

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 481 OF 2011**

Goa State Cooperative Bank Ltd., through its Chief Executive/Managing Director, having its Head Office at Sahakar Sankul, Patto Plaza, Panaji-Goa.

.... Petitioner

Versus

1. Ponda Consumers Co-operative Society Ltd., having its office at Upper Bazar, Ponda-Goa.
2. Mr. Narayan S. Naik (Chairman), Ponda Consumers Coop. Society Ltd., Upper Bazar, Ponda-Goa.
3. Mr. Shabbir Shaikh (Vice-Chairman), Ponda Consumers Coop. Society Ltd., Upper Bazar, Ponda-Goa.
4. Mr. Chandrakant Parkar (Director), Ponda Consumers Coop. Society Ltd., Upper Bazar, Ponda-Goa.
5. Mr. Pramod Raikar (Director), (deceased), Ponda Consumers Coop. Society Ltd., Upper Bazar, Ponda-Goa.
- 5(a) Smt. Meenaxi Pramod Raikar (wife), Kapleswari, Kavale, Ponda, Goa.
- 5(b) Shri Sanjay Pramod Raikar (son), Kapleswari, Kavale, Ponda, Goa.
- 5(c) Mrs. Teja Sanjay Raikar, Kapleswari, Kavale, Ponda, Goa.
- 5(d) Shri Sandeep Pramod Raikar (son), Kapleswari, Kavale, Ponda, Goa.
- 5(e) Mrs. Amita Sandeep Raikar, Kapleswari, Kavale, Ponda, Goa.
6. Mr. Madhukar Phondekar (Director), Ponda Consumers Coop. Society Ltd., Upper Bazar, Ponda-Goa.
7. Mr. Ramesh Mamlekar (Director) (deceased), Ponda Consumers Coop. Society Ltd., Upper Bazar, Ponda-Goa.

- 7(a) Smt. Laxmi Ramesh Mamlekar (wife),
Durgabhat, Ponda, Goa.
- 7(b) Shri Paresh Ramesh Mamlekar (son),
Durgabhat, Ponda, Goa.
- 7(c) Mrs. Manaswi Paresh Mamlekar,
Durgabhat, Ponda, Goa.
- 7(d) Shri Sushant @ Vaman Ramesh
Mamlekar (son), Durgabhat, Ponda,
Goa.
- 7(e) Miss Rajashree Ramesh Mamlekar
(daughter), Durgabhat, Ponda, Goa.
8. Mr. Narayan Naik (Director), Ponda
Consumers Coop. Society Ltd., Upper
Bazar, Ponda-Goa.
9. Mr. Pramod Sirsat (Director), Ponda
Consumers Coop. Society Ltd., Upper
Bazar, Ponda-Goa.
10. Mr. Suresh B. Naik (Director), Ponda
Consumers Coop. Society Ltd., Upper
Bazar, Ponda-Goa.
11. Mr. Sanjay Bandodkar (Director), Ponda
Consumers Coop. Society Ltd., Upper
Bazar, Ponda-Goa.
12. Mr. Ramchandra Shet (Director), Ponda
Consumers Coop. Society Ltd., Upper
Bazar, Ponda-Goa.
13. Mr. Shivanand Phadte (Director), Ponda
Consumers Coop. Society Ltd., Upper
Bazar, Ponda-Goa.
14. The Registrar of Coop. Societies,
Government of Goa, 4th Floor, Sahakar
Sankul, Patto Plaza, Panaji-Goa. Respondents

Mr. S. R. Rivonkar, Advocate for the Petitioner.

CORAM:- C.V. BHADANG, J.

DATE:- 11th March, 2019.

ORAL JUDGMENT:

By this petition, the petitioner is challenging the order dated 01.06.2010, passed by the respondent no. 14, the Registrar of Cooperative Societies (Arbitrator), under the provisions of the Multi State Cooperative Societies Act, 2002 (Act of 2002, for short), by which, the application for review filed by the respondents has been allowed, thereby recalling the earlier order dated 17.03.2010, by which, the respondents were jointly and severally held liable to pay to the petitioner an amount of Rs.48,24,125.97 as on 30.06.2009 alongwith further interest at the rate of 18.5% per annum from 01.07.2009 till realisation.

2. The brief facts are that the petitioner had advanced a loan to the respondent no. 1, Ponda Consumers Co-operative Society Ltd. (Society, for short) for Rs.15 lakhs in the year 2009 for the purpose of its business of controlled and non-controlled commodities. There was a default in the matter of repayment of the loan and hence, the petitioner/disputant referred the matter to the learned Arbitrator, in terms of Section 84 of the Act of 2002 for recovery of the outstanding loan amount.

3. The learned Arbitrator by his order dated 17.03.2010 allowed the application and held the respondent nos. 1 to 13 to be jointly and severally liable to pay the amount alongwith interest as aforesaid.

4. The petitioner instead of challenging the said order, filed an application for review on several grounds, including that the loan was obtained by the Society and the individual Directors, i.e. the respondent nos. 2 to 13 could not be held jointly and severally liable to repay the loan alongwith the respondent no. 1. It was also contended that the loan was granted in the year 2000 and the documents were executed by the then Directors of the petitioner, however, subsequently, the Directors changed and the respondent nos. 2 to 13, who were not the Directors in the year 2000, could not have been held responsible, in any event.

5. For the limited purpose of deciding this petition, it is not necessary to set out the other grounds, on the basis of which the review was sought.

6. Be that as it may, the successor of the Registrar of Cooperative Societies (the Arbitrator), allowed the application

for review and held that it is only the respondent no. 1-Society, which would be liable to pay the loan amount. Feeling aggrieved by the exoneration of the respondent nos. 2 to 13 from liability to pay the loan, the petitioner has approached this Court.

7. I have heard Mr. Rivankar, the learned Counsel for the petitioner. None for the respondents. Perused record.

8. It is submitted by Mr. Rivankar, the learned Counsel for the petitioner that the only remedy available to the respondents/Directors to challenge the award of the learned Arbitrator dated 17.03.2010, was by way of an application under Section 34 of the Act of 1996 and the review application as framed and filed was not maintainable. It is submitted that the learned Arbitrator was in error in entertaining the said application. Secondly, it is submitted that even on merits, the learned Arbitrator could not have gone into the matter threadbare and reversed the findings of the predecessor. Except this, there are no other contentions raised.

9. I have carefully considered the submissions made and I do not find that any case for interference is made out.

10. It is not disputed that under the provisions of the Act of 2002, it is only the Society which would be responsible and liable to repay the loan amount and the individual Directors cannot be held responsible for the same, in the absence of any such Director giving a personal guarantee to the loan. On a careful perusal of the impugned order, it shows that there are other grounds, which are accepted by the learned Arbitrator, while allowing the review and one of such grounds is that the notice of the dispute was not served on the individual Directors and therefore, no adverse order could have been passed in the absence of such notice. Once it is found that the individual Directors are not responsible for repayment of loan, in the absence of these Directors extending any personal guarantee to the loan (which is not the case made out herein), no exception can be taken to the impugned order, by which the individual Directors have been exonerated from the said liability. In the given circumstances, I find it not necessary to go into the question whether, the successor of the Arbitrator who passed the earlier order dated 17.03.2010, could have entertained the application for review or not. The said issue is left open.

11. It is now well settled that while exercising jurisdiction under Article 226 and/or 227 of the Constitution of India, this Court would not set aside an order, which would result into restoring another order, which otherwise cannot be sustained, in the facts and circumstances of the case. Thus, once it is found that the individual Directors would not be liable more so, in the absence of individual notice to them, the initial order in any case cannot be sustained. Even assuming that the application for review, was not maintainable, this Court in its discretionary jurisdiction would not restore the earlier order, which is otherwise unsustainable. In such circumstances, the petition is dismissed, with no order as to costs.

C. V. BHADANG, J.

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