IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7927 OF 2019

The Goregaon Co-operative Urban Bank Limited
through Liquidator … Petitioner
Vs.
The Maharashtra State Co-op. Bank Ltd. … Respondent

Mr. H. G. Misar i/b. Mr. Shubham Misar for Petitioner.
Mr. Nana D. Yelkar for Respondent.

CORAM : UJJAL BHUYAN, J.
DATE : NOVEMBER 14, 2019

P.C. :

Heard Mr. Misar, learned counsel for the petitioner and Mr. Yelkar, learned counsel for the respondent.

2. By filing this Petition under Articles 226 and 227 of the Constitution of India, petitioner seeks quashing of order dated 02.04.2019 passed by the Maharashtra State Co-operative Appellate Court in Appeal No.112 of 2018.

3. Petitioner is a Co-operative Urban Bank registered under the Maharashtra Co-operative Societies Act, 1960. Petitioner is a member of the respondent, which is also a Co-operative Bank registered under the Maharashtra Co-operative Societies Act, 1960 (the Act hereinafter). As a matter of fact, respondent is the apex bank of which petitioner is a constituent.

4. Respondent had sanctioned cash credit facility to the petitioner for an amount of Rs.4 crores pursuant to resolutions dated 31.03.2005 and 28.04.2005 of the petitioner. Subsequently, the cash credit facility was enhanced to Rs.11.02 crores pursuant to application dated 29.09.2007 of the petitioner.

5. It is stated that Reserve Bank of India had passed order dated 26.11.2008 cancelling the banking licence of the petitioner. Thereafter, Liquidator was appointed by the State vide order dated 10.12.2008 to oversee liquidation of the petitioner.

6. Respondent lodged dispute under Section 91 of the Act before the Co-operative Court No.1 at Mumbai for recovery of outstanding dues in respect of the cash credit facilities availed by the petitioner and which it failed to repay. The amount quantified as recoverable at the time of lodging the dispute was Rs.10,56,97,829.08.

7. The dispute was contested by the petitioner which resisted the claim of the respondent. After hearing the matter, Co-operative Court No.1, Mumbai passed order dated 23.10.2017 allowing the dispute lodged by the respondent by directing the petitioner to pay an amount of Rs.10,56,97,829.08 as on 09.12.2008 which was the date of liquidation along with interest @ 10.5% per annum.

8. Aggrieved by the aforesaid order dated 23.10.2017, petitioner preferred appeal before the Maharashtra State Co-operative Appellate Court, Mumbai (Appellate Court) which was registered as Appeal No.112 of 2018. The appeal was contested by the respondent.

9. After hearing the matter, Appellate Court passed the order dated 02.04.2019 rejecting the appeal by upholding the order of Co-operative Court No.1 dated 23.10.2017.

10. Aggrieved, present writ petition has been filed.

11. This Court by order dated 03.10.2019 had issued notice and passed an interim order staying execution proceedings.

12. Respondent has since been served and is represented by learned counsel.

13. Learned counsel for the petitioner has referred to letter dated 01.11.2007 of the Reserve Bank of India (at page 123 of the writ petition) whereby and whereunder Reserve Bank of India directed that petitioner should not without prior approval in writing from the Reserve Bank, grant or renew any loans and advances, make any investment, disburse or agree to disburse any payment whether in discharge of its liabilities and obligations or otherwise, enter into any compromise or arrangement and sell, transfer or otherwise dispose of any of its properties or assets except to the extent and in the manner provided in the said communication.

13.1. He also submits that there is a subsequent communication of Reserve Bank of India to the petitioner dated 01.12.2008 whereby petitioner was informed that Reserve Bank had decided to cancel the banking licence of the petitioner and, therefore, petitioner was restrained from carrying on any banking business in India, including repayment of deposits forthwith.

13.2. Learned counsel submits that when Reserve Bank of India had debarred the petitioner from conducting banking business, petitioner could not have repaid the dues of respondent. On this ground, he finds fault with the orders of the authorities below. He further submits that Reserve Bank of India is a necessary party to the dispute but respondent did not make the Reserve Bank of India a party to the dispute. For non-joinder of necessary party, the dispute ought to have been dismissed.

14. Learned counsel for the respondent has referred to the order passed by the Co-operative Court No.1 as well as the Appellate Court and submits that insofar outstanding dues are concerned, petitioner has not denied the same. Petitioner is only taking shelter behind communication of Reserve Bank of India whereby petitioner has been debarred from conducting banking business, in not repaying its

outstanding dues.

14.1 He submits that debarring the petitioner from conducting banking business cannot be stretched to mean exempting the petitioner from repaying its dues to the creditor. This would be an unacceptable proposal. Petitioner’s banking licence has been cancelled because it failed to conduct its business in accordance with law and as per the guidelines of the Reserve Bank of India to the detriment of the depositors. Petitioner cannot take advantage of its own wrong to stall recovery of dues. On the contention that Reserve Bank of India is a necessary party to the dispute, he submits that no relief is claimed against Reserve Bank of India. Therefore, Reserve Bank of India was not required to be arrayed as an opponent in the dispute.

15. Submissions made by learned counsel for the parties have been considered.

16. Though the factum of availing cash credit facility by the petitioner from the respondent is not denied so also the quantum, nonetheless, it would be apposite to advert to the orders passed by the authorities below.

17. In the dispute lodged by the respondent before the Co-operative Court No.1, the Co-operative Court on thorough consideration of the matter allowed the dispute and directed petitioner to pay an amount of Rs.10,56,97,829.08 as on 09.12.2008 with interest @ 10.5% p.a. to the respondent. This finding was affirmed by the Appellate Court vide order dated 02.04.2019 and dismissed the appeal.

18. Insofar reliance on the communication of Reserve Bank of India dated 01.12.2008 by the petitioner is concerned, Court is of the view that since the banking licence of the petitioner has been cancelled, petitioner has been rightly debarred from conducting banking business, including

repayment of deposits.

18.1. However, as pointed out by learned counsel for the respondent, debarment of the petitioner from conducting banking business cannot be interpreted to shield the petitioner from paying its dues. Petitioner has been restrained by Reserve Bank of India amongst others from repayment of deposits which have matured in the meanwhile or otherwise but that does not mean it has been restrained from repayment of loans and cash credit facilities availed by the petitioner from other financial institutions including the respondent.

19. Regarding non-joinder of Reserve Bank of India as a party to the proceedings in the dispute, Court is of the view that insofar the disputant i.e. respondent is concerned, it seeks no relief against Reserve Bank of India. Problem of the petitioner is with the Reserve Bank of India and insofar cash credit facility availed by the petitioner from the respondent is concerned, Reserve Bank of India is certainly not in the picture. That apart, even the petitioner has not arrayed the Reserve Bank of India as a respondent in the present proceeding.

19.1. In the facts and circumstances of the case, Reserve Bank of India is neither a proper nor a necessary party to the dispute raised by the respondent against the petitioner.

20. On due consideration, Court finds no merit in the writ petition.

21. Writ Petition is accordingly dismissed.

(UJJAL BHUYAN, J.)

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