IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2532 OF 2018

Thane Bharat Sahakari Bank Ltd
And Another … Petitioners
Versus
Amritlal Bava
And Others … Respondents

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Mr. Vishal Kanade a/w Mr. Nikhil Rajani I/b Deshpande & Co. for the Petitioners.
Mr. Chetan Kapadia a/w Yogendra Rajgor I/b Legal Chartered for Respondent No.1.

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CORAM : S.C. GUPTE, J.

DATE : 2 APRIL 2019

(Oral Judgement)

. Heard learned Counsel for the Petitioners and learned Counsel for Respondent No.1.

2 This petition challenges an order passed under Order VII Rule 11 of the Code of Civil Procedure, 1908 ("Code"), by the Co-operative Court, dismissing the Petitioners' application for rejecting the dispute application filed by Respondent No.1 before the Co-operative Court under Section 91 of Maharashtra Co-operative Societies Act, 1960 ("Act"), and an appellate order of the Co-operative Appellate Court confirming that order.

3 The case of Respondent No.1 in his dispute application was that the loan account opened in his name in the first Petitioner bank was fraudulently operated by his introducer, Respondent No.2 herein, in collusion with the branch manager of the first Petitioner bank. He was fraudulently denuded of money by siphoning amounts from his loan account without his having had any benefit of the alleged loan. A criminal prosecution has been pending in this behalf, wherein the manager of the first Petitioner bank along with Respondent No.1 disputant and Respondent No.2 herein have been arraigned as accused by Economic Offences Wing (EOW). In the backdrop of these facts, Respondent No.1 disputant filed a dispute application seeking a declaration that he was not liable to the first Petitioner bank in respect of the loan account. Pending this dispute application, the first Petitioner bank applied to the Deputy Registrar of Co-operative Societies for a recovery certificate under Section 101 of the Act. The certificate was issued by the Deputy Registrar. It appears that after issuance of the recovery certificate, Respondent No.1 disputant amended his dispute application by adding *inter alia* prayer clauses (b) and (c) in it. Prayer clause (b) seeks a permanent injunction restraining the first Petitioner bank from recovering any amount from Respondent No.1 in respect of the loan account, whilst prayer clause (c) seeks recovery of the amount already recovered by the first Petitioner from Respondent No.1 under the captioned loan account. When the dispute application was amended *inter alia* by incorporating prayer clauses (b) and (c), the first Petitioner bank approached the Co-operative Court with the subject application under Order VII Rule 11 for rejection of the plaint. The case of the first Petitioner in that application was that Respondent No.1 disputant could not seek any relief in respect of a recovery certificate issued

under Section 101 of the Act before the co-operative court. It was submitted that if the disputant was aggrieved by the recovery certificate issued against him, his only remedy was to approach the revisional authority under Section 154 of the Act. It was submitted that though prayer clauses (b) and (c) were couched in a language which does not suggest a direct challenge to the recovery certificate, effectively what the disputant was seeking was an interference with a recovery certificate. It was submitted that having regard to the provisions of Section 91(1) of the Act, a proceeding for recovery of any amount as arrears of land revenue on a certificate granted by Registrar under sub-sections (1) and (2) of Section 101 of the Act as well as any order, decision or action of the Registrar against which a revision is provided under Section 154 of the Act, are not to be treated as disputes for the purposes of Section 91(1) of the Act. The Co-operative Court rejected the bank's application and the Co-operative Appellate Court upheld the order of rejection. The orders of the Co-operative Court and Co-operative Appellate Court are the subject matter of challenge in the present writ petition.

4 Learned Counsel for the Petitioners reiterates the averments made in the first Petitioner's application under Order VII Rule 11 of the Code. Learned Counsel submits that having regard to the proviso in Section 91(1) of the Act, the subject matter of disputes in the dispute application, particularly, the reliefs sought in terms of the newly added prayers, i.e. prayer clauses (b) and (c) of the dispute application, are out of bounds for the Co-operative Court under Section 91 of the Act. Learned Counsel submits that these reliefs effectively seek recourse against a recovery certificate duly issued under Section 101 and no amount of clever drafting

can possibly make such application maintainable as a dispute under Section 91.

5 At the very outset, it needs to be noted that the dispute application of Respondent No.1 was filed before the Co-operative Court prior to the bank's application for recovery certificate under Section 101 of the Act. The dispute application principally seeks a declaration that the disputant is not liable in respect of a particular loan account. On the date when this application was filed, it was clearly maintainable. It did disclose a cause of action and was not barred by any law for the time being in force. A plaint or an application, which is maintainable when filed, cannot be rejected on account of proceedings adopted later by the defendant or opponent, as the case may be. Secondly, and at any rate, it is doubtful if a plaint can be rejected only in part. Even if one were to assume that prayers (b) and (c) concern the validity of the recovery certificate issued by the Deputy Registrar under Section 101 of the Act, the plaint or dispute application, as such, cannot be rejected as a whole under Order VII Rule 11 of the Code. At the most, when the dispute application is considered by the Co-operative Court, if the first Petitioner bank is right in its case on the bar of law for the time being in force to this part of the dispute application, the Co-operative Court may reject the particular prayer/s sought; there is no case for rejection of the plaint as a whole. Thirdly, and more importantly, it is necessary to bear in mind that procedures in Sections 101 and 91 of the Act are both available for recovery of dues of a co-operative society. Whereas a summary enquiry is contemplated for quantification of arrears of dues in case of recourse to Section 101, the legislative intent behind it being expeditious resolution of minor disputes, particularly, disputes

concerning calculation of the amount due, Section 91 provides a more appropriate remedy where genuine and disputed questions of fact are to be gone into. Section 91 can be approached by the creditor as well as the debtor. In the present case, it is the debtor, who has approached the Court under Section 91 of the Act, seeking a declaration that he does not owe any amount to the creditor under the particular loan account. His case is essentially based on a fraud practiced by a third party introducer in connivance with the manager of the first Petitioner bank. In such a case, the Registrar of Co-operative societies acting under Section 101 is not expected to decide the controversy. The controversy can be determined more appropriately by the Co-operative Court under Section 91 of the Act.

6 A Division Bench of this Court, in **Top Ten, A Partnership Firm Vs. State of Maharashtra**[1], has considered the nature of the remedies respectively provided under Sections 91 and 101 of the Act. The Division Bench, firstly, noted that Section 91, which opens with a general non-obstante clause, confers exclusive jurisdiction to take congnizance of disputes referred to therein upon co-operative courts; perusal of Section 101, on the other hand, which is the last section in Chapter IX of the Act, the heading being "Recovery of arrears due to certain societies", shows that it enables the Registrar to issue a certificate for recovery of arrears, on his motion, after such inquiry as he deems fit. The language of Section 101 shows that the recovery contemplated therein is by way of a speedy remedy by treating the arrears due to particular types of societies as arrears of land revenue. The non-obstante clause in the opening of Section 101, "Notwithstanding anything contained in Sections 91, 93 and 98", suggests

1 2012(1) Mh. L.J. 347

that Section 101 gives an additional remedy to the types of societies enumerated therein, that is to say, in addition to the normal remedy envisaged under Section 91. The Division Bench then noted that use of both words, i.e. “arrears” and “due”, together in Section 101 suggests a very limited inquiry before issuing the certificate. Statements of accounts and other facts to be disclosed by the concerned society, and looked into by the Registrar, suggest that the arrears are already declared due by some authority or can be ascertained on the basis of statement of accounts and other material placed on record before the Registrar; moment it is demonstrated to the Registrar that a bona fide and genuine defence about the alleged arrears is raised, which calls for a finding on disputed facts, need for cross-examination may surface and in that case Section 101 would cease to apply. This quasi-judicial exercise is made final by the legislative and not kept open under Section 91 only because of the possibility of determination of such limited aspect of arrears due without adjudication on disputed questions of facts. The Division Bench finally observed as follows :

> “19. Thus very small types of disputes in which only limited question is of quantification of arrears due is to be looked into by such Registrar while undertaking enquiry under section 101. Importance, therefore, is to statement of accounts. The enquiry undertaken is only aimed at ascertaining whether amount disclosed in statement of accounts as arrears, is correct and due. The limited opportunity of defence is, therefore, extended to the borrower like pertitioners. The correctness of amount shown as arrears can be verified from the accounts and from accounts of the society and form receipts produced by other side. Denial of cross-

> examination in this situation only shows legislative intent that if a genuine and disputed question of facts is found arising by the Registrar, he cannot proceed to resolve that question. The concerned society, in such circumstances, has to take recourse to filing of a dispute under Section 91, where such disputed questions can be gone into. Hence, a bona fide defence being raised by a borrower or other person against whom such certificate is sought, cannot be resolved by the Registrar under this jurisdiction. If he finds such dispute arising, he has to deny the recovery certificate by passing appropriate judgment under Rule 86F."

7 In keeping with this law and having regard to the nature of the controversy and its contours in the present case, the Co-operative Court alone can be considered an appropriate forum to adjudicate it. In keeping with this observation, the Co-operative Appellate Court, in its impugned order, has correctly ruled that the allegations of fraud being the subject matter of adjudication for granting declaratory and injunctive reliefs prayed for by the disputant in the present case, the subject matter of the dispute would have to be adjudicated independently, though the recovery certificate issued in respect of the same loan account has not been challenged by the disputant. (Incidentally, the recovery certificate according to Respondent No.1 is now being challenged in a revision application under Section 154 of the Act.)

8 For all these reasons, there is no infirmity in the impugned orders of the Co-operative Court and the Co-operative Appellate Court. There is, accordingly, no merit in the writ petition. The petition is dismissed.

9 It is made clear that the petition is dismissed on the ground that there was no case for rejection of the dispute application under Order VII Rule 11 of the Code for the reasons discussed above and not on account of merits of the respective cases of the parties on the alleged dues. The merits of the first Petitioner bank's case for recovery and of the disputant's case for seeking declaratory reliefs in connection with the loan account, have to be canvassed in the dispute application before the Co-operative Court or such other authorities as parties may choose to approach. All rights and contentions of the parties in that behalf are kept open.

(S.C. GUPTE, J.)