IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 2147/2016

Vinod Tulsidas Khera
Vs.
Branch Manager, Yavatmal Urban Co-operative Bank Ltd, Wani, and others.

Office notes Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders.

Shri C.G.Barapatre, Advocate for appellants.
Shri Parijat Pande, Advocate for respondent nos. 1, 2 and 6.
Shri A.V.Palshikar, Assistant Government Pleader, for respondent nos. 3 to 5.

CORAM : A.S.CHANDURKAR, J.
DATED : June 04, 2019

In this writ petition filed under Article 227 of the Constitution of India, the petitioner has sought to challenge the recovery certificate dated 18.12.2012 issued under Section 101 of the Maharashtra Co-operative Societies Act, 1960 (for short, 'the said Act'). A declaration has been sought that the said recovery certificate has been obtained fraudulently by the respondent no.1-Bank. Consequential sale proclamation dated 01.03.2016 is also under challenge.

It is the case of the petitioner that initially an amount of Rs.15,00,000/- (Rs.Fifteen lakhs) was borrowed from the respondent no.1-Bank and in lieu thereof mortgage deed dated 06.02.2003 came to be duly executed. Plot Nos. 4, 5 and 197/2 came to be mortgaged with the Bank. Thereafter, further amount of Rs.5,00,000/- (Rs Five lakhs) was borrowed by the petitioner by creating further charge against those properties. The subsequent mortgage deed is dated 23.02.2004. According to the petitioner, the entire amount borrowed was repaid and pursuant thereto the Bank executed a release deed dated 26.08.2010. However, in that release deed only two of the mortgaged properties came to be released. The petitioner was thereafter served with recovery certificate that was obtained by the Bank under Section 101 of the said Act. The amount sought to be recovered thereunder was Rs.16,20,700/-. The petitioner filed revision application under Section 154 of the said Act but as 50% amount as required to be deposited for entertaining that application was not so deposited, the proceedings came to be dismissed. Thereafter a sale proclamation came to be issued. Being aggrieved, the petitioner has filed the present writ petition.

Shri C.G.Barapatre, learned counsel for the petitioner submitted that in the light of release deed issued by the Bank it was clear that the entire amount borrowed by the petitioner had been repaid and no amount was due and further payable. Though it was incumbent upon the Bank to release all the mortgaged properties, only two properties came to be so released. He submitted that the petitioner was a victim of fraud played by the officers of the Bank and with a view to further recover amounts from the petitioner, proceedings under Section 101 of the said Act came to be initiated. According to him, it was for the Bank to proceed against its officers if the Bank was of the view that release deed had been wrongly issued. Since no amount was due and payable from the petitioner, the fifty percent (50%) amount as required under Section 154(2-A) of the said Act was not liable to be deposited. The petitioner being an illiterate person, he could not be faulted and therefore the impugned orders were liable to be set aside.

Shri Parijat Pande, learned counsel for the respondent no.1-Bank supported the impugned action. According to him, the release deed that was sought to be relied upon by the petitioner was not a legally valid document binding on the Bank. Since it was issued by the Officer without having due authority, appropriate departmental action was initiated and after conducting an enquiry, the concerned Branch Manager of the Bank was duly punished. He further submitted that though it was the case of the petitioner that the Bank had issued release deed as the entire borrowed amount had been repaid, the petitioner had after receiving the release deed deposited an amount of Rs. 2,27,529/-. This aspect of the matter can not be reconciled with the case of the petitioner as it was his case that the entire amount borrowed has been paid. There was no reason to further deposit any amount if the entire borrowed amount had been repaid. He further submitted that the adjudication under Section 154 of the said Act was not under challenge and the petitioner by raising various disputed questions had sought relief in the writ petition. It was submitted that the writ petition thus deserves to be dismissed.

After hearing learned counsel for the parties, it is seen that the petition gives rise to various disputed questions. The legality and validity of release deed dated 26.08.2010 relied upon by the petitioner is seriously disputed by the Bank. In para 16 of the affidavit filed on behalf of the bank, it has been categorically stated that the Bank had initiated action against the concerned Branch Manager who had issued the release deed and after conducting an enquiry, the said Branch Manager was duly punished.

Another relevant factor that cannot be ignored is that though it is the case of the petitioner that the entire borrowed amount was repaid on the basis of which the release deed was executed, an amount of Rs.2,27,529/- has been deposited by the petitioner much after issuance of the release deed. Such deposit even after issuance of the release deed has not been explained. This deposit is without any protest and it appears to be pursuant to recovery certificate issued under Section 101 of the said Act. There is no material on record to proceed on the basis that the release deed has been fraudulently issued by the Bank. Though the petitioner had an opportunity to challenge recovery certificate by depositing 50% of the said amount under Section 154(2-A) of the said Act, that opportunity has not been utilized by the petitioner. Though it was put to the petitioner that even at this stage he could be permitted to invoke the remedy under Section 154(2-A) of the said Act, the petitioner's counsel on instructions submitted that the petitioner was not inclined to avail that remedy. Since various disputed questions of fact arise, I do not find this case to be one in which writ jurisdiction deserves to be exercised.

In that view of the matter, I am not inclined to entertain the writ petition. It is open for the petitioner to avail such remedy as is available to him in law for redressal of his grievances. Writ Petition is accordingly dismissed with no orders as to costs.

At the request of the petitioner, the interim order dated 04.04.2016 passed by this Court shall continue to operate for a period of **six weeks** and shall cease to operate automatically thereafter.

JUDGE

Andurkar.