

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10663 OF 2015
(Janata Sahakari Bank Ltd., Pune and another Vs. Omprakash
Gokulchand Poddar and other)

WITH

WRIT PETITION NO.10774 OF 2015
(Janata Sahakari Bank Ltd., Pune and another Vs. Manibai
Gokulchand Poddar and others)

Mr.S.V.Natu, Advocate for the petitioners.

Mr.T.M.Venjane, Advocate for respondent Nos.1 to 3.

Mr.S.R.Yadav, AGP for respondent No.5.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 25/06/2018

PER COURT :

1. These two matters, being identical and involving the same litigating parties, were heard by this Court on 18/06/2018 and the prima facie view of this Court was recorded in its order which reads as under :

“1. The petitioners are aggrieved by the impugned orders passed by the Revisional Authority under Section 154 of the Maharashtra Co-operative Societies Act. It is pointed out that the revisions filed by the respondents have been allowed since the petitioner Bank has been converted in to a Multi State Co-operative Society, is covered by the Multi State Co-operative Societies Act, 2002 and, therefore, the Certificate issued under Section 101 of the Maharashtra Co-

operative Societies Act, 1960 would not be sustainable.

2. *Learned advocate for the petitioners placed his reliance upon the judgment of this Court in the matter of **Abhyudaya Co-operative Bank Ltd. Vs. State of Maharashtra 2009(4) Mh.L.J. 929** wherein it has been concluded in paragraph No.20 as under :-*

"20. Section 84 of the Multi State Act would apply to cases which are to be instituted under the said Act. It does not apply to cases which have already been instituted another Act including the MCS Act. The section does not even provide for a transfer of cases filed under the MCS Act to the authorities/arbitration provided for therein. If the legislature intended annulling all proceedings under the MCS Act and the representation/filing thereof under section 84 of the Multi State Act the same would have been provided for expressly. As it is there is not even a suggestion to this effect in either enactment. To accept the respondents submission would be reading into the enactments consequences of a wide and crucial nature which cannot be done."

3. *It is thus, contended that, on account of Section 84 of the Multi-State Act and since there is no provision which would act as a saving clause with regard to the bar of limitation to those proceedings which have been concluded under the MCS Act, the proceedings would continue to be governed by the MCS Act, notwithstanding the conversion of the society into a Multi State Co-*

operative Society.

4. *At the request of respondent Nos. 1 to 4, stand over to 25/06/2018 for passing orders.”*

2. Learned Advocate for the respondent has made a valiant attempt to support the impugned order of the Divisional Joint Registrar, by which he has abdicated his jurisdiction and has allowed the revision application by concluding that the provisions of the Maharashtra Co-operative Societies Act, 1960 could not have been invoked by the petitioner / Bank as it became a multi state Bank. It is further submitted that though the application for initiating recovery certificate u/s 101 of the M.C.S.Act was initiated on 25/11/2011, the petitioner/Bank got converted into a Multi State Co-operative Bank on 29/03/2012. The recovery certificate was issued on 05/02/2013 and the two attachment orders assailed by respondent Nos. 1 to 4, dated 21/02/2013 and 04/07/2014, would restrain the bank authorities from resorting to any action under the M.C.S. Act as it had become a Multi State Co-operative Bank.

3. This issue is no longer *res-integra*, keeping in view the exhaustive judgment delivered by this Court in the case of Abhyudaya

Co-operative Bank Ltd. (supra). It would be apposite to reproduce paragraph Nos. 20,21 and 22 hereunder :- (paragraph No.20 is already reproduced at page No.2 of this order)

“21. There is another indication which militates against the respondents submission. There is no provision in the Multi-State Act which saves the bar of limitation if proceedings were to be adopted denovo under Section 84 thereof. To this it was submitted that an application could be made for condonation of delay under Section 85(3) which provides for limitation. Section 85 reads as under:

85. Limitation.- (1) Notwithstanding anything contained in the Limitation Act, 1963 (36 of 1963), but subject to the specific provisions made in this Act, the period of limitation in the case of a dispute referred to arbitration shall,:

(a) when the dispute relates to the recovery of any sum including interest thereon due to a Multi-State cooperative society by a member thereof, be computed from the date on which such member dies or ceases to be a member of the society;

(b) save as otherwise provided in Clause (c), when the dispute relates to any act or omission on the part of any of the parties referred to in Clause (b) or Clause (c) or Clause (d) of Sub-section (1) of Section 84, be six years from the date on which the act or omission, with reference to which the dispute arose, took place;

(c) when the dispute is in respect of an election of an officer of a multi-State cooperative society, be one month from the date of the declaration of the result of the election.

(2) The period of limitation in the case of any dispute, except those mentioned in Sub-section (1), which are required to be referred to arbitration shall be regulated by the provisions of the Limitation Act, 1963 (36 of 1963), as if the dispute were a suit and the arbitrator a civil court.

(3) Notwithstanding anything contained in Sub-sections (1) and (2), the arbitrator may admit a dispute after the expiry of the period of limitation, if the applicant satisfies the arbitrator that he had sufficient cause for not referring the dispute within such period.

22. Section 85 does not entitle a party to condonation of delay as a matter of right. It is left to the discretion of the court to condone or not to condone delay. It was submitted that in such circumstances the court is bound to condone delay. It is not permissible for one court to speculate on what another court may or may not do. To say that the court ought to exercise discretion in a particular manner is not the same thing as to say that the court would do so. If the party is entitled to be relieved of the bar of limitation on account of any legislative amendment the legislature itself would provide for the same. I do not see anything in Section 85 which supports the respondents contention. There is no period specified within which the application under Section 84 ought to be made upon the

*registration of a society under the Multi - **State** Act. This too indicates that the legislature never intended such a society making an application under Section 84.”*

4. Considering the above, it is apparent that as the recovery proceedings were initiated on 25/11/2011, which was prior to the petitioner/Bank becoming a Multi State Co-operative Bank, the said proceedings under the M.C.S. Act would be tenable and the provisions of the M.C.S. Act would continue to apply to such proceedings.

5. In view of the above, both the impugned orders dated 05/02/2015 and 11/02/2015 are quashed and set aside to the extent of these respondents. The Revision Applications Nos. 1/2015, 2/2015, 3/2015, 72/2014 and 73/2014 are restored to the file of Divisional Joint Registrar, Co-operative Societies, Latur, to be decided afresh. The litigating sides agree to appear before the said authority on 13/07/2018. Formal notices need not to be issued. All contentions of the litigating sides, except the jurisdictional issue with regard to the applicability of Maharashtra Co-operative Societies Act, 1960, are kept open for the Revisional Authority to decide on their own merits.

6. Needless to state, such a hearing would be subject to the compliance of sub section 2A of Section 154 of the M.C.S. Act, 1960.

(Ravindra V.Ghuge, J.)