

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO. 1938 OF 2019
IN
WRIT PETITION NO.11616 OF 2015**

Karnala Nagari Sahakari Bank
Limited and anr.

... Applicants

In the matter between

Shri Narayan Gajanan Thakur
V/s.

... Petitioner

The Asst. Registrar,

Co-operative Societies and ors.

... Respondents

Mr.C.G.Gavnekar with A.C.Gavnekar for the Applicant
Nos.2 and 3.

Mr.S.Pawar for the original petitioner.

Mr.P.V.Nelson Rajan, AGP for Respondent Nos.1 to 7.

CORAM : UJJAL BHUYAN, J.

DATE : OCTOBER 11, 2019.

P.C.:-

1. Heard Mr.C.G.Gavnekar, learned counsel for the applicants and Mr.S.Pawar, learned counsel for the original petitioner.

2. Applicants are respondent Nos.2 and 3 in the related Writ Petition No.11616 of 2015 filed by the

original petitioner assailing the legality and validity of the impugned order dated 10th April, 2014 passed by the Divisional Joint Registrar in Revision Application No.14 of 2014 arising out of Recovery Certificate dated 17th December, 2009.

3. Matter relates to recovery of an amount of Rs.1.13 crores approximately by the applicants from the original petitioner. While admitting the writ petition on 12th January, 2016, this court had passed the following interim order:-

“1] Rule.

2] The challenge in this petition is to the recovery certificate No. 101/72/1534 of 2009 dated 17 December 2009. The certificate was challenged by institution of a revision petition under Section 154 of the Maharashtra Cooperative Societies Act, 1960 (said Act). At that stage, in pursuance of the directions issued by this Court, the Petitioner was required to and has deposited 50% of the amount referred to in the certificate, which came to approximately an amount of Rs.1.13 Cores. The Petitioner is an alleged Guarantor to the loan in respect of which recovery certificate came to be issued. The Petitioner has made reference to the reports dated 2 October 2010 and 28

March 2011 made by certain authorities, which prima facie comment upon irregularities concerned upon loan amount, on basis of which, the Petitioner is now being held liable to pay the recovery certificate amounts. Mr. Sakhare has also placed on record bank statements and attempted to demonstrate discrepancies therein. Mr. Sakhare submitted that in this matter, two sets of bank statement were produced by the Bank and even upon cursory examination, several discrepancies are evident. He submitted that the Revisional Authority has not at all addressed itself to the errors made by the statutory authorities as well as the discrepancies in the bank statements.

3] Further, at least prima facie, it also appears that certain observations made by this Court, in the context of certificate were misconstrued by the Revisional Authorities by holding that the certificate have attained the finality. However, the fact remains that though the Petitioner is only the alleged Guarantor, the principal borrowers are his son and wife. In terms of the recovery certificate, even after giving credit for the amount of Rs.1.13 Crores, the amount payable is approximately Rs.3.50 Crores. Upon cumulative consideration of all such circumstances, the interim relief can be granted, subject to the condition that the Petitioner secures the amount to the extent of Rs.1.75 Crores, which corresponds to 50% of the amount presently payable.

4] Therefore, there shall be interim reliefs in terms of prayer clause (d). This shall however, be subject to the Petitioner

depositing in this Court an amount of Rs.1.75Crores, within a period of eight weeks from today.

5] If the amount of Rs.1.75 Cores is deposited within a period of eight weeks from today, the Registry to invest the same in Fixed Deposit Account of a Nationalised Bank for a period of one year, in the first instance. Notwithstanding this direction, the Respondentbank shall be at liberty to make an appropriate application, seeking withdrawal of the said amount. Such application, if and when made, will be considered on its own merits.

6] Mr. C.G. Gavanekar, learned counsel waives notice for Respondent Nos.2 and 3. Mr. Rayrikar, learned AGP waives notice for Respondent Nos.1 and 7.”

4. Prayer (d) pertains to implementation and execution of the order dated 10th April, 2014.

5. From the order dated 12th January, 2016, it is evident that original petitioner was directed to deposit an amount of Rs.1.75 crores in the Registry of this court with further direction to the Registry to invest the said amount in a Fixed Deposit Account of a nationalized bank.

6. From the materials on record, it is seen that this matter was carried in SLP to the Supreme Court and the Supreme Court had passed the following order on 22nd July, 2019:-

“We feel that the appeal can be disposed of in the following terms:

1. The amount of Rs.1,00,00,000/- (Rupees one crore) having been deposited by the appellant in terms of the order dated 4.3.2016, the interim direction contained in the writ petition before the High Court dated 12.1.2016 are modified to the extent that the petition can be heard on the deposit of the said amount rather than the sum of Rs.1,75,00,000/- (Rupees one crore and seventy five lakhs). The impugned order is modified to that extent.

(b) that the amount deposited in the High Court be released to respondent nos. 2 & 3 subject to any orders for adjustment by the High court at the stage of final disposal of the writ petition and on such terms as the High Court considers it appropriate.

The appeal stands disposed of accordingly.

Application for permission for withdrawal of amount stands disposed of.”

7. From the above, it is evident that the original petitioner had deposited the aforesaid amount. Having noticed the same, Supreme Court indicated that the amount deposited by the original petitioner in the High

Court be released to the applicants subject to any order for adjustment by the High Court at the stage of final disposal of the writ petition. That apart, the interim order passed by this court sufficiently protects the interest of the applicants.

8. In view of above, court is not inclined to vacate or modify the interim order dated 12th January, 2016.

9. At this stage, learned counsel for the applicants prays for an early hearing of the related writ petition. It would be open to the applicants to file necessary application for fixing an early date of hearing.

10. Civil Application is accordingly dismissed.

(UJJAL BHUYAN, J.)

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