

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 3706/2018

(DEVISINGH SHANKAR SAWALAKHE **VERSUS** THE DIVISIONAL JOINT REGISTRAR, CO-OPERATIVE
 SOCIETIES, NAGPUR & OTHERS)
 WITH

WRIT PETITION NO. 3707/2018

(DNYANESHWAR HARICHAND MESHARAM **VERSUS** THE DIVISIONAL JOINT REGISTRAR, CO-
 OPERATIVE SOCIETIES, NAGPUR & OTHERS)
 WITH

WRIT PETITION NO. 3708/2018

(SUNIL RAMAJI MESHARAM **VERSUS** THE DIVISIONAL JOINT REGISTRAR, CO-OPERATIVE
 SOCIETIES, NAGPUR & OTHERS)
 WITH

WRIT PETITION NO. 3709/2018

(PARLHAD TEKCHAND SHARNAGAT **VERSUS** THE DIVISIONAL JOINT REGISTRAR, CO-
 OPERATIVE SOCIETIES, NAGPUR & OTHERS)
 WITH

WRIT PETITION NO. 3710/2018

(VAIJAYANTA TIKARAM YELNE **VERSUS** THE DIVISIONAL JOINT REGISTRAR, CO-OPERATIVE
 SOCIETIES, NAGPUR & OTHERS)
 WITH

WRIT PETITION NO. 3711/2018

(SHIVDAS LAXMAN BALADHARE **VERSUS** THE DIVISIONAL JOINT REGISTRAR, CO-OPERATIVE
 SOCIETIES, NAGPUR & OTHERS)
 WITH

WRIT PETITION NO. 3712/2018

(HIRATAI VISHWANATH KHOBRADE **VERSUS** THE DIVISIONAL JOINT REGISTRAR, CO-
 OPERATIVE SOCIETIES, NAGPUR & OTHERS)
 WITH

WRIT PETITION NO. 3713/2018

(VINOD SHRIRAM WAGHMARE **VERSUS** THE DIVISIONAL JOINT REGISTRAR, CO-OPERATIVE
 SOCIETIES, NAGPUR & OTHERS)
 WITH

WRIT PETITION NO. 3714/2018

(DHANVIR EKNATH KANHEKAR **VERSUS** THE DIVISIONAL JOINT REGISTRAR, CO-OPERATIVE
 SOCIETIES, NAGPUR & OTHERS)

 Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

 Shri A.M. Ghare and Shri P.S. Tidke, counsel for petitioners.
 Shri S.B. Bissa, A.G.P. for R-1 & 2.
 Shri S.K. Tambde, counsel for R-3.

CORAM : A.S. CHANDURKAR, J.

DATE : JULY 30, 2019.

In view of notice for final disposal issued earlier, the
 learned counsel for the parties have been heard at length.

The challenge raised in all these writ petitions is to the order passed by the Divisional Joint Registrar Cooperative Societies, Nagpur thereby setting aside the order passed by the Assistant Registrar Co-operative Societies under Section 101 of the Maharashtra Co-operative Societies Act, 1960 (for short, 'the said Act') and remanding the proceedings for fresh adjudication in accordance with law.

The facts in brief are that according to the respondent no.3-Co-operative Society each petitioner had borrowed certain amounts from it. As there was a default in repaying those amounts, the society initiated proceedings under Section 101 of the said Act. Notice was issued to each petitioner who thereafter appeared before the Assistant Registrar. A stand was taken before the Assistant Registrar that each petitioner had not borrowed any amount whatsoever and there was no question of recovering any dues from the petitioners. The petitioners sought to point out that they had filed a dispute under Section 91 of the said Act and as the disputes filed by the petitioners were still pending, no recovery could have been directed. The Assistant Registrar dismissed the applications filed under Section 101 of the said Act. The society therefore filed revision applications under Section 154 of the said Act before the Divisional Joint Registrar. It was noticed by the Revisional Authority that there did not appear any connection between the relief sought in the dispute and the recovery proceedings under Section 101 of the said Act. On that count, the Revisional Authority found that the proceedings under Section 101 of the said Act required proper consideration by following the due procedure. Hence, by its order dated 16.05.2018, the revision applications were allowed and the proceedings were remanded to the Assistant Registrar for fresh

consideration. Being aggrieved, these orders have been challenged by the petitioners.

Shri A.M. Ghare, learned counsel for the petitioners submitted that the petitioners had never borrowed the amounts as alleged by the society on the basis of which the proceedings under Section 101 of the said Act had been initiated. Referring to the First Information Report in Crime No.211 of 2015, it was submitted that the entire records of the society had been burnt and without any factual or legal basis, the society had initiated proceedings for recovery against the petitioners. Referring to the dispute filed by the petitioners under Section 91 of the said Act and especially paragraphs 5 and 6 thereof, it was submitted that the fact that the amounts in question had not been borrowed was specifically pleaded therein. The Assistant Registrar rightly found that the pendency of the dispute was a relevant factor and hence did not exercise jurisdiction under Section 101 of the said Act. The Divisional Joint Registrar however failed to consider these aspects and merely by observing that the procedure under Rule 86 of the Maharashtra Co-operative Societies Rules, 1986 (for short, 'the said Rules') could be followed proceeded to remand the matter. It was then submitted that in the disputes pending before the Co-operative Court, application for amending the same had been duly filed with a prayer that a declaration be granted that loan amount had not been borrowed by the disputant. He placed reliance on the decision in *Shribasaveshwar Co-Operative Credit Society Ltd. Kolhapur Versus Jayant Shivpal Banchhode* [2009(2) Mh.L.J. 216] to urge that the powers of the Co-operative Court under Section 91 of the said Act and the Registrar under Section 101 were distinct and operated in different fields. As the disputes were pending, the order of the Assistant Registrar was liable to be maintained.

On the other hand, Shri S.K. Tambde, learned counsel for the respondent no.3-Society supported the impugned order. According to him, the dispute as filed was by way of an afterthought after the society had initiated proceedings under Section 101 of the said Act. He referred to various documents that were placed on record before the Assistant Registrar to indicate loan amounts being borrowed in the year 2011. He also sought to refer to the statement of account of each petitioner indicating the payment of some loan and calculation of the balance amounts due. According to him, the defence that loan was never borrowed can be raised in the proceedings under Section 101 of the said Act and by following the procedure prescribed by Rule 86 of the said Rules, the proceedings would be adjudicated. He further submitted that in the dispute as filed, no declaration was sought that the loan amounts had not been borrowed. It is only after passing of the orders by the Assistant Registrar that the application for amendment came to be moved. It was thus submitted that the impugned order remanding the proceedings does not cause any prejudice to the petitioner and such adjudication is necessary.

I have heard the learned counsel for the parties at length and I have perused the documents placed on record. In the proceedings filed under Section 101 of the said Act, it is the case of the society that the amount of loan advanced to each petitioner has not been repaid and hence for recovering the same those proceedings have been initiated. There is no dispute that these proceedings have been initiated prior in time. The dispute in question has been thereafter filed by each petitioner under Section 91 of the said Act. Perusal of the said dispute indicates that according to the disputants, they had deposited amounts by way of fixed deposit as well as other deposits from time to time. The same

were not repaid despite the same having matured. The disputant therefore seeks recovery of that amount from the society. In the dispute there are averments that the society created some forged documents to indicate loan being borrowed by the disputant. The same was however disputed. The Assistant Registrar while entertaining the proceedings under Section 101 of the said Act has observed that since the dispute raising a challenge to the fact that no amount of loan was borrowed had been filed by the petitioner, the proceedings for recovery under Section 101 of the said Act did not deserve to be adjudicated. On that count, the proceedings came to be dismissed. The Divisional Joint Registrar however found that the prayers made in the dispute were distinct and had no relation with the proceedings for recovery under Section 101 of the said Act. He observed that by following the procedure prescribed by Rule 86 of the said Rules, the proceedings required fresh consideration.

A perusal of the documents filed by the society alongwith the application under Section 101 of the said Act *prima-facie* indicate an application seeking loan from the society. There are other documents said to be signed by the guarantors as well as a certificate by the employer. There are some other documents placed on record in the form of loan statements. The authenticity and veracity of those documents is yet to be examined in the proceedings initiated by the society. As per provisions of Rule 86(E) of the said Rules, it is the burden on the society which has initiated proceedings for recovery to prove the contents of the application and satisfy the defences raised by the borrower. It is permissible for the borrower against whom such proceedings have been filed to raise appropriate defences. On consideration of that material, the Assistant Registrar is required to pass a reasoned order in that regard.

A perusal of the dispute as filed indicates that the relief sought is for recovery of the amounts invested which according to the disputant have duly matured but have not been repaid. The application for amendment of the dispute is presently pending with the Co-operative Court. Considering the fact that proceedings under Section 101 of the said Act were initially filed alongwith various documents *prima-facie* indicate amounts being borrowed by the petitioners and the burden to prove the same being on the society, it is found that at this stage the order passed by the Divisional Joint Registrar remanding the proceedings for fresh consideration by granting due opportunity to the parties cannot cause any prejudice to the petitioners. The petitioners in those proceedings are free to raise appropriate defences including the defence that they had not borrowed any amount. As noted above, the burden to prove the contents of the application filed under Section 101 of the said Act is on the society. In that view of the matter and after considering the ratio of the decision in *Jayant Shivpal Banchhode* (supra), I do not find any reason to interfere with the impugned order.

By clarifying that the observations made in this order are only for deciding the challenge to the impugned order and by directing that the proceedings shall be adjudicated on its own merits in accordance with law, the Writ Petitions are disposed of. There would be no order as to costs.

All the pending civil applications also stand disposed of.

JUDGE