

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.5117 OF 2018

1. Rajendra Baban Deshmukh)
Prop of M/s.Shree Sai Property Consultant)
Age -60, Occupation- Business,)
R/At : Row House No.7,)
Saptarashi Row House Apartment,)
Plot No.1 Survey No.43/2B/3,)
Jail Road, Nashik – 422 101.)

2. Mrs.Sangita Rajendra Deshmukh)
Age -57, Occupation- Business,)
R/At : Row House No.7,)
Saptarashi Row House Apartment,)
Plot No.1 Survey No.43/2B/3,)
Jail Road, Nashik – 422 101.)

.. Petitioners

Versus

Recovery Officer,)
Abhyudaya Co-op. Bank Ltd.,)
Legal and Recovery Department,)
Shrama Safalya CHS Ltd.,)
63, G.D. Ambekar Marg,)
Parel Village, Mumbai 400 012.)

2. Prashant Ramchandra Panagre)
Age : 50, Occupation-Service,)
Plot No.57, Shraddha Vihar Colony,)
Survey No.104, Nagav Corner,)
Opp. Shivam Park, Near Ashirwad Nursing)
Indira Nagar, Nashik 422 008.)

3. Sham Vasantao Wagh)
Age 55, Occupation : Service,)
Behind Devi Mandir, Dasak,)
Opp. Sadguru Mangal Kryalay,)
Jail Road, Nashik Road, Nashik 422101.)

4. State of Maharashtra)
(to be served to the office of)
the Ld. G.P.High Court, Bombay) .. Respondents

Mr.Vishal Tambat a/w Mr.Amol Wagh i/by M/s. VMK Legal for the petitioners.

Mr.Vishal C. Ghosalkar for the respondent no.1.

Ms.K.N.Solunke, AGP for the respondent no.4.

CORAM : R.D. DHANUKA, J.

DATE : 7th June 2018

Judgment :-

. By this petition filed under Article 227 of the Constitution of India, the petitioner has impugned the arbitral award rendered by the learned arbitrator on 8th August 2017 and the impugned the order dated 12th December 2017 passed by the Recovery Officer under Section 97 of the Multi State Co-operative Societies Act, 2002 (for short “MSCS Act) and to seek release of the bank guarantee of the respondent nos.2 and 3. It is not in dispute that the petitioners have not impugned the arbitral award dated 8th August 2017 and the order dated 12th December 2017 passed by the Recovery Officer under Section 34 of the Arbitration and Conciliation Act, 1996. The petitioners have challenged the impugned orders in this petition under Article 227 of the Constitution of India.

2. No writ is maintainable against the arbitral award under Article 227 of the Constitution of India. The prayers for impugning the arbitral award are accordingly rejected on that ground.

3. In so far as the impugned order dated 12th December 2017 passed by the learned Recovery Officer under Section 97 of the MSCS Act is concerned, the learned counsel for the petitioners submits that the learned Recovery Officer has no jurisdiction to pass any order in execution of the impugned award under Section 97 of the MSCS Act. He invited my attention to Section 94 of the MSCS Act and would submit that Section 84 of the MSCS Act is not mentioned in Section 94 of the MSCS Act. Section 97 which has to be read with Section 94 cannot be pressed into service.

4. Learned counsel for the petitioners invited my attention to Section 84 of the MSCS Act and would submit that since the provisions of the Arbitration and Conciliation Act, 1996 including Section 36 thereof would be applicable to the parties, when the award has attained finality in view of Section 36 of the Arbitration and Conciliation Act, 1996, the Abhyudaya Co-op. Bank Ltd., the beneficiary of the award can execute the award under the provisions of the Code of Civil

Procedure read with Section 36 of the Arbitration and Conciliation Act, 1996. He submits that the order passed by the Recovery Officer is thus totally without jurisdiction.

5. Learned counsel appearing for the petitioners invited my attention to Section 84(5) of the Act. He placed reliance on the judgment of this Court in the case of ***Ratansi R. Gada Vs. Abhyudaya Co-operative Bank Ltd. & Anr., 2011(3) Bom.C.R. 117*** and in particular paragraph 15 thereof. He placed reliance on Section 94 of MSCS Act and submits that the said section excludes Section 84, therefore, even if the arbitral award attains finality for the purpose of execution of the arbitral award, provisions of Code of Civil Procedure, 1908 as contemplated under Section 36 of the Arbitration and Conciliation Act, 1996 would be applicable and not Section 97 of the MSCS Act and/or Rules made thereunder.

6. Learned counsel for the respondent no.1 invited my attention to Sections 84(5) and 94 to 97 of the MSCS Act. It is submitted that since the remedy of execution is specifically provided under Section 97 of the MSCS Act, in view of Section 84 (5) of the MSCS Act, the bank who has succeeded before the learned arbitrator in the arbitral

proceedings is not required to file any application under Order XXI of the Code of Civil Procedure, 1908 read with Section 36 of the Arbitration and Conciliation Act, 1996 for execution of the arbitral award.

7. In so far as the reliance is placed by the petitioners on Section 94 of the MSCS is concerned, it is submitted that the said section does not refer to Section 94 of the MSCS Act. Section 97 will have to be read independently and not with Section 94 of the MSCS Act. He also laid emphasis on Section 84(5) of the MSCS Act and would submit that since remedy of execution of award under Section 84 is provided in Section 97 of the MSCS Act, in view of Section 84(5) of the MSCS Act, Section 36 of the Arbitration and Conciliation Act, 1996 providing for enforcement of award would not apply.

8. Learned counsel also tenders a copy of the order passed by the Government of India, Ministry of Agriculture & Farmers Welfare issued on 18th August 2016 addressed to the Managing Director, Abhyudaya Co-operative Bank Ltd. appointing various officers and authorising them to execute the arbitration awards in order to effect recoveries arising out of arbitral awards.

9. A perusal of Section 84 (5) of the MSCS Act clearly indicates that the provisions of the Arbitration and Conciliation Act, 1996 shall apply to all arbitrations under the said MSCS Act excluding the provision relating to arbitration under the provisions of the said MSCS Act. Section 97 of the MSCS Act clearly indicates that the Central Registrar or the arbitrator or any person authorised by him in writing shall be deemed when exercising any powers for the purpose of recovery of any amount by the attachment and sale or by sale without attachment of any property, or when passing any orders on any application made to him for such recovery or for taking a step-in-aid of such recovery, to be a civil court for the purposes of Article 136 of the Schedule to the Limitation Act, 1963. Section 96 of the MSCS Act empowers the arbitrator to pass various interim orders if the arbitrator is satisfied that a party to any reference made to him under Section 84 with intent to defeat or delay the execution of any decision is about to dispose of the whole or any part of the property.

10. In my view, Section 97 of the MSCS Act is an independent power given to the Central Registrar or to the arbitrator or to any person authorised to be civil Court for certain purposes including execution of arbitral awards rendered under Section 84 of the MSCS Act. Pursuant to

the said provision, the Central Government has authorised the Recovery Officer for the purpose of recovery of dues of the Abhyudaya Co-operative Bank Ltd. arising out of the arbitral award by executing the arbitral award.

11. I am not inclined to accept the submission of the learned counsel for the petitioners that Section 97 has to be read with Section 94 of the MSCS Act or that since Section 94 does not refer to Section 97, powers of the Central Registrar or arbitrator or person authorised to be civil Court cannot be exercised by such person to execute the arbitral award under the MSCS Act. The remedy under Section 97 of the MSCS Act is an independent specifically provided under Section 97 and thus in view of Section 84 (5) of the MSCS Act, such a party is not bound to invoke the provisions of Section 36 of the Arbitration and Conciliation Act, 1996 read with Order XXI of the Code of Civil Procedure, 1908.

12. In so far as the judgment of this Court in the case of ***Ratansi R.Gada Vs. Abhyudaya Co-operative Bank Ltd. & Anr. (supra)*** relied upon by the learned counsel for the petitioners is concerned, a perusal of the said judgment indicates that this Court has not considered the effect of Section 97 of the MSCS Act which has to be read with

Section 84(5) of the MSCS Act. The judgment of this Court thus is clearly distinguishable in the facts of this case and would not assist the case of the petitioners.

13. In my view, the order passed by the Central Government authorising the Recovery Officer of the Abhyudaya Co-operative Bank Ltd. for the purpose of taking steps in execution of the arbitral award and for the purpose of recovery arising out of the arbitral award is applicable. In my view, the action of the Recovery Officer taken on 12th December 2017 is thus absolutely within the powers vested in him under Section 97 of the MSCS Act and is justified. The petition is devoid of merit and is accordingly dismissed. No order as to costs.

R.D. DHANUKA, J.