

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1038 OF 2015

Subhash Narayan Sardal And Anr.	... Petitioners
Vs.	
State of Maharashtra And Ors.	... Respondent

Mr. Sampatrao Pawar for the petitioner.
Mr. S.L. Babar, AGP for respondent nos. 1 and 2.
Mr. N.N. Bhadrashete for respondent no. 4.

CORAM : NITIN W. SAMBRE, J.

DATE : 6th June, 2019.

P.C. :

Both these petitioners are the employees of respondent no.4-Co-operative Bank, who are faced with the proceeding u/sec. 88 of the Maharashtra Co-operative Societies Act, 1960 (here-in-after referred as “the Act” for sake of convenience).

2 These proceeding u/sec. 88 of the Act are questioned by the petitioners on the ground, Sub section 20 of Section 2 of the Act, the petitioners cannot be termed as an Officer, who are empowered to give direction in regard to any business of respondent no. 4-Society. The petitioners also relied upon the ingredients of provisions of section 88 of

the Act so as to substantiate the contention that the ingredients therein are not satisfied. According to the petitioners, neither the audit u/sec. 81 nor any enquiry u/sec. 83 has implicated them or has reflected so in the proceeding u/sec. 88 of the Act. The learned Counsel for petitioner would urged that apart from the fact that there is a recovery of the amount of the loan, for the default of which the petitioners are proceeded against u/sec. 88 of the Act. According to him, one of the Director has taken complete responsibility of the said transaction. In addition, he would urge that the bank has recovered entire amount *qua* the liability fastened in proceeding u/sec. 88 of the Act. Relying upon the judgment of this Court in the matter of **Gajanan Pandurang Shet Parkar V/s Authorised Person of the Registrar of Co-op. Soc., 1998(3) ALL MR 356** would urge that the petitioner cannot be proceeded u/sec. 88 in the capacity of employees of the respondent no. 4- Society.

3 *Per contra*, the learned Counsel for the respondent submits that the petition is filed at a premature stage as according to him, it is open for the petitioners to establish that they are not covered within the definition of sub section 20 of section 2 of the Act, to mean the Officer of the Bank, who are authorized to issue any direction as regards the business of the Society. He would draw support from the judgment of this Court in the matter of **Chandrashekhar S. Bhole V/s. Bhandari Co-Op. Bank Ltd.** and others, decided on 06/09/2017. The learned Counsel would urge that the perusal of the charge-sheet issued to the petitioner in categorical terms speaks of causing loss to the tune of Rs. 14,62,395/- towards the loan advanced to 11 persons for purchasing of auto-rickshaw.

He would then urged that considering the status of the petitioner in the Dombivali Branch, the petitioner can be *prima-facie* inferred to the officer under the provisions of sub section 20 of section 2 of the Act. He submits that the petition is liable to be dismissed.

4 I have dwel upon the controversy raised. This Court will require to consider, as to whether the petition under sub section 20 of section 2 of the Act can be considered to be the officers of the Society, who are authorized under the by-laws to give directions in regard to the business of the society.

5 No doubt, the learned Counsel for the respondent no. 4 has invited my attention to the certain instructions issued by the Head Office in regard to the disbursement of loan, however, that by *ipso-facto* cannot mean that the petitioners in exercise thereof were entitled to issue the directions in regard to the business of the society. Unless the nature of directions issued in exercise of said powers had cause financial loss to the respondent-Bank by the officers like petitioners are established.

6 It can be seen from the record that there is no material to infer that the petitioners at any point of time has issued any directions as regards the business of the society.

7 Apart from above, the facts of the minutes of meeting of the Managing Directors of the Society has in categorical terms noted about acceptance of entire liability by one of the Director namely Anil Bhingarde

cannot be lose sight of. The respondent-bank has also recovered entire loan amount is also worth referring too.

8. Apart from above, this Court had an occasion to consider the liability of the employees under the provisions of section 88 of the Co-operative Societies Act in the matter of Gajanan Shet Parkar (Supra). This Court while dealing with the scope of section 88 of the Act has held that if an officer as defined under sub section 20 of section 2 of the Act is to be proceeded u/sec. 88 of the Act then there has to be initial finding that the officer is guilty of improper performance in exercising of positive lawful duty. Though the learned Counsel for respondent no. 4 has informed that the petitioners are proceeded against departmentally, there is no finding place on record to infer that there was any positive lawful duty entrusted with the petitioner and the petitioners were guilty of improper performance of their lawful duty. In the aforesaid background and having regard to the law laid down in matter of Gajanan Shet Parkar, this Court is of the view that the proceeding u/sec. 88 of the Co-operative Societies Act initiated against the petitioners are not maintainable at this stage. As such, the petition in my opinion, needs to be allowed in terms of prayer clause (c). Needless to clarify that in case if any positive findings are recorded against the petitioner of failure of performance of any positive lawful duty, it will be open for the respondent no. 4-Bank to recover the loss to the extent of caused by u/sec. 88 of the Act.

(N. W. SAMBRE, J.)