

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3984 OF 2013**

Smruddhi Nagari Sahakari Pat Sanstha Ltd. Sangli & Ors. ... Petitioners
V/s.

Sandeep @ Nayaka Arjun Aarge & Ors. ... Respondents

Mr. Umesh R. Mankapure a/w Ms. Rati Sinhasane i/b Mr. Umesh R. Mankapure for the Petitioners.

Mr. Anant Vadgaonkar for Respondent No.1.

Mr. A.B. Kadam, A.G.P. for Respondent Nos.5 and 6.

CORAM : V.L. ACHLIYA, J.

DATE : 22nd FEBRUARY, 2019.

P.C. :

1 Being aggrieved by the order dated 01.01.2013 passed by the Divisional Joint Registrar, Co-operative Societies, Kolhapur Division, Kolhapur, in Revision Application No. 298 of 2010, the Petitioner-Credit Co-operative Society has preferred this Petition.

2 By the impugned order, Respondent No.6 has partly allowed the Revision Application filed by Respondent No.1 and disallowed the penal interest and expenditure of Rs.25,564/- awarded by Respondent No.5 while issuing certificate under Section 101 of Maharashtra Co-operative Societies Act, 1960 (in short 'the said Act').

3 Heard the learned Counsel for Respondent No.1 and learned

A.G.P. for Respondent No.5. Perused the impugned order.

4 In brief it is the contention of the learned Counsel for the Petitioners that the order passed by Respondent No.6 is unsustainable in law. It is argued that the terms of agreement entered between the Petitioner and Respondent No.1 it is specifically provided that in the event of default in making the payment of loan amount, the Petitioner-Bank will be entitled to charge penal interest @ 3% over and above the agreed rate of interest. It is further submitted that as per the bylaws of the Petitioner-Co-operative Credit Society, the Petitioner-Society is entitled to claim and charge the penal interest not more than 2% on and above agreed rate of interest in default of repayment of loan amount in terms of agreement. It is submitted that in terms of the agreement between the Petitioner and Respondent No.1, the Petitioner-Credit Society is also entitled to recover the expenses incurred towards the recovery of loan amount. It is submitted that while passing the impugned order, the learned Divisional Joint Registrar has overlooked the terms of agreement entered between the Petitioner-Credit Society and Respondent No.1 as well as by-laws of Society and disallowed the penal interest as well as expenditure. In this background, the learned Counsel urged to set aside the impugned order.

5 On the other hand the learned Counsel representing Respondent No.1 supported the order passed by Respondent No.6. Learned Counsel submits that in the loan account itself, no penal interest as well as expenditure has been charged and debited in the name of Respondent No.1. It is submitted that considering the overall facts of the case, the evidence on record, the Divisional Joint Registrar has upheld the content as of Respondent No.1. It is submitted that the order passed by the Divisional Joint Registrar is quite reasoned and suffers from no illegality or perversity so as to call for exercise of writ jurisdiction under Article 227 of the Constitution of India.

6 On due consideration of submissions advanced in the light of overall facts in the case and the reasons recorded by Respondent No.6, I am of the view that the impugned order calls for no inference in exercise of writ jurisdiction under Article 227 of the Constitution of India. The reasons assigned to partly allow the Revision Application are quite consistent with the evidence on record. The promissory note executed between the Petitioner-Credit Society and the Respondent No.1 provides for charging of interest @ 15%. It nowhere provides for charging of penal interest over and above the interest. Moreover in the loan account

maintained by the Petitioner, no penal interest has been charged and debited in the name of Respondent No.1. Similarly no particulars of expenditure incurred are mentioned in the Application filed under Section 101 of the said Act nor any debit entries are shown in the loan ledger account of Respondent No.1. At the time of filing an application under Section 101 of the said Act, the amount of Rs.25,564/- has been claimed as an expenditure without giving particulars. So also no particulars of interest charged as penal interest have been given in the application filed under Section 101 of the said Act, Respondent No.5 has awarded the penal interest without specifying the rate at which the penal interest to be charged. The manner in which the certificate has been granted clearly reflects non application of mind on the part of the Officer concerned. In that view, the order passed by the Divisional Joint Registrar calls for no interference in exercise of writ jurisdiction under Article 227 of the Constitution of India. I am, therefore, not inclined to entertain the Petition. Accordingly, the Petition is dismissed with no order as to costs.

(V.L. ACHLIYA, J.)