IN THE HIGH COURT OF JUDICATURE AT BOMBAY BENCH AT AURANGABAD

2 WRIT PETITION NO.7535 OF 2016

SUMANGAL NAGARI SAHAKARI
PATSANSTHA MARYADIT, DEOPUR
THROUGH ITS MANAGER SUNIL
SHIKRISHNA TANDALE … PETITIONER

VERSUS

THE DIVISIONAL JOINT REGISTRAR
CO-OP SOCIETY, NASHIK
DIVISION NASHIK AND OTHERS … RESPONDENTS

…

Mr. V.D. Salunke, Advocate for Petitioner
Mr. A.B. Chate, AGP for Respondent Nos. 1 and 2-State
Mr. Deepak D. Choudhari, Advocate for Respondent No.4
Mr. J.R. Shah, Advocate for Respondent Nos.3 and 5

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CORAM : V. K. JADHAV, J.
DATED : 16th DECEMBER, 2019

PER COURT :-

1. By consent of the parties, heard finally at admission stage.

2. By way of this writ petition, the petitioner – society is challenging the order dated 02.05.2013 passed by the Deputy Registrar, Co-operative Societies, Dhule and the order dated 11.12.2014 passed by the Divisional Joint Registrar Co-operative Societies, Nashik Division, Nashik in Revision Application No. R-105 of 2013. The petitioner - society has also prayed that the Deputy Registrar Co-operative Society Dhule and the Divisional Joint Registrar Co-operative Society, Nashik may be directed to issue certificate under Section 101

of the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as “MCS Act”) by allowing the application dated 13.08.2012 filed before the Deputy Registrar Co-operative Societies, Dhule.

3. Brief facts giving rise to the present writ petition:

(I) The petitioner is the co-operative society, registered as per the provisions of MCS Act. Respondent No.3 had approached the petitioner - society and applied for loan. On 02.03.2007, in the meeting of Board, respondent nos. 3, 4 and 5 came to be accepted as members of said society. Furthermore, the petitioner – society advanced him the loan of Rs.62,70,000/- on 02.03.2007. On the same day, by issuing the cross cheque, the amount of Rs.60,00,000/-and Rs.2,00,000/- has given in the name of respondents. The said cheques came to be directly deposited in the joint account of respondent nos. 3 & 4 of Indira Sahakari Bank Ltd. Respondent no.3 had already taken the loan from Indira Co-operative Society. Even the respondent had executed demand promissory note, Karj Rokha, Kararpatra, obligation letter etc. along with hypothecation deed in respect of three plots owned by him. The respondent no.3 had refunded the part loan by cheques and cash to the petitioner – bank on various dates and the amount refunded is to the tune of Rs.42,82,915/- out of principal amount, till the date of 30.09.2012. However, thereafter, respondent no.3 has not deposited any amount in the account of society towards the loan. In consequence thereof, the petitioner - society has presented an application under Section 101 of MCS Act. However, by impugned order dated 02.05.213, the Deputy Registrar, Dhule has rejected the said application. Being aggrieved by the same, the petitioner – society has preferred the revision application before the Divisional Joint Registrar Co-operative Societies, Nashik and by order dated 11.12.2014, the said revision application came to be dismissed and confirmed the order of Deputy Registrar, Co-operative Societies, Dhule. Hence, this writ petition.

4. Learned counsel for the petitioner - society submits that respondent no.3 had already availed the loan from Indra Sahakari Bank Ltd. and in order to refund the same, he had approached to the petitioner - society and obtained the loan which is not disputed. However, the authorities below have not taken into consideration the promissory note, hypothecation deed and karja rokha. Furthermore, the authorities below have also not considered the respondent no.3, who had refunded the loan to the extent of Rs.42,82,915/-. The petitioner - society has created charge on the property of the petitioner

and the same recorded in 7/12 extract. This is also not considered. Learned counsel submits that the proceedings under Section 101 of MCS Act before the Registrar are quasi Judicial in nature, but does not means that the Registrar is expected to engage in the process of long drawn reasoning of each aspect or argument. It is enough if that authority broadly considers the main issue as to whether the concerned member is in arrears and to what extent and whether the claim of arrears of the society substantiated from the record. Learned counsel submits that due to the impugned orders, the petitioner - society has to suffer financial loss.

5 Learned counsel for the petitioner in order to substantiate his contention placed reliance on the following cases:

(I) **Vasant Jobanputra Vs. Bank of India Staff Sampada Co-operative Housing Society Ltd. and Ors.** reported in **2004 (4) Mh.L.J. 1093.**

(II) **Vijay Shamrao Bhokre and Ors. Vs. Mumbadevi Jilla Nagari Sahakari Pat Sanstha Maryadit & Ors.** reported in **2011 (1) Bom. C.R. 327**

6. Learned counsel Mr.J.R. Shah for respondent nos.3 & 5 and learned counsel Mr.Deepak D. Choudhari for respondent no.4 submit that respondent no.3 has filed his Say to the application filed by the petitioner - society under Section

101 of MCS Act before the learned Deputy Registrar Co-operative Society, Dhule and raised many disputed question of facts such as the petitioner - society alleged to have disbursed the loan amount of Rs.62,70,000/- to respondent no.3 but in hypothecation deed, the loan amount is shown as 15 Lakhs only. Furthermore, the said hypothecation deed has not been executed by respondent no.3. Though the petitioner - society alleged to have issued two cheques for disbursement of said loan and the said cheques came to be deposited in the account viz. Account No.90/01 of Indira Sahakari Bank Ltd, however, the petitioner - society has failed to submit the details of said account and the name of holder. The said loan amount alleged to have been sanctioned in the meeting of the petitioner - society dated 02.03.2007 at 06.00 pm. It further appears that before the said sanction, the loan was disbursed. The loan is not sanctioned in terms of the bye-laws of the society. Both the authorities below submit that so far as the provisions of Section 101 of MCS Act are concerned, this is a speedy remedy of summary nature and it enables the Registrar to issue certificate after undertaking and enquiry, if he is satisfied that concerned society has failed to take action under the foregoing sub-section in respect of any amount due as arrears. The language itself shows that the recovery contemplated is of arrears due to society. Learned counsel for the respondent/s

submit that Section 91 dealing with such disputes opens with non abstante clause. Thus a exclusive jurisdiction has been conferred to take cognizance of such disputes under the Co-operative Court. Section 91 enables the Co-operative Court to decide disputes about the amounts claimed by the society as arrears and recovery of loan is also possible under Section 91. Learned counsel for respondent/s submit that both the authorities below finds the disputed question of facts, genuinely arising in the proceedings and the same cannot be resolved without cross-examination. Learned counsel for respondent/s submit that there is no substance in the writ petition. The writ petition is liable to be dismissed.

7. Learned counsel Mr. Deepak D. Chaudhari for respondent no.3 in order to substantiate his contention placed reliance on the following case:

(i) **Top Ten and Anr. Vs. State of Maharashtra and Ors.** reported in **2012 (2) Bom. C.R. 647**.

8. I have also heard the learned AGP for respondent nos. 1 and 2.

9. On careful perusal of the impugned orders passed by the authorities below, it appears that both the authorities below have refused to entertain the proceedings under Section 101 of MCS Act on the ground that the many disputed

question of facts are raised in the matter and those question and facts, genuinely arising in the proceedings and the same cannot be resolved without cross-examination. Learned Deputy Registrar Co-operative Society, Dhule has given reference to the various disputed questions which can be reproduced herein-below:

> "(i) On perusal of the loan extract, it appears that on 02.03.2007, two cheques for an amount of Rs.6,000,000/- and Rs.2,00,000/- respectively came to be submitted and transferred in the bank account viz. Account No. 90/1 maintained with Indra Bank. It is not clear as to in whose bank account of the said Indra bank, the amount has been transferred and how those cheques of loan amount has been directly forwarded in the said account maintained with Indra Bank. However, the reference has been given by the respondents that the said cheques have been transferred and deposited in the account of wife of respondent no.3. The petitioner - society has not explained instead of depositing the said amount in the bank account of respondent no.3 herein why the said huge loan amount has been transferred in the name of other person.
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> (ii) Even though the said loan shown to have been sanctioned in the meeting on 02.03.2007 at about 06.00 pm, however, the transactions shown to have been occurred prior to that. Furthermore, in the meeting, the subject about the sanctioned of loan was not taken on the main agenda but it was taken at the end.

(iii) Even though certain documents shown to have been executed, however, those loan documents are incomplete without any details. There is no proper application of interest without following bye laws or any resolution. The documents submitted along with loan application are suspicious and most of the documents with blank spaces kept as it is without filling it.

(iv) Even though the huge amount of 62.70 lakhs shown to have been borrowed, however, in the hypothecation deed only 15 lakhs has been shown.

(v) Though respondent no.3 has denied that he has received the loan amount, however, it is a fact that the amount has been transferred in the bank account maintained in the name of his wife in Indra Bank Ltd. and on subsequent occasion, respondent no.3 has repaid the substantial amount."

10. It further appears that while disposing of revision application no. R-105 of 2013, the Joint Registrar Co-operative Society, Nashik has also considered the same and further held that the petitioner - society has to take recourse to filing of the dispute under Section 91 where such disputed questions can be gone into.

11. In a case of Vasant Jobanputra Vs. Bank of India Staff Sampada Co-operative Housing Society ltd. & Ors. *(Supra)* relied upon by the learned counsel for the petitioner – society, it appears that the writ petitioner in the case cited

takes exception to the recovery certificate issued by the Deputy Registrar Co-operative Societies against the petitioner at the instance of the respondent - society. Respondent – society had applied to the Deputy Registrar for issuance of recovery certificate on the assertion that the petitioner was in arrears of certain demands and outgoings of the respondent - society towards the maintenance and service charges, non-occupational charges and balance cost of construction along with interest accrued thereon. It is the case of the petitioner – borrower that on the same cause of action, respondent - society has already instituted dispute under Section 91 of MCS Act which is still pending for consideration and as such, respondent - society could not have taken recourse to recovery proceedings under Section 101 of MCS Act in respect of said amount. Learned Single Judge of this Court has held that no fault can be found with the certificate as issued by the Registrar, which is supported by the documents on record. Indeed, the proceedings under Section 101 of the MCS Act before the Registrar are quasi judicial in nature, but that does not means that the Registrar is expected to engage in the process of long drawn reasoning or analysis of each aspect or argument.

12. It appears that in other way, learned Single Judge has considered the provisions of Section 101 of MCS Act and

negatived the challenge made by the petitioner - borrower.

13. In a case of Top Ten and Anr. Vs. State of Maharashtra and Ors. *(Supra)* wherein the judgment and order of the Division Bench in a case of **Vijay Shamrao Bhokre Vs. Mumbadevi Jilla Nagari Sahakari Pat Sanstha Maryadit, Kopargaon** reported in **2011 (1) Bom. C.R. 327** is also referred, the Division Bench of this Court by referring the various cases on this point in Paragraph Nos. 19 and 21 of the judgment has made the following observations:

> "19. Thus very small types of disputes in which only limited question is of quantification of arrears due, is to be looked into by such Registrar while undertaking enquiry under section 101. Importance therefore, is to statement of accounts. The enquiry undertaken is only aimed at ascertaining whether amount disclosed in statement of accounts as arrears, is correct and due. The limited opportunity of defence is, therefore, extended to the borrower like petitioners. The correctness of amount shown as arrears can be verified from the accounts and from accounts of the society and from receipts produced by other side. Denial of cross-examination in this situation only shows legislative intent that if a genuine and disputed question of facts is found arising by the Registrar, he cannot proceed to resolve to that question. The concerned society, in such circumstances, has to take recourse to filing of a dispute under section 91, where such disputed questions can be gone into. Hence, a bona fide defence being raised by a borrower or other person against whom such certificate is sought, cannot be resolved by the Registrar under this jurisdiction. If he finds such dispute arising, he has to deny the recovery certificate by passing appropriate judgment under Rule 86-F.

. In Ramchandra and another Vs. Collector, Nagpur and others (supra), the Division Bench of this Court has looked into the provisions of section 137. Section 137[1] was earlier a provision pari materia with provisions of section 101. Section 137 [1] enables the Registrar to make such enquiry as he deems fit. Section 101 was also containing same phrase till 10.5.2006. On that date, the said words have been replaced and Registrar, is obliged to conduct enquiry in such manner as may be prescribed. Thereafter, Chapter VIII-A has been added to 1961 Rules, prescribing the mode of enquiry. Thus, said Division Bench judgment is no longer relevant for interpreting the scheme of section 101. Paragraph 26 of this Division Bench judgment on which the petitioners have placed reliance, however, does not show any express finding about need of extending an opportunity of cross-examination. Moreover, there is no provision either in 1960 Act or in 1961 rules, prohibiting such cross-examination in section 137 enquiry. This judgment, therefore, is of no assistance in present situation.

21. We have not seen any repugnancy or inconsisteny inter se between section 91 and section 101 of 1960 Act. Section 91 is a general remedy and general law covering all disputes; while section 101 governs extremely a small type of nature therefrom, where only possible dispute is about the quantum of arrears demonstrated to be due. If any other type of dispute requiring an adjudication arises, it is not possible for the Registrar or his delegate functioning under Chapter VIII-A to entertain such application and the application in that event needs rejection. The concerned society has then to move the Co-operative Court under section 91 for said recovery. Language of both the provisions is plain and unambiguous and both the provisions can be construed harmoniously in this manner. Both the provisions begin with non obstante clause and do not militate with each other, but proceed to advance the legislative intention of enabling a society to have a speedy remedy for recovery of arrears due as land revenue. Therefore,

only the legislature has envisaged very limited verification, which even does not call for any cross-examination of either of the parties. The express bar of such cross-examination under Rule 86-E is because of this very narrow scope of enquiry open to the Registrar under section 101 read with Chapter VIII-A of 1961 Rules. As already held above, if the scope of enquiry is required to be enlarged, the legislative intent will itself get frustrated. If the Registrar or his delegate finds disputed questions of facts, genuinely arising in such proceedings, and the same cannot be resolved without cross-examination, it is apparent that the application under section 101 itself cannot be entertained. In that event it has to be held that claim made by the concerned applicant-society is not in respect of arrears due to it as envisaged under section 101 of the 1960 Act.

14. In view of the ratio laid down by the Division Bench of the Court in the case of Top Ten and Anr. Vs. State of Maharashtra and Ors. *(Supra)* and considering the concurrent findings recorded by both the authorities below, I find no substance in this writ petition. Hence, I proceed to pass the following order:

ORDER

I) The writ petition is hereby dismissed.

(V. K. JADHAV, J.)

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