

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11913 OF 2015

1. **Mr.Sairam Iyer**

Age : Adult, Occup. Business
392-A, Mahale Plot,
Gokhale Nagar Road,
Pune – 411 016

...Petitioner

Versus

1. **The Cosmos Co-operative Bank Ltd.**

Corporate Office, Cosmos Tower,
ICS Colony, University Road
Ganeshkhind Road, Pune – 411 007
Represented through its Chairman

2. **Mr. S. V. Kale**

Special Recovery Officer
The Cosmos Co-operative Bank Ltd.,
Recovery Division, 269/270 Cosmos
Tower, 5th Floor, Shaniwar Peth,
Pune – 411 004.

3. **M/s. Alpik Finance Ltd.**

New Elixir Building, 6th Floor,
Walls Street, Fort, Mumbai.

4. **Mr. Ravikumar**

New Elixir Building, 6th Floor,
Walls Street, Fort, Mumbai.

5. **Asst. Registrar Co-operative
Societies**

Pune District Urban Co-operative
Banks Association Ltd. Pune

...Respondents

Mr. Vineet B. Naik, Senior Advocate a/w Mr. Sukund R.
Kulkarni, Advocates for Petitioner.

Mr. Madhur Rai a/w. Mr.Balraj Kulkarni for Respondent no.1.

Mr. A. B. Kadam, AGP for the State/Respondent.

CORAM: N. J. JAMADAR, J.

RESERVED ON: 5th April, 2019.

PRONOUNCED ON: 3rd May, 2019.

JUDGMENT:-

1. Rule. Rule made returnable forthwith. With the consent of the Counsels for the parties heard finally.

2. By way of this petition under Article 227 of the Constitution of India the Petitioner has prayed for a writ or direction in the nature of certiorari to quash and set aside two recovery certificates dated 1st April, 2002 granted by the Assistant Registrar, Co-operative Societies, Pune, under Section 101 of the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as 'the Act') thereby authorising the recovery of the sums of Rs.5,19,52,448.62 ps. and Rs.1,16,11,184.34 ps., respectively, from the Petitioner, found to be due as arrears to Respondent no.1 Bank.

3. Shorn of unnecessary details, the facts leading to the petition can be summarised as under:

During the period of February – 1995 to December – 2000, the Petitioner was an employee of Respondent no.3 - M/s. Alpic Finance Limited. However, the Petitioner was neither a promoter nor a shareholder of Respondent no.3 Company. Respondent no.3 had availed certain loan facility from Respondent no.1 Bank. Respondent no.3 committed default in

repayment. After the Petitioner tendered his resignation with effect from 1st January, 2001, Respondent no.1 Bank seems to have initiated a proceeding under Section 101 of the Act against Respondent no.3. In the said proceedings, the Petitioner was erroneously shown as the Director of Respondent no.3. The Assistant Registrar, Co-operative Societies – Respondent no.5, issued impugned recovery certificates under Section 101 of the Act, granting recovery of the amounts of Rs.5,19,52,448.62 ps. and Rs.1,16,11,184.34 ps.

4. To the shock and surprise of the Petitioner, after almost 15 years of his severing the ties with Respondent no.3, the Petitioner was served with a notice by Respondent no.1 Bank calling upon him to repay the loan amount in respect of which default was committed by Respondent no.3. Thereupon the Petitioner gathered information. It transpired that despite the resignation of the Petitioner and the cessation of ties between the Petitioner and Respondent no.3, with effect from 1st January, 2001, Respondent no.1 Bank had wrongly shown the Petitioner as the Director of Respondent no.3. In the proceedings initiated under Section 101 of the Act of 1960 an incorrect address, to the knowledge of the officers of Respondent no.3, was furnished and, consequently, the said

proceedings came to be determined by Assistant Registrar after a declaration that the Petitioner did not participate in the said proceedings despite notice.

5. The Petitioner has, thus, assailed the said recovery certificates granted by the Assistant Registrar – Respondent no.5 and the consequent action of Respondent no.3 Bank, freezing the personal savings account of the Petitioner with Respondent no.1 Bank in pursuance of the recovery initiated under Rule 7 of the Maharashtra Co-operative Societies Rules, 1961, on two counts: one, the proceedings under Section 101 of the Act, 1960 were initiated against the Petitioner by deliberately furnishing an incorrect address and, therefore, the entire proceedings is vitiated for breach of the fundamental principles of natural justice. Two, the execution of the recovery certificates are sought to be made after a period of 12 years and, thus, clearly barred by limitation under Article 136 of the Limitation Act.

6. Respondent no.1 Bank has countered the claim of the Petitioner by filing Affidavit-in-reply. The very tenability of the petition, in the light of the availability of an efficacious alternative remedy in the form of a revision under Section 154 of the Act, is questioned, at the threshold. It is contended that

in order to circumvent provisions of sub-section (2A) of Section 154 which mandate the deposit of 50% of the due amount, the Petitioner has invoked the writ jurisdiction of this Court.

7. On merits, Respondent no.1 contends that the complete innocence sought to be pleaded by the Petitioner is belied by the fact that the Petitioner had executed documents not only in the capacity of the Director of Respondent no.3 Company but also in his personal capacity, and thereby promised the repayment of loan. Copy of the promissory note executed by the Petitioner on 4th May, 1999 was pressed into service in support of the said claim. It was further pointed out that Respondent no.3 had preferred a revision against the order of the Assistant Registrar granting the recovery certificates in question bearing Revision Application No.342 and 343 of 2002, before the Additional Joint Registrar, Pune Division and those revisions came to be dismissed on 27th February, 2015. Thus, the ground of delay is also untenable.

8. In the light of the aforesaid rival contentions, I have heard Mr. Vineet Naik, the learned Senior Counsel for the Petitioner, Mr. Madhur Rai, the learned Counsel for Respondent nos.1 and 2 at some length and Mr. Kadam, the learned AGP for the State.

9. Mr. Naik, the learned Senior Counsel for the Petitioner submitted that the instant proceeding is a classic case of abuse of the summary procedure for recovery of the amount due to the Society, envisaged under the Co-operative Societies Act, 1960. It was urged that Respondent no.1 has surreptitiously obtained the recovery certificates, keeping the Petitioner in the dark, by deliberately furnishing an incorrect address. Further, the officers of Respondent no.1 were fully aware about the cessation of the ties between the Petitioner and Respondent no.3 and yet it was falsely proclaimed that the Petitioner was the director of Respondent no.3 and the impugned certificates were obtained. In this backdrop, the impugned order deserves to be quashed and set aside as they have been obtained in the proceedings which were conducted in the flagrant violation of principles of natural justice and fundamental principles of judicial disposition. Thus, according to the learned Senior Counsel for the Petitioner, the availability of an alternate remedy, which in the circumstances of the case cannot be said to be efficacious, cannot preclude this Court from exercising its writ jurisdiction.

10. From the tenor of the submissions it becomes evident that it has two facets. One, there was no jural relationship between

the Petitioner and Respondent no.3. The Petitioner was merely an employee of Respondent no.3 and bore no responsibility towards the loan availed by Respondent no.3 from Respondent no.1. Two, the proceedings were initiated before the Assistant Registrar under Section 101 of the Act, 1960 by deliberately showing incorrect address of the Petitioner and, thus, it proceeded *ex parte* qua the Petitioner resulting in grave prejudice to the Petitioner for want of an effective opportunity of hearing.

11. Though, initially, the Petitioner approached the Court with a bold case that he was a mere employee and had no role to play in the financial transactions of Respondent no.3, yet, after the documents evidencing the execution of instruments by the Petitioner for availing the loan were tendered by the Respondent no.1, the Petitioner has pressed into service the defence of severance of relationship with Respondent no.3 by tending the resignation with effect from 1st January, 2001. It is pertinent to note that from the copy of the promissory note, dated 4th May, 1999, it appears that in consideration of the advance of a sum of Rs.2,50,00,000/-, the Petitioner, another Director and the Company promised to repay the said amount along with interest at the rate of 18% p.a., jointly and severally. The

learned Senior Counsel attempted to wriggle out of the situation by putting forth a submission that the Petitioner has executed the said promissory note only as an authorised signatory of Respondent no.3. However, the said endeavour cannot be countenanced as the Petitioner seems to have executed the said promissory note in the capacity of the authorised signatory of Respondent no.3 as well as in his personal capacity. Thus, prima facie, it becomes clear that the Petitioner had played a far greater role than the one sought to be urged.

12. If the said promissory note dated 4th May, 1999 is taken at par, the ground of severance of the relationship with Respondent no.3 assiduously urged on behalf of the Petitioner, pales in significance. Since the liability under the said promissory note is, *ex-facie*, joint and several and the Petitioner seems to have incurred the personal liability as well, the resignation from the services of Respondent no.3 may not, by itself put an end to the said liability.

13. The reliance placed by the learned Senior Counsel for the Petitioner on a judgment of a Division Bench of this Court in the case of **Saumil Dilip Mehta vs. State of Maharashtra & Ors.**, Writ Petition No.548 of 2001, dated 18th October, 2001, wherein it was enunciated that when a Director has tendered

his resignation and the Board of Directors has accepted it and has acted on it, such Director cannot be held liable for the liability incurred by the said Company after the date of acceptance of his resignation, may not advance the cause of the submission urged on behalf of the Petitioner. In the instant case, from the material on record, it appears that, *prima facie*, the liability was incurred by Respondent no.3 before the Petitioner severed the ties with Respondent no.3. Moreover, the Petitioner had undertaken personal liability as well.

14. This takes me to the second ground of challenge. It was strenuously urged on behalf of the Petitioner that the Respondent had known that the correct address of the Petitioner was B. G. Shirke Guest House, Mahale Plot, S. No.392/A, Gokhalenagar, Pune, on which the communication dated 4th March, 2015 was addressed. Yet, Respondent no.1 has wrongly and deliberately shown the address of the Petitioner as Plot No.2 Nachiket Park, Baner Road, Aundh, Pune. The notices allegedly issued by the Assistant Registrar, in the proceedings under Section 101 of the Act, 1960, were thus never served upon the Petitioner. This factor singularly vitiates the proceedings in which the impugned certificates came to be granted.

15. At the outset, it is necessary to record that, the aforesaid submission is rooted in facts. The question as to whether the said address Plot no.2, Nachiket Park, Baner Road, Aundh, Pune, was the correct address and whether the notices were, in fact, served upon the Petitioner on the said address, are essentially questions of facts. When disputed, these are matters for evidence and proof. This Court, in exercise of its extraordinary jurisdiction under Article 227 of the Constitution of India, is not expected to deal with disputed questions of facts. Therefore, the edifice of the submission sought to be built on the premise of furnishing incorrect address of the Petitioner, cannot be countenanced, in this proceedings.

16. Even otherwise, there is material which dents the credibility of the submission sought to be advanced on behalf of the Petitioner, even with regard to the incorrect address of the Petitioner. The very same promissory note, executed by the Petitioner on 4th May, 1999, records the address of the Petitioner as Plot No.2, Nachiket Park, Baner Road, Aundh, Pune - 411 045. Evidently, the page on which the said address is mentioned finds the signatures of the Petitioner not once but thrice. In the face of this material, which is, in the context of time, more proximate to the institution of proceedings under

Section 101, than the communication dated 4th March, 2015, *prima-facie*, the submission that the proceedings have been conducted in breach of the principles of natural justice does not merit acceptance.

17. In the backdrop of aforesaid facts, the challenge to the tenability of the proceedings on the count of existence of an efficacious alternate remedy appears well founded. Indisputably the revision before the learned Joint Registrar, Co-operative Societies, is statutorily provided under Section 154 of the Act, 1960. Sub-section (2A) of Section 154 contains an interdict against entertaining a revision against an order passed under Section 101 granting recovery certificates unless the revision applicant deposits 50% of the amount recoverable thereunder.

18. Undoubtedly, the existence of an alternate remedy for not entertaining a writ petition by the High Court is a self-imposed limitation. If a case of infringement of fundamental rights or flagrant violation of the principles of natural justice is made out, the High Court can entertain a writ petition despite the availability of an alternative remedy. However, in the facts of the case, it appears that the Petitioner had resorted to an innovative strategy to obviate the payment of the deposit so as to avail the statutory remedy.

19. The Petitioner can very well agitate all the grounds including the ground of non-service of the notice of the proceedings before the statutory authorities.

20. As regards the aspect of delay in laying the execution of the certificates issued under Section 101 of the Act, it is pertinent to note that the revision petitions filed by Respondent no.3 Company were dismissed on 27th February, 2015. The order dated 27th February, 2015 reveals that they were pending since the year 2002. Despite an opportunity, none of the parties have shed light on the issue as to whether the execution and operation of the recovery certificates dated 1st April, 2002 was stayed during the pendency of the said revision petition. Even otherwise, said issue of non-executability of the recovery certificates can be agitated in the very same proceedings wherein the execution is sought to be enforced and/or before the revisional authority.

21. Lastly, it was urged on behalf of the Petitioner that Respondent no.3 Company has been directed to be wound up by the learned Company Judge in Company Petition No.853 of 2000. A copy of order dated 21st June, 2007, wherein the Company Petition No.853 of 2000 was made absolute in terms of prayer Clauses (a) and (b) therein and the Official Liquidator

was directed to Act as Liquidator for the purposes and in relation to the winding up of the Company (Alpic Finance Ltd.) in accordance with the provisions of the Companies Act, 1956, was pressed into service.

22. It would be suffice to record that in view of the said order of winding up and appointment of an Official Liquidator, all consequences in law would follow and the recovery proceedings would be subject to the liquidation proceedings.

23. Resultantly, the writ petition stands dismissed with aforesaid clarification. It is further made clear that the statutory authorities under the Act shall proceed to determine the proceedings, if instituted, on merits, without being influenced by any of the observations hereinabove as they were made for the purposes of determination of this proceedings and all the points are kept open for consideration.

24. Rule stands discharged. No costs.

[N. J. JAMADAR, J.]