

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2 OF 2015
WITH
WRIT PETITION NO.3 OF 2015
(Manoj Prabhulal Nyati Vs. The State of Maharashtra and others)

Mrs.Chaitali Chaudhary-Kutti, Advocate for the petitioner.
Mr.S.K.Tambe, AGP for respondent No.1.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 07/06/2018

PER COURT :

1. When these two petitions were heard by this Court on 06/01/2015, the following order was passed :-

"1 Both these Writ Petitions are filed by the same Petitioner, namely, Manoj Prabhulal Nyati. In the first petition, the Petitioner is said to be the Guarantor and in the second petition, he is said to be the Borrower.

2 Mr.Kutti, learned counsel appearing for the Petitioner, has fairly stated that in the first petition, the Petitioner is shown to be the Guarantor on the basis of signatures which were obtained on blank papers.

3 The Petitioner has challenged the recovery certificates issued under Section 101 of the Maharashtra Cooperative Societies Act, 1960, both dated 07.08.2014. In the first petition, the impugned recovery certificate is for an amount

of Rs.53,960/- and in the second petition, the impugned recovery certificate indicates an amount of Rs.6,90,000/-.

4 The Petitioner submits that both the impugned recovery certificates are not signed by the Competent Authority and therefore, they are void ab-initio. It is further submitted that no loan has been taken by the Petitioner from the Respondent No.3 Cooperative Society. It is then submitted that the Competent Authority under Section 101 of the MCS Act was already transferred to another location and had no jurisdiction to conduct the proceedings or purportedly pass an order under Section 101 of the MCS Act since he was bereft of jurisdiction.

5 Mr.Kutti submits that these contentions are part of the pleadings in the petition and the Petitioner stands by the said statements. In the event any of these statements are found to be incorrect, these petitions be dismissed with exemplary costs.

6 Mr.Kutti has tried to impress upon this Court that these petitions should be entertained directly without exhausting the statutory remedy under Section 154 of the MCS Act. He seeks to place reliance on the Full Bench judgment of this Court reported in **2011 (3) AIR Bom.R 594** (Smt.Shireen Sami Gadiali and another v/s Spenta Cooperative Housing Society Limited and others) and the Division Bench judgment of this Court.

7 Neither of these judgments make it mandatory for this Court to entertain a writ petition directly against an order passed under Section 101 of the MCS Act. Nevertheless, notices are being issued to the Respondents only in view of the peculiar facet of this case wherein the Petitioner has arrayed the

Assistant Registrar, Cooperative Societies by name in view of the contention that he has not signed the certificates under Section 101 and was not empowered to conduct any proceedings under the said provision against the Petitioner.

8 *Needless to state, the issue as to whether, these Writ Petitions are entertainable or not and the aspect of the Petitioner depositing 50% of the amount set out in the certificates under Section 101 shall be dealt with on the next date.*

9 *Issue notice before admission to the Respondents, returnable on 03.02.2015. The learned AGP waives service on behalf of the Respondent No.1. The request for interim relief shall be considered on the next date subject to whether, the petitions could be entertained by this Court."*

2. Subsequently, this Court has passed an order on 15/03/2016 directing the petitioner to deposit an amount of Rs.2,00,000/- in this Court. The said amount has been deposited by a demand draft dated 16/04/2016.

3. The petitioner in both these petitions is present in the Court. Learned Advocate for the petitioner submits on instructions that WP No.2/2015 can be disposed of as the petitioner desires to repay the entire loan amount as on date, with interest, in relation to which the recovery certificate u/s 101 of the M.C.S. Act, 1960 was issued on 07/08/2014, within 6 weeks from today. The said amount would be

deposited in the respondent/Bank, failing which, the bank would be at liberty to recover the said amount from him. The said statement is accepted and WP No.2/2015 is disposed of.

4. Learned Advocate for the petitioner has extensively canvassed in the second petition. The contention is that the petitioner was never heard by the Assistant Registrar in the Section 101 proceedings. The roznama of the proceedings would indicate the presence of the petitioner. On a few occasions, the roznama has been manipulated and despite a blank space having been left with the slanting cross sign by the petitioner above his signature, there is a scribbling/over-writing after the petitioner had signed the roznama. It is also contended that the recovery certificate is not signed by the Assistant Registrar and there is no legal value for such a certificate. Primarily, the petitioner contends that he was never heard by the Assistant Registrar and the principles of natural justice have been violated. So also, he had never obtained any loan.

5. The learned AGP has relied upon the affidavit in reply dated 07/09/2016 filed by Mr.Popat Shamrao Patole who was the Assistant Registrar at the relevant time. He points out from the affidavit that though he was transferred on 30/07/2014, the said transfer order

was cancelled by the State Government within 1 day and he continued to perform his duties, pursuant to which, the recovery certificate was issued on 07/08/2014. He further points out that the Assistant Registrar specifically states that he has issued the recovery certificate under his signature and he owns up the said certificate.

6. I find that several disputed questions have been raised in this petition which cannot be gone into by this court. The Revisional Authority can consider the record and proceedings under Section 101 proceedings and decide the said issues under Section 154 of the M.C.S. Act.

7. At this stage, learned Advocate for the petitioner submits on instructions that since an amount of Rs.6,90,000/- is to be recovered as per the recovery certificate and as the petitioner has already deposited Rs.2,00,000/- in this Court by DD dated 16/04/2016, the petitioner is willing to deposit a further amount of Rs.1,25,000/- with the Registrar and approach the Registrar by filing a revision application u/s 154. By considering that the petitioner has complied with sub Section 2(A), the Revisional Authority may be directed to decide the proceedings expeditiously as the petitioner would file the

said proceedings within 8 (eight) weeks from today alongwith an additional amount of Rs.1,25,000/-.

8. Considering the above, this petition is disposed of. The amount of Rs.2,00,000/- deposited by the petitioner in this Court would be transferred by the Registry of this Court alongwith accrued interest to the Jt. Registrar, Co-operative Societies, Nashik, expeditiously. If the petitioner prefers his revision petition within 8 (eight) weeks from today and deposits Rs.1,25,000/- alongwith the said petition, the Jt. Registrar would consider these amounts to be in compliance with Sub Section 2(A) and shall deal with the said proceedings under Section 154, as expeditiously as possible and preferably within a period of 1 (one) year from the date of filing. The time spent by the petitioner in this Court from 31/12/2014 till the passing of this order and 8 weeks thereafter, shall be a ground for condonation of delay, if any.

(Ravindra V.Ghuge, J.)