantor is Chetan Nirmal Tatiya i.e. his brother and one more guarantor is Mr.Jagdish Premchand Jain. In these two cases, besides the proceedings under Section 101 of the MCS Act,1960 as on date, no other proceedings have been initiated. So also, in both these cases, the petitioners themselves have taken loan by which two loan accounts have been created. Whether these loan accounts can be connected with the loan account of M/s. Galaxi Paper Industries Limited or not, is not for this Court to go into as those are disputed questions and these issues can be gone into by the authority which may be empowered to do so.

8] Considering the above, I do not find any reason to

entertain these two petitions. The same are, therefore dismissed.

9] Learned Advocate for the petitioners submits that, the authority under Section 101 of the MCS Act, 1960 should not be influenced by the observations of this Court. I do not find that the apprehension of the petitioner is sustainable. As such, the said authority would surely consider the rival contentions of the parties with regard to the loan accounts while deciding the proceeding under Section 101 of the MCS Act, 1960.

(RAVINDRA V. GHUGE, J.)

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