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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11919 OF 2017

Aadesh A. Shah (Vadujkar) ...Petitioner
V/s.
The State of Maharashtra & Ors. ...Respondents

Mr.A.Y. Sakhare, Senior Counsel i/b Mr.Pratap Patil for the Petitioner.

Mr.S.D. Rayrikar, A.G.P. for the State – Respondent Nos.1, 2 and 4.

Mr.A.G. Damle, Senior Counsel i/b Mr.Sushant Prabhune for the Respondent No.3.

CORAM : R.D. DHANUKA, J.
DATE : 5TH JUNE, 2018.

P.C. :-

1. By this petition filed under Article 227 of the Constitution of India, the petitioner has impugned the order dated 6th September, 2017 passed by the learned Minister, Co-operation, Maharashtra State and also an order dated 19th February, 2017 passed by the learned Commissioner for Co-operation and Registrar, Co-operative Societies, under section 73-C and 78-A of the Maharashtra Co-operative Societies Act, 1960.

2. It is not in dispute that the petitioner had obtained a loan from Baramati Sahakari Bank Limited. It is the case of the petitioner that his family members had deposited some amounts in certain fix

deposits with the said bank. The father of the petitioner had made several criminal complaints against the office bearers of the said bank alleging that the said bank was not returning the said fix deposits nor was releasing any payment to the father of the petitioner.

3. Admittedly, the petitioner had filed the nomination form for the post of a director of the bank on 6^{th} February, 2015 and was declared elected by the said bank in the year 2015. The petitioner committed default in making repayment of the loan. The fix deposits given by the family members of the petitioner came to be adjusted by the bank subsequently.

4. One of the member of the bank filed a complaint against the petitioner seeking disqualification under section 73-C and 78-A of the Maharashtra Co-operative Societies Act, 1960 on the ground that on the date of filing the nomination form, the petitioner was disqualified in view of he being the defaulter in making repayment of the loan to the said bank. Learned Commissioner of Co-operation considered the said complaint and declared the petitioner as disqualified. Learned Minister, Co-operation rejected the application filed by the petitioner.

5. Mr.Sakhare, learned senior counsel appearing for the petitioner invited my attention to some of the correspondence annexed to the petition and would submit that though the family

members of the petitioner had number of fix deposits lying in the bank, the bank did not adjust the amounts of these fix deposits against the amount of loan obtained by the petitioner. He submits that it is an admitted position that after the election of the petitioner as one of the director of the bank, the bank subsequently adjusted these fix deposits amount against the loan amount of the petitioner. He submits that the bank ought to have adjusted the fix deposits prior to the date of the petitioner's filing the nomination form for the post of director of the bank.

6. Mr.Damle, learned senior counsel appearing for the complainant, the respondent no.3 herein on the other hand points out that no application was made by the petitioner for adjustment of the said fix deposits amount to the bank at any point of time prior to the petitioner's filing the nomination form. He submits that on the other hand, the father of the petitioner had made a complaint to the Baramati City Police Station and also had filed the proceedings under section 156(3) of the Code of Criminal Procedure. He submits that admittedly on the date of filing the nomination form by the petitioner, the petitioner was a defaulter and thus was disqualified under section 73-C of the Maharashtra Co-operative Societies Act, 1960.

7. A perusal of the record clearly indicates that though the petitioner claimed that certain fix deposits of the family members of

the petitioner were lying with the bank on the date of the petitioner's filing the nomination form to contest the election for the post of director, the petitioner did not repay the loan amount as on the date of filing the nomination form. The father of the petitioner on the other hand was making a grievance against the bank for seeking return of the fix deposits and/or for payment under those fix deposits. The question of the petitioner therefore seeking any adjustment of those amount against the loan taken by the petitioner did not arise. Mr.Sakhare, learned senior counsel for the petitioner could not point any letter addressed by the petitioner to the bank before filing the nomination form to adjust the amount lying in the fix deposits against the balance amount payable by the petitioner to the bank.

8. A perusal of two orders passed by the authorities clearly indicates that the authority has considered all these relevant facts and also adverted to the judgment of the Supreme Court and this Court holding that if the petitioner herein was a defaulter on the date of filing the nomination form, he would be disqualified under section 73(CA) of the Maharashtra Co-operative Societies Act, 1960. Subsequent repayment of the loan after filing of the nomination form would not relate back to the date of filing of the application. The judgment of the Supreme Court adverted to by the authorities below squarely applies to the facts of this case. I am respectfully bound by the said

judgments.

9. In my view, the finding rendered by the two authorities below is not perverse and thus cannot be interfered by this Court in this writ petition under Article 227 of the Constitution of India. The impugned orders passed by both the authorities below are well reasoned orders and do not warrant any interference of this Court under Article 277 of the Constitution of India. The petition is devoid of merit and is accordingly dismissed. No order as to costs.

(R.D. DHANUKA, J.)