

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

WRIT PETITION NO.3488 OF 2017

Sahebrao Gangadhar Somvanshi)
Age Major, residing at Madkijamb)
Taluka Dindori, District Nashik.) .. Petitioner

Versus

1. The Madkijamb Vividh Kayakari)
Sahakari Seva Sanstha Maryadit)
Madkijamb, Taluka Dindori)
District Nashik through its Secretary)

2. The Recovery Officer/Inspector)
Dindori-B, Divisional Office,)
Having its office of Nashik District)
Central Co-operative Bank Ltd.)
at Dindori Branch, Taluka Dindori,)
District Nashik.)

3. The Co-operative Officer (First Class)
Dindori, District Nashik)

4. The Assistant Registrar,)
Co-operative Societies, Dindori,)
District Nashik.)

5. The Commissioner of Co-operation)
& Registrar of Co-operative Societies)
Maharashtra State having his office)
at Pune -1.)

6. The State of Maharashtra) .. Respondents

**ALONG WITH
WRIT PETITION NO.6657 OF 2017**

Narayan Parshuram Kor)
Age Major)
Residing at Village Ambasan,) .. Petitioner

Versus

1. The Ambasan Vividh Kayakari)
Sahakari Seva Sanstha Maryadit)
Ambasan, Taluka Baglan,)
District Nashik.)
2. The Assistant Registrar,)
Co-operative Societies, Satana,)
Baglan, District Nashik.)
3. The District Deputy Registrar)
Co-operative Societies, Nashik)
4. The State of Maharashtra) .. Respondents

Mr.P.N.Joshi for the petitioner.

Mr.Amol Patil i/by Mr.Sachin Randive for the respondent no.1.

Mr.S.D.Rayrikar, AGP for the respondent nos.3 to 6.

CORAM : R.D. DHANUKA, J.

DATE : 10th July 2018

P.C.:

. By consent of parties, both the matters were heard together and are being disposed of finally by a common order.

2. By these petitions filed under Article 227 of the Constitution of India, the petitioner has impugned the order dated 2nd February 2016 passed by the respondent no.4 i.e. Assistant Registrar, Co-operative Societies, Dindori, District Nashik and the order dated 18th June 2016 passed by the respondent no.2 i.e. Assistant Registrar, Co-operative

Societies, Satana, Baglan, District Nashik and the order dated 26th August 2016 and 12th September 2016 passed by the respondent no.3 i.e. The District Deputy Registrar, Co-operative Societies, Nashik respectively.

3. In so far as the Writ Petition No.3488 of 2017 is concerned, on 31st March 1994, the petitioner obtained a loan under the caption of “Grape Loan” in the sum of Rs.24,900/- which was repayable on or before 26th September 1995 in one installment. On 1st August 1994, the petitioner obtained a loan of Rs.6,400/- for purchasing “Electric Motor” which was repayable on or before 1st August 1997 in one installment. On 20th June 1995, the petitioner obtained a loan of Rs.98,595/- for the purpose of “Erection of Iron Angle for Grape Garden” which was repayable on or before 20th June 1998. On 31st March 1998, the petitioner obtained a loan of Rs.29,000/- for providing “Drip Irrigation System” which was repayable on or before 31st March 1997 in one installment. On 1st August 1994, the petitioner obtained a loan of Rs.10,800/- for “constructing / laying pipeline” in the agricultural land which was repayable on or before 1st August 1997 in one installment. The total loan obtained by the petitioner from the respondent no.1 Society was in the sum of Rs.1,69,695/-. The respondent no.1 obtained a recovery

certificate against the petitioner under Section 101 of the Maharashtra Co-operative Societies Act, 1960 (for short “the said Act”) for recovery of Rs.4,73,845/- from the petitioner towards various loans granted to the petitioner.

4. Since it was the case of the petitioner that in view of Section 44-A of the said Act, the respondent no.1 could not have recovered interest amount more than the principal amount. The respondent no.2 i.e. The Recovery Officer had issued a notice to the petitioner for taking steps to attach the property of the petitioner. The petitioner had accordingly made an application before the Assistant Registrar on 19th October 2015 inter alia praying for recovery of the excess amount recovered contrary to Section 44-A of the said Act. The said application of the petitioner came to be rejected by the learned Assistant Registrar on 2nd February 2016 relying upon the judgment of the Division Bench of this Court in the case of ***Nivrutti Narayan Bankar Vs. Adarsha Padhegaon Vividh Karyakari Seva Sahakari Society Ltd. & Ors., 1984 (2) Bom.C.R. 667.*** Being aggrieved by the said order dated 2nd February 2016 passed by the Assistant Registrar, the petitioners filed this writ petition.

5. In so far as the Writ Petition No.6657 of 2017 is concerned, the facts of this matter are almost identical. In this matter, the Assistant Registrar though held that the respondent no.2 could not have recovered the interest amount more than the principal amount has still rejected the application for refund of the excess amount filed by the petitioner on the ground that there was dispute between the parties and thus the petitioner was required to file a dispute under Section 91 of the said Act. The petitioner has impugned the said order along with other orders in Writ Petition No.6657 2017.

6. Mr.Joshi, learned counsel for the petitioner in both the matters, invited my attention to various documents annexed to the writ petitions and also to the impugned order passed by the learned Assistant Registrar. He submits that in so far as the Writ Petition No.3488 of 2017 is concerned, learned Assistant Registrar has rejected the application filed by the petitioner merely on the ground that the petitioner was not entitled to seek refund in view of the earlier judgment of the Division Bench of this Court in the case of ***Nivrutti Narayan Bankar Vs. Adarsha Padhegaon Vividh Karyakari Seva Sahakari Society Ltd. & Ors., 1984 (2) Bom.C.R. 667.***

7. Learned counsel for the petitioner invited my attention to the Circular dated 1st October 2015 issued by the State of Maharashtra interpreting Section 44-A of the said Act issuing the guidelines to the authorities to consider that no co-operative society shall be entitled to recover the interest amount more than the principal amount. It was made clear that the said circular that the same was applicable to all the Co-operative Societies. He submits that based on the said circular, the petitioner had applied for refund before the Assistant Registrar.

8. Learned counsel for the petitioner invited my attention to the affidavit-in-reply filed by the respondent no.1 and also to some of the averments made in the writ petition. He submits that the respondent no.1 had not disputed the fact that the respondent no.1 had recovered the interest amount more than the principal amount of loan granted to the petitioner.

9. Learned counsel for the petitioner invited my attention to the later judgment of the Division Bench of this Court in the case of ***Nivrutti Narayan Bankar Vs. Adarsha Padhegaon Vividh Karyakari Seva Sahakari Society Ltd. & Ors., 1994 (1) Mah.L.R. 477***. He submits that the Hon'ble Supreme Court has set aside the earlier judgment of this

Court in the case of ***Nivrutti Narayan Bankar Vs. Adarsha Padhegaon Vividh Karyakari Seva Sahakari Society Ltd. & Ors., 1984(2) Bom.C.R. 667*** and remanded the matter back to this Court for reconsideration. He submits that after remand of the matter by the Hon'ble Supreme Court to this Court, this Court has held that the Co-operative societies cannot recover the interest amount more than the principal amount under Section 44-A of the said Act. He submits that the impugned order thus passed by the Assistant Registrar is contrary to the principles of law laid down by this Court in the later judgment of this Court in the case of ***Nivrutti Narayan Bankar Vs. Adarsha Padhegaon Vividh Karyakari Seva Sahakari Society Ltd. & Ors., 1984 (2) Bom.C.R. 667***. He submits that in any event, the impugned order is based on the earlier judgment of this Court which has been set aside by the Hon'ble Supreme Court and a contrary view is subsequently taken by this Court holding that under Section 44-A of the said Act, the Co-operative Societies could not recover the interest amount more than the principal amount. The impugned order thus passed by the Assistant Registrar deserves to be set aside on this ground itself.

10. In so far as the Writ Petition No.6657 of 2017 is concerned, learned counsel made an additional submission that in this case, though

the authority has held that the society had recovered the interest amount more than the principal amount which is not permissible under Section 44-A of the said Act, no relief is granted on the ground that remedy of the petitioner would be under Section 91 of the said Act. In this writ petition, no reply has been filed.

11. Learned counsel for the respondent no.1, on the other hand, invited my attention to few paragraphs of the writ petition and would submit that out of five loans granted to the petitioner, four loans not the agricultural loans but were granted towards the agricultural development purposes and thus Section 44-A of the said Act was not applicable to the facts of this case and thus there is no question of any refund of the excess amount recovered by the society from the petitioner.

12. The next submission of the learned counsel is that there was no adjudication on the issue as to whether the loan obtained by the petitioner would fall within the purview of Section 44-A of the Act and thus the only remedy of the petitioner would be to file a dispute under Section 91 of the Act.

13. Mr.Joshi, learned counsel for the petitioner invited my attention to the letter addressed by the society to the Assistant Registrar in

response to the application for refund made by the petitioner and would submit that neither in the said reply nor in a reply before this Court in this writ petition, the respondent no.1 has raised an issue that the application would not fall within the purview of Section 44-A of the said Act. He submits that in any event, the learned Assistant Registrar has not rejected the claim for refund on the ground that since the nature of the loan obtained by the petitioner allegedly would not come within the purview of Section 44-A of the said Act, this Court cannot allow the respondent no.1 to raise that issue for the first time across the bar.

14. A perusal of the record clearly indicates that it is not disputed by the respondent no.1 society that the respondent no.1 has recovered more than the double amount i.e. principal amount and amount of interest thereon from the petitioner while executing the recovery certificate under Section 101 of the said Act. A perusal of the affidavit-in-reply as well as reply to the application filed by the petitioner before the Assistant Registrar clearly indicates that no issue has been raised by the respondent no.1 that the loan would not fall within the purview of Section 44-A of the Act specifically on the ground that the loans granted to the petitioner were for agricultural development purpose.

15. A perusal of the impugned order passed by the Assistant Registrar clearly indicates that the learned Assistant Registrar has rejected the application for refund of the excess amount merely on the ground that the claim of the petitioner was contrary to the law laid down the earlier judgment of the Division Bench of this Court in the case of ***Nivrutti Narayan Bankar Vs. Adarsha Padhegaon Vividh Karyakari Seva Sahakari Society Ltd. & Ors., 1984 (2) Bom.C.R. 667.*** which the has been recovered by the Hon'ble Supreme Court.

16. It is not in dispute that the earlier judgment delivered by the Division Bench of this Court in the case of ***Nivrutti Narayan Bankar Vs. Adarsha Padhegaon Vividh Karyakari Seva Sahakari Society Ltd. & Ors. 1984 (2) Bom.C.R. 667*** had been subsequently overruled by the Hon'ble Supreme Court and the matter was remanded back to this Court for deciding the matter afresh. It is not in dispute that pursuant to the said order passed by the Hon'ble Supreme Court, Division Bench of this Court, subsequently on remand, rendered a judgment and held that the Co-operative Societies are not permitted to recover the interest amount more than the principal amount in view of Section 44-A of the Act irrespective of the fact as to whether the recovery certificate was issued

in the matter or not. In my view, the impugned order passed by the Assistant Registrar relying upon the earlier judgment which is overruled by the Hon'ble Supreme Court and contrary view thereafter has been taken by the another bench of this Court thus deserves to be set aside on that ground itself. Be that as it may, State of Maharashtra thereafter has issued Government Resolution from time to time in the line of the principles of law laid down by the Division Bench of this Court in the subsequent judgment and has instructed all the authorities to see that no Co-operative Societies can be allowed to recover the interest amount more than the principal amount in view of Section 44-A of the said Act. The said Government Resolution is admittedly binding on all the Co-operative Societies.

17. In so far as the submission of the learned counsel for the respondent no.1 that some loans taken by the petitioner were for the agricultural development purpose and would not fall within the purview of Section 44-A of the said Act is concerned, admittedly the respondent no.1 did not raise this issue before the learned Assistant Registrar and also before this Court by filing any affidavit-in-reply. In my view, no such plea can be thus allowed to be raised for the first time at this stage across the bar.

18. In so far as the submission of the learned counsel for the respondent no.1 that there was no adjudication of the claim made by the petitioner before the Assistant Registrar and thus the remedy of the petitioner would be to file a dispute under Section 91 of the Act for refund of the excess amount is concerned, in my view, there is no merit in this submission of the learned counsel for the respondent no.1. No such issue was raised by the respondent no.1 before the Assistant Registrar. Since the impugned order is ex facie contrary to the principles of law laid down by the Division Bench of this Court in the later judgment of this Court in the case of *Nivrutti Narayan Bankar Vs. Adarsha Padhegaon Vividh Karyakari Seva Sahakari Society Ltd. & Ors., 1994 (1) Mah.L.R. 477*, this Court is not precluded from entertaining the writ petition under Article 227 of the Constitution of India. The question of filing any dispute under Section 91 of the said Act would not arise in view of the fact that the respondent no.1 did not dispute the fact that the respondent no.1 had recovered the interest amount more than the principal amount. The said alleged dispute was thus not required to be adjudicated upon under Section 91 of the Act. In my view, this submission of the learned counsel for the respondent no.1 has also no merit.

19. The principles of law culled out from the later judgment of the Division Bench of this Court in the case of ***Nivrutti Narayan Bankar Vs. Adarsha Padhegaon Vividh Karyakari Seva Sahakari Society Ltd. & Ors., 1994 (1) Mah.L.R. 477*** are summarised as under :-

“Section 44-A of the Act opens with a non-obstante clause and prescribes that notwithstanding anything contained in any agreement or any law for the time being in force, the Society shall not recover in any manner whatsoever on account of interest a sum greater than the amount of the principal of the loan. Even if the Section does not refer to the decree of the Civil Court or the certificate granted by the Registrar, the intention of the Legislature is clear in as much as the flat is issued restraining the Society from effecting recovery in any manner whatsoever. The expression “in any manner whatsoever” would include recovery even under the decree of the Civil Court or under the certificate granted by the Registrar. What Section 44-A of the Act provides is that the Society shall not recover the amount and when the petitioner complains that such recovery is being made then in spite of the certificate, the Co-operative Court was perfectly justified in giving a declaration. The Legislature has clearly provided that the Society shall not recover, in any manner whatsoever interest which is greater than the amount of the principal of the loan.”

20. In my view, the respondent no.1 Society thus could not have recovered any amount towards the interest amount more than the principal amount in view of Section 44-A of the said Act. The action on the part of the respondent no.1 in recovering the excess interest amount over and above the amount equivalent to the principal amount is thus ex facie contrary to Section 44-A of the said Act and the aforesaid

principles of law laid down by this Court and thus deserves to be set aside. The respondent no.1 Bank is thus liable to refund the excess amount of such interest recovered from each of the petitioners with a reasonable amount of interest which quantified @9% p.a. from the date of recovery of excess amount till payment.

21. I therefore pass the following order :-

- (i) The impugned order 2nd February 2016 passed by the Assistant Registrar, Co-operative Societies, Dindori, District Nashik and the order dated 18th June 2016 passed by the respondent no.2 i.e. Assistant Registrar, Co-operative Societies, Satana, Baglan, District Nashik and the order dated 26th August 2016 and 12th September 2016 passed by the respondent no.3 i.e. The District Deputy Registrar, Co-operative Societies, Nashik respectively are quashed and set aside.
- (ii) Application made by the petitioner for seeking refund of the excess amount is allowed.
- (iii) The respondent no.1 is directed to refund the excess amount within two weeks from today with interest @9% p.a. from the date of recovery of excess amount till payment.

- (iv) Both the writ petitions are disposed of in aforesaid terms. There shall be no order as to costs.
- (v) Parties to act on the authenticated copy of this order.

R.D. DHANUKA, J.