

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****WRIT PETITION NO. 8657 OF 2014**

T.J.S.B.Sahakari Bank Ltd.)
A body corporate registered/converted)
under Multi-State Co-op. Societies Act 2002)
having its Pune Regional Office at :-)
Govind Chamber C.H.S.Ltd., Pune,)
Above Girija Hotel, Opp.BSNL Office)
Nal Stop, Karve Road, Pune – 411 004)
through Recovery Manager (PRO))
Shri Pradeep Lalchand Sonawane) **..... Petitioner**

VERSUS

- 1. M/s.Vasudeo Khachermal & Co.,**)
A proprietary concern through Proprietor)
Shri Vasudev Khachermal Agarwal,)
Age – Adult, Occupation – Business,)
Having its business place at No.508/509,)
Market Yard, Pune – 411 037)
- 2. Shri Vijaykumar Satyanarayan Agarwal)**
R/at – Vasant Baug, Bibwewadi,)
Pune – 411 037)
- 3. Mrs.Premkala Vasudev Agarwal,**)
R/at – A-2/A, Flat No.601, Manikchand)
Malabar Hill, Lullanagar, Pune – 411 040)
- 4. The Deputy Registrar,**)
Co-op. Societies, Pune City (3),)
Sanskritik Bhavan, Sant Tukaram Nagar,)
Pimpri, Pune – 411 018)
- 5. The Divisional Joint Registrar,**)
Co-op. Societies, Pune Division,)
Sakhar Sankool, Shivajinagar,)
Pune – 411 005) **..... Respondents**

Mr.Shailendra S.Kanetkar for the Petitioner.

Mr.Madhav J.Jamdar for the Respondent no. 1.

Mr.A.Y.Skhare, Senior Advocate, a/w. Mr.Joel Carlos for the Respondent no.2.

Mr.S.D.Rayrikar, A.G.P. for the State – Respondent nos.4 and 5.

CORAM : R.D. DHANUKA, J.

DATE : 12th FEBRUARY, 2018

JUDGMENT

Rule. Mr.Kanetkar, learned counsel for the petitioner states that all the respondents are served. None appeared for the respondent no.3 when the matter was called out.

2. By this petition, the petitioner has impugned the order dated 23rd January,2014 passed by the respondent no.5 in Revision Application No.312 of 2009 thereby returning the Recovery Application dated 24th September,2003 and directing the petitioner to file the said application under section 91 of the Maharashtra Co-operative Societies Act, 1960 before the Co-operative Court and setting aside the order dated 31st October,2008 passed by the respondent no.4.

3. Some of the relevant facts for the purpose of deciding this petition are as under :-

4. Sadguru Jangli Maharaj Sahakari Bank Ltd. was registered under the provisions of Maharashtra Co-operative Societies Act, 1960 and had alleged to have given a loan to a proprietary concern of

M/s.Vasudeo Khachermal & Co., a proprietary concern of Mr.Vasudeo Khachermal Agarwal. The respondent no.1 had applied for a loan to the erstwhile bank i.e. Sadguru Jangli Maharaj Sahakari Bank Ltd. It is the case of the petitioner that the respondent nos. 1 to 3 had executed various documents including security/guarantee in favour of Sadguru Jangli Maharaj Sahakari Bank Ltd. It is the case of the petitioner that each of those parties committed default in making re-payment of the said loan to the said Sadguru Jangli Maharaj Sahakari Bank Ltd. The said bank had filed an application under section 101 of the Maharashtra Co-operative Societies Act, 1960 against the respondent nos. 1 to 3 for issuance of recovery certificate. The said bank had granted further facilities in favour of those respondents.

5. On 23rd October,2008, the petitioner bank had been converted as Multi-State Scheduled Co-operative Bank under the Multi-State Co-operative Societies Act, 2002. The said Sadguru Jangli Maharaj Sahakari Bank Ltd. amalgamated with the petitioner w.e.f. 18th August,2007.

6. On 31st October,2008, the respondent no.4 rejected the Recovery Application No.422 of 2003 and rendered various findings against the said Sadguru Jangli Maharaj Sahakari Bank Ltd.

7. Being aggrieved by the said order dated 31st October,2008, the petitioner filed Revision Application No.312 of 2009 before respondent no.5 under section 154 of the Maharashtra Co-operative Societies Act, 1960 on 23rd December,2008. The respondent no.5

passed an order dated 23rd January, 2014 thereby partly allowing the said revision application and setting aside the order passed by the respondent no.4. The revision authority however directed that a dispute be filed under section 91 of the Maharashtra Co-operative Societies Act, 1960. The petitioner thus filed this petition under Article 227 of the Constitution of India.

8. Mr.Kanetkar, learned counsel for the petitioner invited my attention to various findings recorded by the respondent no.4. He also invited my attention to the order passed by the respondent no.5. He submits that the respondent no.5 has though set aside the findings recorded by the respondent no.5 in the impugned order has without assigning any reasons has directed the petitioner to file a dispute under section 91 of the Maharashtra Co-operative Societies Act, 1960.

9. It is submitted that the pending proceedings prior to the petitioner having registered as Multi-State Schedule Co-operative Bank, the prior proceedings would be continued to be governed by the provisions of Maharashtra Co-operative Societies Act, 1960 and the pending application under section 101 of the Maharashtra Co-operative Societies Act, 1960 filed by the erstwhile bank which were amalgamated with the petitioner ought to have been continued before respondent no.4 and no direction to file under section 91 of the Maharashtra Co-operative Societies Act, 1960 could have been issued by the respondent no.4 or respondent no.5.

10. Mr.Sakhare, learned senior counsel for the respondent no.2 on

the other hand submits that there were several disputed facts and there being no crystallized claim before the recovery officer under section 101, the said application filed under section 101 of the Maharashtra Co-operative Societies Act, 1960 itself was not maintainable. He submits that the revisionary authority as well as respondent no.4 has rightly directed the petitioner to file appropriate dispute under section 91 of the Maharashtra Co-operative Societies Act, 1960. In support of this submission, learned senior counsel placed reliance on the judgment delivered by the Division Bench of this court in case of ***M/s.Top Ten vs. State of Maharashtra & Ors., 2012(2) Bom.C.R.647.*** He also placed reliance on the judgment of this court in case of ***M/s.Shewalkar Developers Ltd. vs. Rupee Co-operative Bank Ltd. and another*** in ***Writ Petition No.9309 of 2013*** dated 24th February,2015.

11. A perusal of the impugned order passed by the respondent no.4 which came to be set aside by the respondent no.5 clearly indicates that the said authority had rejected the application under section 101 of the Maharashtra Co-operative Societies Act filed by the predecessor of the petitioner on the ground that there were several disputed questions. The claims made by the predecessor of the petitioner were not crystallized claims.

12. A perusal of the order passed by the respondent no.5 indicates that the revisionary authority had set aside the said order passed by the respondent no.4 on the ground that no such enquiry to enter into the disputed facts was permissible under section 101 of the Maharashtra

Co-operative Societies Act, 1960. While setting aside the order passed by the respondent nos. 4, the respondent no.5 however without recording any reasons took a view that remedy of the petitioner would be to file a dispute under section 91 of the Maharashtra Co-operative Societies Act.

13. It is not in dispute that since 23rd October, 2008, the petitioner is converted as Multi-State Scheduled Co-operative Bank under the Multi-State Co-operative Societies Act, 2002.

14. A perusal of the revision application dated 1st October, 2015 filed by the petitioner clearly indicates that the alternate prayer of the petitioner is to grant liberty to the petitioner to file dispute under section 84 of the Multi-State Co-operative Societies Act, 2002 based on the same cause of action of Recovery Application No.422 of 2003.

15. Mr.Kanetkar, learned counsel for the petitioner on instruction states that if this court comes to the conclusion that the remedy of the petitioner would not be under section 101 of the Multi-State Co-operative Societies Act, 2002, his client can be permitted to file proceedings under section 84 of the Multi-State Co-operative Societies Act, 2002. statement is accepted.

16. Mr.Kanetkar, learned counsel for the petitioner states that respondent nos. 1 to 3 also had filed a separate dispute before the co-operative court under section 91 of the Maharashtra Co-operative Societies Act, 1960 which is rejected. Respondent nos. 1 to 3 does not

accept this statement of the petitioner.

17. Though the respondent no.4 has set aside the impugned order passed by the respondent no.4 on the ground that the claim of the predecessor of the petitioner which was sought to be pursued by the petitioner is not crystallized claim and required detail evidence. A perusal of the record prima facie indicates that various contentions on merits had been raised by the respondent nos. 1 to 3 before the respondent no.4 as well as before the respondent no.5. Division Bench of this court in case of *M/s.Top Ten* (supra) has held that the enquiry undertaken under section 101 is only aimed at ascertaining whether amount disclosed in statement of accounts as arrears, is correct and due. The correctness of amount shown as arrears can be verified from the accounts of the society and from receipts produced by other side.

18. It is held by this court that in case of a dispute about the quantification, the society has to take recourse to filing of a dispute under Section 91, where such disputed questions can be gone into. In my view, in view of various disputes about quantification raised by the respondent nos. 1 to 3 as is apparent, the remedy of the petitioner in this case would not be under section 101 of the Maharashtra Co-operative Societies Act, 1960 but would be under section 84 of the Multi-State Co-operative Societies Act, 2002 and more particularly in view of the fact that 23rd October, 2008 the petitioner is already converted into Multi-State Scheduled Co-operative Bank under the Multi-State Co-operative Societies Act, 2002. In my view, upon conversion of the petitioner as Multi-State Scheduled Co-operative

Bank under the Multi-State Co-operative Societies Act, 2002, the remedy of the petitioner would be under section 84 of the said Act. The impugned order passed by the respondent no.5 is thus modified to this extent.

19. The petitioner would be at liberty to file reference under section 84 of the Multi-State Co-operative Societies Act, 2002. The reference shall be filed within four weeks from today. It is made clear that this court has not expressed any views on the merits of the matter. All the contentions on merits of the matter are kept open. It is made clear that if any issue on limitation is raised by any of the respondents, the learned arbitrator as may be appointed by the Central Registrar or any person authorized to appoint an arbitrator under the provisions of Multi-State Co-operative Societies Act, 2002 shall consider the plea under section 14 if any raised by the petitioner. The learned arbitrator shall decide the reference on its own merits without being influenced by the observations made by the respondent no.4 as well as respondent no.5 in the impugned orders.

20. The learned arbitrator shall decide the claim expeditiously and not later than one year from the date of petitioner filing a statement of claim before the learned arbitrator. The respondents are directed to file their affidavit/written statement if any, before the learned arbitrator within eight weeks from the date of receipt of statement of claim.

21. The impugned order passed by the respondent no.5 is modified to this extent. Rule is made absolute in the aforesaid terms.

22. Writ petition is disposed of in the aforesaid terms. No order as to costs.

23. The interim protection granted by this court to continue for a period of 12 weeks. The petitioner would be at liberty to apply for continuation of the said interim order before the learned arbitrator. The learned arbitrator shall decide the application for the interim relief on its own merits.

[R.D. DHANUKA, J.]