

Tandle

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10751 OF 2018

Sudam Bhikoba Jadhav & Anr.

... **Petitioners*****Versus***

The Karad Janata Sahakari Bank & Ors.

... **Respondents**

.....

*Mr. Sachin Punde for the Petitioner.**Mr. V. B. Rajure for the Respondent No.1.**Smt. M. S. Bane, AGP for Respondent Nos. 2 to 4 – State.*

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CORAM : A. S. GADKARI, J.**DATE : 27TH SEPTEMBER, 2019****P. C. :**

1. By this petition under Article 227 of the Constitution of India, the petitioner has impugned Order dated 3rd August 2018 passed by the respondent No.3, rejecting the Revision Application No. 49 of 2015 preferred by the petitioner, and confirming the Order dated 3rd December 2014 passed by the respondent No.2 under Section 101 of the Maharashtra Co-operative Societies Act, 1960 (for short “the said Act”), granting recovery certificate in favour of respondent No.1 – Bank.

2. Heard Mr. Punde learned counsel for the petitioners, Mr. Rajure, learned counsel for the respondent No.1 and the learned AGP for respondent Nos.2 to 4. Perused the record.

3. The record indicates that, respondent No.1 sanctioned and disbursed a loan of Rs. 20,00,000/- in favour of the petitioner No.1. As the petitioner did not repay the said loan amount within the stipulated period as per contract of loan, the respondent No.1 initiated proceedings under Section 101 of the said Act. After receipt of the notice, the petitioners and their guarantors appeared before the respondent No.1. The respondent No.2 after taking into consideration the material made available before it, has allowed the application by its Order dated 3rd December 2014 in Application No. 233/13-14. The Revision Application No. 49 of 2015 preferred by the petitioners has been dismissed by the Respondent No.3 by its impugned Order dated 3rd August, 2018.

4. Mr. Punde learned counsel for the Petitioners submitted that, the petitioners had availed loan facility from the bank in the year 1998 and the documents submitted to the Bank at that relevant time have been misused by the bank for creating record to show that the petitioners have availed loan facility of Rs.20,00,000/- in the year 2006. He further submitted that, the petitioners never signed the documents of loan in the year 2006.

5. It appears that, amount was disbursed in favour of petitioners as per the adjustment arrived at between the parties. The record clearly indicates that, petitioners have signed various documents on 31st March 2006, in favour of the Bank, such as, Letter of Lien, Letter of Authority,

Letter of Continuity of Loan Facility, Promissory Note etc. On perusal of the said documents it is further clear that, the petitioners have signed those documents on the said date. The petitioners have also signed the Revenue Stamp on the Promissory Note on 31st March 2006.

It is therefore clear that, there is no substance in the contention of the learned counsel for the petitioners that, the documents which the petitioners had submitted with the Bank in the year 1998 were misused by the Respondent – Bank in the year 2006, thereby showing that, the Bank has given separate loan to the petitioners amounting to Rs.20,00,000/-.

6. As noted earlier, there is concurrent finding recorded by both the lower authorities below. The Constitution Bench of the Supreme Court in the case of *Syed Yakoob Vs. K.S. Radhakrishnan & Ors.*, reported in AIR 1964 SC 477, while enumerating the nature and limits of the jurisdiction of the High Court in issuing a writ of certiorari has held that, the jurisdiction of the High Court to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an Appellate Court. This limitation necessarily means that the findings of fact reached by the inferior court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. That, an error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be.

In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari.

A finding of fact recorded by the Tribunal cannot, however, be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding.

7. The Supreme Court in the case of *Shalini Shyam Shetty & Anr. Vs. Rajendra Shankar Patil*, reported in (2010) 8 SCC 329 has enumerated the principles in the exercise of High Court's jurisdiction under Article 227 of the Constitution of India. It is held that, the High Courts cannot, at the drop of a hat, in exercise of its power under Article 227 of the Constitution, interfere with the Orders of tribunals or courts interior to it. Nor can it, in exercise of this power, act as a court of appeal over the orders of the court or tribunal subordinate to it. In cases, where an alternative statutory mode of redressal has been provided, that would also operate as a restrain on the exercise of this power by the High Court.

That, the High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of the tribunals and courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.

It is further held that, in exercise of its power of superintendence, the High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or courts subordinate to it, is a possible view. In other words, the jurisdiction has to be very sparingly exercised. That, the power of interference under this Article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and courts subordinate to the High Court.

The afore-stated view expressed in the case of *Shalini S. Shetty (Supra)* has been further affirmed by the larger Bench of the Supreme Court in the case of *Radhey Shyam & Anr. Vs. Chhabi Nath and Ors. reported in (2015) 5 SCC 423*.

8. Perusal of record further clearly indicates that, the respondent No.2 at the first instance and the respondent No.3 in its revisional jurisdiction have scrutinized the entire material available on record in its proper perspective. After perusing the entire material

available on record, this Court is of the considered view that, both the authorities below have not committed any error either in law or on facts.

9. The petition being dehors of merits, is accordingly rejected.

(A. S. GADKARI, J.)