IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6121 OF 2018

Kishor s/o. Ganpatrao Chavan,
Age : 53 years, Occ. Agri.,
r/o. Kishor Mangal Kendra, 4/5/81,
Near Jabre Hanumanmandir,
Jadhavmandi, Aurangabad ..Petitioner

Vs.

1. Shri Gajanan Maharaj Nagari
Sahakari Path Sanstha Ltd.,
Shop No.7 and 8, N-7, CIDCO,
Aurangabad,
through Branch Manager

2. Special Recovery Officer,
Marathwada Vibhag Sahakari
Pat Sanstha Ltd.,
c/o. Shri. Gajanan Maharaj
Nagari Sahakari Pat Sanstha Ltd.,
Shop Nos.7 and 8, N-7, CIDCO
Aurangabad

3. Vishnu s/o. Devrao Gadekar,
Age : 65 years, Occ. Nil,
r/o. Laxminiwas,
Near Kendriya Kamgarkalyan
Hospital, Behind Garware Stadium,
N-1, CIDCO, Aurangabad

(Petition stood dismissed
against Respondent no.3 as per
Court's order dtd.11.09.2018)

4. The Deputy Registrar,
Co-operative Societies,
Tq. Aurangabad,
Office Nirala Bazar,
Aurangabad ..Respondents

Mr.V.B.Kale, Advocate for petitioner

Mr.P.D.Suryawanshi, Advocate for respondent nos.1 and 2

Mr.P.M.Kulkarni, AGP for respondent no.4

CORAM : R.G. AVACHAT, J.
RESERVED ON : OCTOBER 17, 2019
PRONOUNCED ON : FEBRUARY 14, 2020

ORDER :-

The challenge in this Writ Petition is to the Recovery Certificate dated 31.03.2012 issued by the Deputy Registrar, Co-operative Societies, Aurangabad (respondent no.4) and consequential notice of recovery issued by the Special Recovery Officer (respondent no.2) on 06.06.2018.

2. Heard learned Counsel for the parties. Perused the documents necessary to decide present Writ Petition.

3. Mr.Kale, learned Counsel for the petitioner, would submit that the petitioner has not obtained any loan from respondent no.1 – Credit Society after 2008. The loan had been obtained in the year 2000. The same has been repaid. The Branch Manager of respondent no.1 has admitted the same in unequivocal terms in a proceedings initiated under Section 138 of the Negotiable Instruments Act ("N.I. Act", for short). The petitioner surprisingly received the impugned demand notice dated 06.06.2018. He would further submit that the petitioner had not been served with the notice of proceedings initiated under Section 101 of the Maharashtra Co-operative Societies Act ("the Act", for short). The proceedings were held *ex-parte*. The petitioner had asked respondent no.1 to issue him `no-dues certificate'. The petitioner's request has, however, been turned down. In view of learned Counsel, for all the aforesaid reasons, the impugned recovery certificate and the

consequential recovery notice are bad in law and thus, liable to be set aside.

4. An affidavit-in-reply has been filed on behalf of respondent nos.1 and 2. it has been stated in the affidavit-in-reply that the petitioner had been granted loan of Rs.30,000/- for business purpose. Till the date of filing of the affidavit, the petitioner repaid Rs.23,947/-. As on that date, a sum of Rs.1,19,110/- was due from the petitioner. The Branch Manager – Dilip Yadgire, who testified in the proceedings under Section 138 of N.I. Act, had been won over by the petitioner. The accounts of respondent no.1 could not be audited during the period from 01.04.2002 to 31.03.2012 for the reasons best known to the Managing Committee. Thereafter, the accounts came to be audited. As it was found that the then Manager and Dilip Yadgire misappropriated a huge amount of the Society, prosecution has been launched against both of them. The documents in the nature of extract of loan

account of the petitioner, copy of audited report, besides some other documents, etc., came to be produced on record.

5. Learned Counsel representing respondent nos.1 and 2 and learned AGP for respondent no.4 would submit that the petitioner has an equally efficacious remedy in the nature of Revision under Section 154 of the Act. According to them, the petition, therefore, is not maintenable.

6. I have considered the rival submissions advanced by learned Counsel for the parties. Admittedly, the petitioner had obtained a business loan of Rs.30,000/- from respondent no.1 – Credit Society, way back in the year 2000. There is not a single document in the nature of payment receipt or no-dues certificate produced on record by the petitioner. He simply relies on an admission given by the then Branch Manager in a proceedings initiated under Section 138 of N.I. Act. A copy of the judgment

delivered in the said proceedings has been produced on record.

7. True, the petitioner has been acquitted of the offence punishable under Section 138 of the N.I. Act. It needs no mention that the judgment in a criminal proceedings is not relevant/admissible in a civil proceedings. Even if the judgment is perused for the sake of the petitioner, it is evident therefrom that the petitioner has been acquitted giving him benefit of doubt. The Manager – Yadgire, in his examination-in-chief, testified inconsistent with the averments in the complaint. During his cross-examination, he admitted that the petitioner has repaid the entire loan amount and nothing is due from him.

8. The admissions are relevant but do not themselves constitute a conclusive proof. The admission can be proved to be wrong. It can be explained. A copy of the audit report is produced on record to suggest that the then Manager – Yadgire was

responsible for monetary mess. Respondent no.1 has, therefore, launched criminal prosecution against him. In this factual backdrop and there being no other evidence than mere reliance on the admission of Manager – Yadgire to suggest the petitioner to have repaid the entire loan amount, the case of the petitioner cannot be accepted. There is on record a document in the nature of the petitioner's loan account extract. Moreover, respondent no.1 – Credit Society has produced on record a copy of letter issued by the petitioner to it on 08.04.2011, asking for information regarding the amount due from him on his loan account. The communication indicates that the petitioner was given inspection of the documents relating to his loan account. He has, however, been denied copies thereof, since he did not pay necessary charges therefor. Had the petitioner really did not owe any amount to respondent no.1 – Credit Society, he had no reason to make inquiry about the dues towards his loan.

9. So far as the petitioner's contention that the proceedings for obtaining recovery certificate went *ex-parte* against him is concerned, there is on record a copy of the public notice (Exh.`R-5'), asking the petitioner and surety for his loan, to appear before respondent no.4 on 16.02.2012 by 11.00 a.m. in connection with the proceeding under Section 101 of the Act. It, therefore, cannot be said that the petitioner had not been served with the notice of the proceedings held before issuance of recovery certificate.

10. Moreover, the petitioner has an equally efficacious remedy in the nature of revision under Section 154 of the Act.

11. For the aforesaid reasons, no case is made out for grant of relief, as prayed for. The Writ Petition stands dismissed. Interim relief stands vacated.

12. It is, however, made clear that the petitioner is at liberty to avail the remedy of Revision. If he avails such remedy, the revisional authority would decide the proceedings on its own merits uninfluenced by any of the observations made herein above.

[**R.G. AVACHAT, J.**]

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