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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12026 OF 2015

Shri. Rajendra Ganpati Patil and another .....Petitioners

V/s.

The Karad Janta Sahakari Bank .....Respondents
through CEO Shri. V. D. Suryawanshi
and others

Mr. Abhijit Kadam i/b Vaibhav R. Gaikwad for the Petitioner
Mr. Shailendra Kanetkar for respondent no. 1
Mr. S. D. Rayrikar AGP for the State
Mr. Sarang Aradhye a/w Mr. Milind Prabhune for respondent nos. 2, 3, 5, 6 to 14, 16, 18 to 23.

CORAM : NITIN W. SAMBRE, J.

DATE : JUNE 7, 2019.

P.C.

Heard respective learned counsel for the parties.

2 The order passed by the State Government in exercise of powers under Section 152 of The Maharashtra Co-operative Societies Act, 1960 (Hereinafter referred to as 'the said Act') thereby setting aside the order passed under Section 82 of the said Act, fastening liability and ordering recovery of the amount is a subject

matter of challenge.

3 In an inquiry under section 88 of the said Act, the Registrar held respondent-directors responsible on two counts: (i) In spite of embargo by the Reserve Bank of India, dividend to the tune of Rs. 59 Lakhs and odd was distributed; (ii) and the loan amount over and above the sanction limit came to be disbursed and not recovered.

4 The learned Minister while upsetting the aforesaid order in Appellate jurisdiction has noticed that the loan which was granted to concerned consumers was with counter guarantee by the State Government and as such, there is no financial loss was caused to the respondent no.1-bank. The learned Minister then proceeded to observe that the personal loan granted and disbursed in favour of such customers is within the Administrative and Financial limit prescribed by the bank. As such, the State Government proceeded to allow the appeal. Hence, this petition.

5 The learned counsel for the petitioner submits that apart from

the fact that the basis which is formed for allowing the appeal in exercise of powers under Section 152 of the Act, are far away from the reality and truth, the directions issued by the Reserve Bank of India which are binding on the respondent-bank are given go-by by the respondent directors. According to him, in an inquiry under section 88 of the said Act, once it was held that respondent-directors are liable to compensate the bank towards the loss caused by them, the Appellate Authority for non-existing reasons/grounds ought not to have allowed the appeal. As such, it is submitted that the petition be allowed.

6 *Per contra* the learned counsel for the respondent-directors would urge that respondents even though are held to be responsible for alleged short coming on two counts viz. issuance of dividend and recovery of the loan amount. The loan amount of the three cases in which the default was noticed, in two of the cases already recovery was effected, whereas in one case, recovery proceedings are already initiated. the submission is, the financial interest of the bank and its members is already taken care of by the respondent-directors. A

further submission is the Award of the dividend in favour of the shareholders is in the interest of shareholders and in accordance with legal provisions. He would urge that there was no intention to cause any financial loss to the bank. He submits that there was no intention to commit any act which attracts Section 88 of the said Act.

7 The learned counsel for the bank supported the claim of the respondent-directors.

8 Having appreciated the aforesaid submissions, I hardly notice any fault with the order which is passed by the Registrar in exercise of powers under Section 88 of the said Act as the Registrar has acted in neutral manner. Of the total 15 charges levelled against respondent-directors, he could find substance in two of them viz. disbursement and non recovery of personal loan and disbursement of dividend contrary to directions of the Reserve Bank of India.

9 So far as the aforesaid two issues are concerned, the view expressed by the Appellate Authority while setting aside the order of

Registrar passed under Section 88 of the said Act are without any basis. The State Government in the order impugned has lost sight of the fact that there were directions by Reserve Bank of India not to disburse the dividend but still the respondent proceeded to disburse the same primarily to please the shareholders. So far as the amount of loan is concerned, even if at this stage, certain amount is recovered out of the outstanding loan amount, still the fact remains that at relevant time default was committed. It is open for the respondent to approach Registrar under Section 88 of the said Act seeking modification of the order thereby fastening the liability under the said provisions in view of recovery made. This Court cannot lose sight of the fact that at relevant time there was default and the respondent-directors are held to be responsible for the same which findings are based on documentary evidence.

10 The learned Appellate Authority has lost sight of the fact that the Registrar while conducting an inquiry under Section 88 of the said Act has considered the material on record including that of explanation tendered by the respondent-directors and after

considering documentary evidence has passed a detailed reasoned order.

11 While upsetting the said finding, the Appellate Authority merely for asking has reversed the said finding that too without any basis or sustainable reasons. Reserving the aforesaid right of the respondent-directors to move for modification of the order to the extent of fastening the liability, this Court is of the view that the order passed by the Appellate Authority in exercise of powers under Section 152 of the said Act is not sustainable and that being so, order impugned dated 13/01/2014 passed by the Appellate Authority under Section 152 of the said Act is hereby quashed and set aside.

12 The petition stands allowed in the above terms.

[NITIN W. SAMBRE, J.]