

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8409 OF 2004
WITH
CIVIL APPLICATION NO.2318 OF 2019

The Kapol Co-operative Bank Ltd.,
Ground floor, Rolex Apartment,
S. V. Road, Malad (W), Mumbai-64

..Petitioner

Versus

- 1] M/s. Devansh Pharma Chem
Loyalka Apt., Co-op. Hsg. Soc. Ltd.,
Loyalka Compound, Siri Road,
Mumbai-400 006.
- 2] Janak J. Gandhi (HUF)
Prop. Of M/s. Devansh Pharma Chem
Loyalka Apt., Co-op. Hsg. Soc. Ltd.,
Loyalka Compound, Siri Road,
Mumbai-400 006.
- 3] Vasantgauri J. Gandhi
Loyalka Apt., Co-op. Hsg. Soc. Ltd.,
Loyalka Compound, Siri Road,
Mumbai-400 006.
- 4] Girish C. Shah
244/3B, Mangaldas Road,
Mumbai-400 025.
- 5] The Assistant Registrar
Co-operative Societies,
(on deputation) Brihan Mumbai
Nagari Sahakari Bank,

Association Ltd., Bhartiya Krida
Mandir Building, 4th floor,
Near Sahakar nagar, Naigaon,
R. No.26, Wadala,
Mumbai-400 031.

- 6] The Divisional Joint Registrar
Co-operative Societies,
Mumbai Division,
Malhotra House, Opp. G.P.O. Mumbai ..Respondents

Mr. R. M. Haridas, Advocate for the Petitioner.
None for the Respondents.

**WITH
ORIGINAL SIDE WRIT PETITION NO.230 OF 2008**

- 1] Shri. Janak Jivanlal Gandhi
Age 47 years, Occ: Business,
- 2] Shri. Dilip Jivanlal Gandhi
Age 57 years, Occ: Business both
residing at Flat No.1, Second floor,
Loyalka Apartment, Loyalka
Compound, Siri Road, Chowpaty,
Mumbai-400 006. ..Petitioners

Versus

- 1] The Kapol Co-op. Bank Ltd.
a co-operative bank registered
under the provision of Multi-State
Co-operative Societies Act 2002
having its Registered Office at
Vasant Wadi, Kalbadevi,
Mumbai-400 002.

2] Authorized Officer

The Kapol Co-op. Bank Ltd.
a co-operative bank registered
under the provision of Multi-State
Co-operative Societies Act 2002
having its Registered Office at
Vasant Wadi, Kalbadevi,
Mumbai-400 002.

3] Shri. P. B. Arbut

Assistant Registrar at Esplanade
Centre of Courts, Office of the
Chief Metropolitan Magistrate
Esplanade Mumbai.

4] State of Maharashtra

Through Government Pleader,
Original Side, High Court, Mumbai.

..Respondents

None for the Petitioners.

Mr. R. M. Haridas, Advocate for Respondent Nos.1 & 2.

Ms. Uma Palsuledesai, AGP for Respondent No.4.

**CORAM : PRADEEP NANDRAJOG, C.J. &
SMT. BHARATI DANGRE, J.
DATE : 2nd DECEMBER, 2019**

ORAL JUDGMENT (Per Pradeep Nandrajog, C.J.)

1] Only after we read the pleadings in Writ Petition No.230 of 2008, can we make sense out of the ill-drafted and ill-concealed proceedings initiated by Kapol Co-operative Bank Ltd. leading to it filing Writ Petition No.8409 of 2004, in which challenge is to an

order dated 28.06.2004 passed by the Revisional Authority under the Maharashtra Co-operative Societies Act, 1960.

2] Kapol Co-operative Bank sought recovery of ₹ 64,76,349/- by filing an application under Section 101 of the Maharashtra Co-operative Societies Act before the Assistant Registrar, Co-operative. In the said application M/s. Devansh Pharma Chem. Loyalka Apartment Co-op. Hsg. Soc. Ltd. was impleaded as Respondent No.1. Mr. Janak J. Gandhi (HUF) stated to be a proprietor of the Co-operative Society as Respondent No.2. Vasantgauri J. Gandhi also as Respondent No.2 and Girish C. Shah as Respondent No.3. It was pleaded that the Respondent was a member of the Applicant Bank. It was pleaded that the Respondents had filed an application for loan. It was pleaded that the Respondent created equitable mortgage of flat No.3 of the 1st Respondent society. It was pleaded that Janak J. Gandhi (HUF), Vasantgauri J. Gandhi and Girish C. Shah gave personal sureties.

3] From the pleadings in Writ Petition No.230 of 2008 it emerges that the flat stated to have been offered as security was by creating an equitable mortgage. It was jointly owned by late Smt. Vasantgauri J. Gandhi and her husband Jivanlal Gandhi. She died in the year 2003. Grievance in the said Writ Petition is to an order obtained by the Bank under Section 14 of the SARFAESI Act, 2002 from the Chief Metropolitan Magistrate, Mumbai on 04.12.2007.

4] Reverting to the Petition filed by the Bank, claim by the Bank was dismissed by the Assistant Registrar vide order dated 10.12.2003 giving reason that the Bank did not file any documents to prove its case.

5] Said order was challenged in a revision which has been dismissed on 28.06.2004. The reason is interesting. The first reason is that the Co-operative Bank was governed by the Multi-State Co-operative Societies Act, 2002 and thus no proceedings could be initiated under the Maharashtra Co-operative Societies Act, 1960. The second reasoning is that the Bank did not prove its case by filing so called bills of exchange.

6] Thus as regards Writ Petition No.8409 of 2004, the same requires to be disposed of holding proceedings initiated by the Bank under the Maharashtra Co-operative Societies Act, 1960 to be *non est* and as a result the impugned order dated 28.06.2004 as also the order dated 10.12.2003 are declared *non est*. The Bank would be entitled to remedies as contemplated by Section 84 of the Multi-State Co-operative Societies Act, 2002.

7] As regards Writ Petition No.230 of 2008, noting that the Petitioners therein are the sons of late Smt. Vasantgauri J. Gandhi who had died before the impugned order dated 04.12.2007 was passed and she being one of the stated mortgagor of the mortgaged property, the order dated 04.12.2007 is quashed. We quash the said order and

(201 & 202) WP-8409-04 & 230-08.doc.

simultaneously note the stand of counsel for the Bank that the Bank would not initiate any action under SARFAESI to recover its dues.

8] The Bank would proceed only under Section 84 of the Multi-State Co-operative Societies Act, 2002.

9] Civil Application No.2318 of 2019 is disposed of as infructuous.

**Balaji G.
Panchal**

Digitally signed by
Balaji G. Panchal
Date: 2019.12.03
10:17:29 +0530

SMT. BHARATI DANGRE, J

CHIEF JUSTICE