

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4549 OF 2018
(Nagnath Baburao Kokate Vs. State of Maharashtra and others)

Mr.G.V.Patil, Advocate for the petitioner.
Mr.S.W.Munde, AGP for respondent Nos. 1 to 4.
Mr.S.P.Brahme, appointed as an Amicus-curiae.
None for respondent No.5.
(CORAM : Ravindra V.Ghuge, J.)

DATE : 02/05/2019

PER COURT :

1. On 02/04/2019, after hearing the learned Advocate for the petitioner, the learned AGP for respondent Nos. 1 and 2 and the learned Advocate for respondent No.5, I had passed the following order :-

"1. I have heard the learned Advocates for the petitioner, the learned AGP on behalf of respondent Nos.1 to 4 and on behalf of respondent No.5.

2. The petitioner is aggrieved by the concurrent findings dated 26/12/2016 delivered by the District Registrar, Money Lending and dated 12/06/2017 delivered by the Divisional Joint Registrar, Co-operative Societies, which is the Appellate Authority.

3. The learned Advocate for the petitioner has strenuously criticized the impugned orders. Contention is that he had purchased the land admeasuring 5 R from Gat No.513 at Village Dhekari by a

registered sale deed dated 02/09/2005. The petitioner paid Rs.1,00,000/- to respondent No.5 while reducing the sale deed into writing on 02/09/2005. For one year, the petitioner was to use the land and respondent No.1 was to utilize an amount of Rs.1,00,000/-, which he would return within one year to the petitioner.

4. The petitioner further contends that after one year, as respondent no.5 did not return the money, he started pursuing respondent No.5 to execute the sale deed in favour of the petitioner. Since he did not return the amount of Rs.1,00,000/-, the petitioner preferred RCS No.31/2016 after eleven years.

5. Respondent No.5 moved the appropriate authority u/s 18 of the Maharashtra Money Lending Act on 18/08/2016. By the impugned order dated 26/12/2016, the competent authority concluded that the said sale was a result of a money lending transaction and issued appropriate directions for transferring the land in the name of respondent No.5. The Appellate Authority concluded that the order of the competent authority was neither perverse nor erroneous and as such the said order was sustained.

6. Learned Advocate for the petitioner relies upon the judgment delivered by this Court in the matter of **Ramesh Dhulatrao Gawhale Vs. The State of Maharashtra and others [2006(5) Mh.L.J.15]** to contend that such transactions are purely sale transactions in relation to agricultural land and therefore they would not be covered by the Maharashtra Money Lenders Act.

7. I find from the judgment delivered in Ramesh (supra) that the facts of the said case have been recorded in paragraph No.2. The 8 respondents/agriculturists who alleged to have borrowed money from the petitioner Ramesh, deposed before the Assistant Registrar, competent authority under the Act that they have sold their field properties to the petitioner and have executed registered sale deeds. They contended that they are in possession of the land sold and the revenue records continue in their names. They claimed to have cleared entire loan amounts and yet the petitioner refused to re-convey the fields. The petitioner/Ramesh made a statement that as he resides away from the fields, he had given the fields on lease for cultivation to the original owners. There was no written lease agreement between the parties.

8. This Court relied upon several judicial pronouncements in Ramesh (supra) and concluded in paragraph Nos.13 and 14 as under :-

“13. Discussion above therefore leaves no doubt that legislature did not intend to cover transactions in which immovable property was sold as security under section 13-B of Act. In any case it is apparent that when interest in immovable property is transferred by mortgage or by assignment (Sale), such cases do not fall under it even if it be as security by debtor to moneylender. Legislature was alive to the legal meaning of phrase pledge and the same has been used deliberately in section 13-B. Read in contradistinction with section 18 and 28 this is more apparent. The word Pawn broker is not used in section 13-B deliberately because security accepted by moneylender maybe even of title deeds or bonds or other similar

securities like cheques, shares etc. In all these writ petitions, it is admitted position that the respondents or debtors have executed and registered sale-deeds in favour of petitioners and petitioners have thus acquired title to the immovable property possession of which is ordered to be restored back to such vendor debtors by Authority or is sought by the Authority itself. Obviously such direction and order is beyond scope of section 13-B of Bombay Moneylenders Act, 1946 which deals with only movable properties.

14. There is one more reason for holding this. The scheme of Act discussed above shows that the legislature has also given important role to Civil Court in the matter for redressal of grievances of debtors before it and to see that Act is more effectively implemented. Sections 10 and 29 are important for this purpose.

Section 10. Stay of suits by moneylenders not holding license: -

(1) No Court shall pass a decree in favour of a moneylenders in any suit to which this Act applies including such suit pending in the Court before the commencement of the Bombay Money Lenders (Amendment) Act 1975 unless the Court is satisfied that at the time when the loan or any part 31 thereof, to which the suit relates was advanced, the moneylender held a valid license, and in the Court is satisfied that moneylender did not hold a valid license, it shall dismiss the suit.

Section. 29. Notwithstanding anything contained in any law for the time being in force, the Court shall, in any suit to which this

Act applies, whether heard ex parte or otherwise -

- (a) reopen any transaction, or any account already taken between the parties;*
- (b) take an account between the parties;*
- (c) reduce the amount charged to the debtor in respect of any excessive interests;*
- (d) if on taking accounts it is found that the moneylender has received more than what is due to him pass a decree in favour of the debtor in respect of such amount.*

Provided that in the exercise of these powers, the Court shall not

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- (i) reopen any adjustment or agreement purporting to close previous dealings and to create new obligations which have been entered into by the parties or any person through whom they claim at a date more than six years from the date of the suit;*

- (ii) do anything which affects any decree of a Court,*

Explanation:- For the purpose of this Section excessive interest means interest at a rate which contravenes any of the provisions of section 25.

Section 10 requires Court not to decree the suit of moneylender and to dismiss it if he did not have valid license. Section 29 permits Court to open closed transaction and to take accounts

itself to find out whether any injustice has been done to debtor by taking advantage of his illiteracy or ignorance or whether excessive interests is charge from him. Thus Act has not done away with proceedings before Civil Court. No jurisdiction even in the alternative has been conferred on Authority in disputes arising under Act in relation to immovable properties. In any case such Authority is not constituted as an alternate forum to decide questions about title to immovable properties. Bare perusal of its section 13-B show that only limited type of disputes are left for decision by Authority and such decisions about valuation or identity of property given by Authority have alone been made final. Section 2 defines business of money lending to mean the business of advancing loans [whether in cash or kind and] whether or not in connection with or in addition to any other business; while it defines loan as an advance at interest whether of money or in kind. It is therefore apparent that in cases where perusal of documents or inspection of records under section 13-A does not reveal such an advance, those cases are excluded from scope of section 13-B. In case of Sale, even if it is presumed to be bogus or sham, loan amount normally will be reflected as consideration paid and not as an advance. There'll be a registered document duly executed by debtor evidencing it. All these factors may be conspicuous by their absence in case of advance of money as loan after accepting security of movables. The Act recognises the important role of Civil Court in Civil suits to which it will be applicable and the legislature has therefore left some disputes including one in relation to sale-deed to be sorted out only in Civil Court and not

before Authority which has not been equipped either by section 13 or by its position (legal education or expertise) to resolve such intricate civil controversies.”

9. *In the instant case, the sale deed which is drawn in Marathi, indicates that it was a nominal sale deed which was to be in existence for only one year from 02/09/2005. The petitioner paid Rs.1,00,000/- to respondent No.5. The script appearing in the sale deed indicates that respondent No.5 categorically mentions that he is in a financial crunch and requires money for personal use. He has therefore borrowed an amount of Rs.1,00,000/- from the petitioner to be repaid in one year. The petitioner is permitted to use the agricultural land and after the amount of Rs.1,00,000/- is repaid to him, he would hand over the possession of the land to respondent No.5. The amount of Rs.1,00,000/- was paid by the petitioner in cash.*

10. *Respondent No.5 has now taken a stand that he was given a loan of only Rs.50,000/- though it is not so mentioned in the sale deed and as the petitioner is a money lender, he extracted an undertaking from him that he would return an amount of Rs.1,00,000/- to the petitioner which includes the interest amount of Rs.50,000/-.*

11. *The learned AGP has defended the impugned order.*

12. *The learned Advocate for respondent No.5 submits that he would prepare himself in this matter, especially in view of the observations of this Court in paragraph Nos. 13 and 14 in the judgment delivered in Ramesh (supra) that such sale transactions with*

regard to agricultural land, would not be covered by the Maharashtra Money Lending Act.

13. In the light of the facts as recorded above and in view of the law laid down in Ramesh (supra), the peculiar facts of this case will have to be considered. Learned Advocate for respondent No.5 seeks some time.

14. In view of the above, to enable respondent No.5 to prepare himself, stand over to 25/04/2019 in the "Urgent Admissions Category".

15. I deem it appropriate to appoint Mr.Brahme, learned Advocate as an amicus curiae in this matter. The learned Advocate for the petitioner shall supply the copy of the petition paper book to Mr.Brahme within 3 days from today.

16. Until further orders, the respondents would be precluded from seeking execution and operation of the impugned orders."

2. In view of the above, Mr.Brahme, learned Advocate, amicus-curiae has placed on record his brief points alongwith the copy of the new, Maharashtra Money Lending (Regulation) Act, 2014 introduced by the Maharashtra Act No.VIII 2014 dated 16/01/2014 and a copy of the statement of objects and reasons.

3. He submits that the Bombay Money Lenders Act, 1946 was repealed by the 2014 Act which was brought into effect on 16/01/2014. The judgment delivered by the learned Single Judge of this Court in the matter of Ramesh (supra), reported in 2006, apparently is under the Bombay Money Lenders Act of 1946.

4. He has referred to the statement and objects of the 2014 Act which read as under :-

“1. The harassment to the farmers-debtors at the hands of money-lenders, resulting in the frequent suicides by the farmers is a matter of great concern. The existing enactment on money-lending, namely the Bombay Money-Lenders Act, 1946 (Bom.XXXI of 1947) is found to be too inadequate to prevent the harassment to the farmers-debtors by the money-lenders. Various Committees appointed by the State Government to study the reasons for farmers' suicides have submitted their reports, which, interalia, point out that harassment by money-lenders is a major reason for such suicides. With a view to effectively prevent the harassment of farmers-debtors at the hands of money-lenders, it had become expedient for the Government to make a new law to regulate the transactions of money-lending in the State by repealing the existing Bombay Money-Lenders Act, 1946 (Bom.XXXI of 1947).

2. Accordingly, the Maharashtra Money-Lending (Regulation) Bill, 2010 (L.A.Bill No.XLIX of 2010) was introduced and has

been passed by both Houses of the State Legislature. The said Bill was forwarded to the Union Ministry of Home Affairs being nodal Ministry for the purpose and is under consideration for the Hon'ble President's Assent. The Union Ministry of Finance (Department of Financial Services) through the Ministry of Home Affairs has made certain suggestions in respect of the definition clause of the said Bill to explicitly provide that the provisions of the said Bill shall not apply to the Non-Banking Financial Companies and the Reserve Bank of India regulated under the Reserve Bank of India Act, 1934, so also to the Co-operative Societies and the Co-operative Banks regulated under the Banking Regulation Act, 1949 as well as to the Regional Rural Banks regulated under the Regional Rural Banks Act, 1976. Obviously, such institutions are governed by the Central Laws made under the Union List. However, as insisted by the Union Home Ministry, on the recommendation of the Union Ministry of Finance, such explicit provisions have been incorporated. It is considered expedient to bring such law into force with immediate effect by promulgating an Ordinance.

3. As both Houses of the State Legislature are not in session and the Governor of Maharashtra is satisfied that, circumstances exist which render it necessary for him to make a law, for the purposes aforesaid, this Ordinance is promulgated."

5. He submits that for time immemorial, the farmers were at the mercy of the money lenders and since the 1946 Act excluded

immovable properties from the ambit of the Act, the farmers became vulnerable and were an easy prey to losing their immovable agricultural properties resulting in a permanent loss of source of earning for the entire family. It was in this backdrop that the State of Maharashtra introduced the 2014 Act, specifically including immovable properties within the ambit of the Act.

6. Mr.Brahme refers to Section 18 of the 2014 Act and Rule 17 of the Maharashtra Money Lending Rules, 2014, which read as under :-

“Section 18 - (1) If, on the basis of facts disclosed, during verification under section 16 or inspection under section 17, or by an application from a debtor or otherwise, the District Registrar has reason to believe that any immovable property, which has come in possession of the money-lender by way of sale, mortgage, lease, exchange or otherwise, within a period of [fifteen years] from the date of verification or the inspection or the date of receipt of application from debtor, in the nature of the property offered by the debtor to the money-lender as a security for loan advanced by the money-lender in course of money-lending, the District Registrar, may, himself or through an inquiry officer, to be appointed for the purpose, in the manner prescribed, hold further inquiry into the nature of the transaction.

(2) If upon holding the inquiry as per sub-section (1), the District Registrar is satisfied that the immovable property came in

possession of the money-lender as a security for loan advanced by the money-lender during the course of money-lending, the District Registrar may, notwithstanding anything contained in any other law for the time being in force, after recording the reasons, declare the instrument or conveyance as invalid and may order restoration of possession of the property to the debtor who has executed the instrument or conveyance as a security or to his heir or successor, as the case may be.

(3) Before passing an order or giving decision as per sub-section (2), the District Registrar shall give an opportunity to the person concerned to state his objections, if any, within fifteen days from the date of receipt of notice by him and may also give personal hearing, if he so desires.

(4) Any person aggrieved by the order or decision of the District Registrar under sub-section (2) may, within one month from the date of order or decision, appeal to the Divisional Registrar :

Provided that, the Divisional Registrar may admit the appeal after expiry of the period of one month, if the appellant satisfies him that he had sufficient cause for not preferring the appeal within the period.

(5) The order passed by the Divisional Registrar in appeal preferred under sub-section (4) shall be final.

(6) Subject to the appeal provided under sub-section (4), the order passed or decisions given by the District Registrar under sub-section (2), shall be sufficient conveyance and it shall be the duty of every officer entrusted with the work relating to maintenance of land records under the Maharashtra Land Revenue Code, 1966, or under any other law for the time being

in force, to give effect to such order in his records.”

“Rule 17 :- Procedure for the Return of Immovable property acquired or usurped in course of money- lending.—(1) The proceeding for return of the immovable property and restoration of possession, shall commence by an application for cancellation and declaration of any instrument or conveyance as invalid, on the ground that, an instrument or conveyance entered into between the applicant and the opponent is a security for the loan advanced by the opponent to applicant in the course of money lending, to be presented to the District Registrar of money lender of concerned District in which immovable property is situated. Such Application shall be either verified or shall be supported with an affidavit.

(2) (a) The Application shall be affixed with court fee stamp of Rs. 100 and shall be accompanied with the relevant and necessary instrument, document on which the Applicant relies and evidence if any to prove his claim.

(b) The Application shall contain the following particulars.—

- (i) The name, age, occupation of the Applicant,
- (ii) The name, age, occupation of the Opponent,
- (iii) The date on which the cause of action arose,
- (iv) The particulars as to the nature of the transaction and relief sought,
- (v) List of documents and witnesses if any on which the Applicant relies and wants to examine at the time of inquiry.

(3) Where the application does not contain the particulars as above and as required as per section 18, the District Registrar or the person

authorized by him shall forthwith ascertain from the applicant such of the particulars necessary to decide the application and shall reduce them to writing in the form of endorsement or an annexure to the application which shall be deemed to be a part of the application. The District Registrar shall not reject any such application on any trivial grounds.

(4) On receipt of such application the District Registrar shall examine the application and enter or cause it to be entered in the register kept for that purpose in Form No. 5.

(5) The District Registrar may enquire the said application himself or through an officer appointed by him for that purpose to ascertain the nature of the transaction mentioned in the application.

(6) On admission of the application the District Registrar shall fix a convenient day and place for inquiry or trial of the application and shall issue a notice to the opponent. The opponent shall be entitled to file his reply to the application and the District Registrar shall give him an opportunity to file reply to the application. However, in no case an adjournment for more than one month would be granted to file the reply and the documents on which the opponent relies.

(7) The District Registrar or the inquiry officer may frame the issues for his decision on any day on which the inquiry has been fixed for evidence.

(8) The District Registrar may proceed ex-parte if the opponent does not appear or file his reply within the stipulated period and shall then require the applicant to appear with his documents and witnesses, if any, on the day and place fixed for that purpose.

(9) The District Registrar or the inquiry officer shall have all the powers of the civil court for the purposes of enforcing the attendance of any

person and to examine him on oath to ascertain the nature of the transaction. In the event of requirement of any additional document or record by the District Registrar or the inquiry officer, he may proceed, if so required as per section 16.

(10) The District Registrar or the inquiry officer may examine the applicant or such other person as he may deem fit which he considers necessary by inspecting the documents in order to ascertain the real nature of the transaction.

(11) The District Registrar or the inquiry officer, for reasons to be recorded in writing, may adjourn the inquiry for such time as he thinks fit but not ordinarily exceeding 7 days.

(12) The District Registrar or the inquiry officer appointed by him shall have power, at any stage of the proceedings, to add name of any person to whom the possession for enjoyment of property or use claimed, may have been transferred or the addition of whom as a party appears necessary in order to enable him to effectually and completely decide the issue involved in section 18, be added as applicant or opponent as the circumstances of the case may require.

(13) Procedure in case of death of person in the proceedings.—In case of death of any person while inquiry is pending.—

(i) if the application is made by either of parties in the proceedings, the District Registrar or the inquiry officer shall summarily determine as to who is the legal representative of the deceased person and shall enter on record the name of such representative.

(ii) Where the District Registrar or the inquiry officer orders to enter the name on record of any person as a legal representative of the deceased opponent, he shall issue a notice to such legal representative

and the inquiry shall proceed on the date fixed in such notice.

(14) (i) On the day fixed or any other day to which the proceeding of inquiry has been adjourned, the District Registrar or the inquiry officer shall proceed to hear all the evidence brought before him and decide the point as to the nature of the transaction as per sub-section (1) of 18.

(ii) In case the inquiry is conducted by inquiry officer appointed by District Registrar, he shall submit his report to District Registrar within the period fixed by District Registrar, in any case not later than sixty days from the conclusion of inquiry by him. The District Registrar may extend this period for reasons to be recorded in writing by another period of thirty days.

(iii) In case the District Registrar himself has conducted the inquiry or after the receipt of inquiry report of inquiry officer, shall peruse and scrutinize the report and thereafter if he is satisfied that the immovable property has come into the possession of money lender as a security for loan advanced by the money lender during the course of money lending, shall issue a notice as required under sub-section (3) of section 18, within 15 days from the date of receipt of inquiry report or his conclusion before passing any order under sub-section (2) of section 18 and shall not pass any order under sub-section (2) of section 18 unless a further opportunity of being heard, is given to the person concerned to state his objections if any on the finding. Such opportunity of being heard may also include personal hearing if he so desires.

(iv) the person concerned may state his objections if any within 15 days from the date of receipt of aforesaid notice. The District Registrar thereafter may fix the date for personal hearing as per sub-

section (3) of section 18.

(15) The District Registrar or inquiry officer as the case may be shall maintain a roznama of each date of the inquiry proceedings under section 18 and maintain the same during the course of inquiry. He shall also sign a memorandum of substance of evidence of each witness as the examination of witness proceeds. He shall briefly record his reasons for his findings under sub- sections (1) and (2) of section 18.

(16) The District Registrar shall pass an order either declaring the instrument or conveyance as invalid and may order restoration of possession of property to the debtor who has executed the instrument or conveyance as the case may be or reject the application within a period of thirty days from the conclusion of the proceedings by recording his reasons therefore in writing.

(17) Where the District Registrar gives a decision or passes an order declaring the instrument or conveyance as invalid and orders restoration of possession of property to the debtor under sub- section (2) of section 18, an effect shall be given by revenue officer entrusted with the work of maintenance of land record under Maharashtra Land Revenue Code or any other law for the time being in force and such order under sub-section (2) of section 18 shall be executed in the same manner as if a decree passed by the Civil Court.

(18) Any person agreed by the order mentioned in sub-rule 17, may prefer an appeal to the Divisional Registrar within thirty days from the date of order.”

7. It is, therefore, quite evident that Section 17 brings the

immovable properties within the ambit of the 2014 Act and vests powers in the District Registrar to cause an enquiry into the nature of the transaction. The manner in which the District Registrar can exercise powers, is enumerated u/s 18. An appeal provision is also prescribed to approach the Divisional Registrar against the order of the District Registrar. Rule 17 prescribes the procedure to be adopted for the return of immovable property acquired or usurped in the course of a money lending transaction. As such, it is apparent from the intent and object of the Act as regards the necessity of bringing the immovable property within the ambit of the 2014 Act.

8. I must record my displeasure that the learned Advocate for the petitioner cited the judgment in Ramesh (supra) without indicating to the Court that the said judgment was delivered under the Old Act, which has already been repealed. Even in the synopsis, the petitioner has not written the year of the Act by merely stating 'the Maharashtra Money Lending Act'.

9. It is, therefore, obvious that the judgment delivered by this Court in Ramesh (supra) would not be applicable in view of the introduction of the 2014 Act and the Rules framed thereunder in 2014.

10. Considering the above and keeping in view that the law laid down in Ramesh (supra) would no longer be applicable to the case in hand, I do not find any reason to cause any interference in the concurrent orders. Considering the scope of the supervisory jurisdiction of this Court in view of the law laid down by the Hon'ble Apex Court in Syed Yakoob Vs.K.S.Radhakrishnan and others [AIR 1964 SC 477] and Surya Dev Rai Vs. Ram Chander Rai [2003(6) SCC 682], this petition is dismissed.

11. I find it appropriate to compliment Mr.Brahme for the able assistance rendered to the Court in this matter.

(Ravindra V.Ghuge, J.)