

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO. 465 OF 2018

Santosh Wamanrao Gaikwad

.....Petitioner

V/s.

State of Maharashtra & Ors.

.....Respondents

* * * * *

Mr. V.L. Subramanian Rajan, Advocate for the petitioner.

Mr. Manish Upadhye, AGP for State-respodents no.1 and 2.

Mr. Ramnath Ravi I/by. M/s. Ramanathsekhar and Company, Advocate for respondent no.4.

Coram : K.K. Tated, &**Sandeep K. Shinde, JJ.****Friday 28th September, 2018.****P.C. :**

1. Heard Learned Counsel for the parties.
2. By this petition, under Article 226 of the Constitution of India, the petitioner is challenging the order dated 10th January, 2018 passed by the Divisional Joint Registrar,

Mumbai in Revision Application No. 552 of 2017 rejecting petitioner's Revision Application under Section 154 of the Maharashtra Co-operative Societies Act, 1960 for non-compliance of the provisions of Section 154(2A) of the said Act.

3. Mr. Rajan, the learned Counsel for the petitioner submits that in the present case, neither he was the borrower nor the Guarantor. Therefore, there is no question of deposit of amount as per Section 154(2A) of the said Act.

4. On the other hand, the Learned Counsel appearing on behalf of the respondent-Bank submits that the petitioner is shown as a Guarantor in sanction letter dated 3rd February, 2014. In para-7 of the said letter, he further submits that, even the petitioner appeared before the Deputy Registrar when the matter was for hearing under Section 101 of the said Act. These facts stated by the Deputy Registrar in his Affidavit dated 13th December, 2017 filed before the Divisional Joint Registrar in Revision Application No. 552 of 2017.

4. The Learned Counsel for the respondent/Bank submits that, even the Apex Court in the matter of **Shri. Arun B. Khanjire Vs. The Inchalkaranji Urban Co-op. Bank Ltd. & Ors. Passed in Special Leave Petition (C) No. 18563 of 2005** held that, there is no question of having the deposit under Section 154(2A) of the said Act. Para-16 of the said judgment reads thus :

“16. Having carefully considered the submission made on behalf of the respective parties and having carefully considered the provisions of Section 154 of the Maharashtra Co-operative Societies Act, 1960, and in particular Sub-section (2A) of Section 154, we are convinced that no interference is called for with the order of the High Court impugned in these proceedings. Admittedly, Section 154(1) of the above Act confers revisionary powers on the State Government and also the Registrar of Co- operative Societies under the Act. It also empowers the State Government or the Registrar to satisfy themselves as to the legality or the propriety of any such decision or order and to modify, annul or reverse the same after

giving the person affected thereby an opportunity of being heard either suo motu or on an application. In the instant case, although learned counsel Mr. Jaydeep Gupta tried to impress upon us that the proceedings had been commenced suo-motu, we are unable to accept such submission since an application had been made by the petitioner to the officer concerned in which all the facts relating to the appeal had been set out. Although, the same was not in the form of a formal Memorandum of Appeal it served the purpose of the appeal without compliance with the provisions of Sub- section (2A) which required deposit of 50% of the recoverable dues. In fact, the petitioner resorted to an innovative procedure in order to avoid the pre-condition of payment of 50% of recoverable dues as stipulated under Sub- section (2A) of Section 154 of the above Act.

5. On the basis of this submission, the Learned Counsel for the respondent-Bank submits that, there is no substance in the present Writ Petition and the same be dismissed with costs.

6. We have heard both sides at length. There is no dispute that on record, it is clear from the sanction letter dated 3rd February, 2014 that the petitioner stood as Guarantor. Not only that, Certificate under Section 101 of the said Act is also issued against the petitioner. Apart from that, this Court during the course of arguments, called upon the Learned Advocate for the petitioner, whether petitioner wants more time to deposit the amount as per Section 154(2A). He has declined to do so.

7. Hence, considering the submissions made by both sides and the judgment of the Apex Court in the matter of *Arun B. Khanjire* (supra), we do not find substance in the present Writ Petition.

(a) The Writ Petition stands rejected.

(b) No order as to costs.

(SANDEEP K. SHINDE, J)

(K.K. TATED, J)