Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 675 OF 2018

Rahul @ Pratap Laxmikant Khope,
of major age, Indian National,
resident of House No.E-28,
Maddicatta, Cuncolim,
Salcete, Goa. ….. Petitioner.

Versus.

1. Central Registrar of
Co-operative Societies, Government
of India, having its Office at Department
of Cooperation, Ministry of Agriculture
& Co-operation, Krishi Bhavan,
New Delhi 110 001.

2. Goa State Cooperative Bank Ltd,
a Cooperative Society, registered under
the Multi-State Cooperative Societies
Act, 2002, having its Head Office at
Sahakar Sankul, EDC Complex,
Patto Plaza, Panaji, Goa
through its Managing Director.

3. The Recovery and Sales Officer,
North/South Zone, C/o. Goa
State Cooperative Bank Ltd,
Head Office at
Sahakar Sankul, EDC Complex,
Patto Plaza, Panaji, Goa

4. The Registrar of Cooperative Societies,

Government of Goa, having his Office at
4th Floor, Sahakar Sankul, EDC Complex,
Patto Plaza, Panaji, Goa …. Respondents.

Mr. Rohit Bras de Sa, Advocate for the Petitioner.

Mr. S. R. Rivankar, Advocate for Respondent No.2.

Coram : M.S. Sonak &
Prithviraj K. Chavan, JJ.

Date : 14 January 2019.

ORAL JUDGMENT : (Per M.S. Sonak, J.)

Heard Mr. Rohit Bras de Sa for the Petitioner and Mr. S. R. Rivankar, Advocate for Respondent No.2-Bank.

2. Rule. Rule made returnable forthwith. Heard with the consent of the parties.

3. Since the main relief sought for in this Petition, concerns Respondent No.2-Bank, presence of Respondents No.1, 3 and 4 is not necessary.

4. The Petitioner had obtained some loans from Respondent Bank, which is a co-operative Bank. Since, there were defaults in repayment of such loan amounts, the following six cases

came to be initiated by the Respondent Bank against the Petitioner.

(1) Case No.ARCS/HQ/CC/ABN-1241/2000/14;

(2) Case No. ARCS/HQ/CC/ABN-1242/2000;

(3)Case No.ARCS/HQ/CC/ ABN-1243/2000;

(4) Case No.ARCS/HQ/CC/ABN-1244/2000;

(5) Case No.ARCS/HQ/CC/ABN-1246/2000; and

(6) Case No. ARCS/HQ/CC/ABN-1245/2000.

5. The aforesaid six cases were disposed of by the Assistant Registrar of Co-operative Societies vide common Judgment and Order dated 13 April 2005. The operative portion of this common Judgment and Order reads thus :

> " *O R D E R*
>
> *All the above fix cases referred by the Hon'ble High Court of Bombay at Goa along with the 6th case disposed of in view of the observations made abvoe. The Opponent, Shri Laximikant S.P. Khope, may make the payment of Rs.50,00,000/- within 15 days from the date of the order and the Disputant bank may accept the same in full and final settlement towards the entire loan dues involved in above six cases.*
>
> *Given under my Signature and Seal of this Office on this 13th day of April, 2005 at Panaji-Goa."*

6. The Petitioner has produced on record receipts that he has, within the period prescribed, paid the amount of ₹ 50.00 lacs to

the Respondent Bank, which amount has been duly accepted by the Respondent Bank and even credited to the six loan accounts of the Petitioner. Even today, there is no dispute whatsoever regarding this position. Particular reference can be made to a document dated 13 May 2005, addressed by the Respondent Bank to the Petitioner, confirming the position that the Bank has received the amount of ₹ 50.00 lacs and the same has been credited to the six loan accounts of the Petitioner. This document also makes a reference to the common Judgment and Order dated 13 April 2005, in pursuance of which the said amount has been paid and received.

7. Despite the aforesaid, by a communication dated 4 October 2016, the Respondent Bank called upon the Petitioner to repay the loan amounts, which is again the subject-matter of the aforesaid six cases or the aforesaid six loan accounts. The letter states that in case, the Petitioner fails to pay the loan amounts, the Petitioner's name would be published in the local newspapers, styling him as a willful defaulter. Aggrieved by this, as also by non-issuance of a No Due Certificate, the Petitioner has instituted the present case.

8. Mr. Rivankar, the learned Counsel for the Respondent Bank accepts that the Petitioner has indeed cleared the loan amounts in terms of the common Judgment and Order dated 13 April 2005. He, however, submits that at the relevant time no entries were made

as regards closure of the loan amount. He further submits that if such entries have to be made today, then, it is likely that the same is construed as writing off any outstanding loan. He submits that powers to write off outstanding loans are vested only in the General Body. He, therefore, submits that this issue can only be sorted out at the Annual General Meeting which is scheduled to be held before end of September 2019. Mr. Rivankar, in fact, produced on record a letter dated 10.1.2019, addressed to him by the Respondent Bank, requiring him to make such a submission. At the request of Mr. Rivankar, we take on record the letter dated 10 January 2019.

9. Since, in the present case there is no dispute whatsoever that the issue of repayment of the six loan accounts was finally disposed of by the common Judgment and Order dated 13 April 2005 and further the Petitioner consistent with such order, has already paid the amount of ₹ 50.00 lacs to the Respondent Bank within the period prescribed, we fail to understand as to how it can be said that there is any further outstanding liability in so far as these loan accounts are concerned. In absence of any dues or outstanding loan liability, we fail to understand as to how the issue of writing off arises in the present facts.

10. In any case, the Respondent Bank, having received the amount of ₹ 50.00 lacs in full and final settlement towards the entire

loan dues involved in the six cases referred to above, there is no justification on the part of the Respondent Bank in issuing the letter dated 4 October 2016, and making demand for further payment or threatening publication of the Petitioner's name/photograph on the basis that the Petitioner is a willful defaulter, at least in so far as the above six cases are concerned.

11. In such circumstances, the matter need not wait till the same is referred to the General Body which is stated to be scheduled sometime in September 2019. According to us, this is not a case of writing off, but this is a case where the Petitioner has, in full and final settlement, cleared the loan amounts consistent with the common Judgment and Order dated 13 April 2005.

12. For the aforesaid reasons, we set aside the letter dated 4 October 2016, issued by the Respondent Bank and further direct the Respondent Bank to issue to the Petitioner necessary No Due Certificate in relation to the aforesaid six loan accounts, within six weeks from today. Besides, if any property of the Petitioner stands attached towards the repayment of these six loan accounts, then, the Respondent Bank is directed to take steps to release the same, expeditiously.

13. We clarify that in case, if there are any further loan

accounts or liabilities, then, the direction for lifting up attachment will not apply. This means that the properties are to be released unless they are attached or required in connection with some loan accounts, other than the six loan accounts cases referred to in paragraph 4 above.

14. Rule is, accordingly, made absolute in the aforesaid terms. There shall be no order as to costs.

Prithviraj K. Chavan, J. ***M.S. Sonak, J.***