IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8750 OF 2015

The Maharashtra State Co-operative Bank Limited ...Petitioner

versus

The Dhule District Central Co-operative Bank Limited, Dhule ...Respondent

.....
Advocate for Petitioner : Mr. Gorde Patil Sandeep
Advocate for Respondents : Mr. P.N. Nagargoje h/f Mr. D.B. Thoke
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CORAM : V. K. JADHAV, J.
DATED : 8th JANUARY, 2020

PER COURT:-

1. Heard both sides.

2. The petitioner bank is Apex Bank registered under the provisions of Maharashtra Co-operative Societies Act, 1960 (hereinafter for the sake of brevity referred to as “the Societies Act”), doing the business of Banking under the provisions of Banking Regulations Act, 1948. The petitioner bank had advanced loan to Sindhkheda Sahakari Shetmal Prakriya and Vikiri Sangh Limited under various heads and in view of that the said Sangh had executed security documents creating charge on the assets of said Sangh. The respondent is District Central Co-operative Bank, Dhule and member of the petitioner bank.

3. On 2.12.1987, the Sahakar Laxmi Sangh was amalgamated in Sindhkheda Sahakari Shetmal Prakriya and Vikiri Sangh Limited. As

per the scheme of amalgamation, the liability of Sahakar Laxmi Sangh for paying of its due to the creditors shifts on the Taluka Shetkari Sangh Limited. Unless the dues of the petitioner bank are repaid, the process of amalgamation need not proceed further. Consequently, the Sangh had discussion with the petitioner bank and requested to accept the amount of Rs.5.00 lacs and right off the balance amount of Rs.4.38 lacs. The petitioner bank on receipt of the proposal resolved to recommend the proposal to AGM. However, the competent authority refused to grant approval to the proposal regarding seeking right off the balance amount on the ground that the secured assets are worth more than Rs.9.38 lacs. After receipt of the said proposal, the said fact was brought to the notice of the Sangh and request was made for the balance amount of Rs.4.38 lacs. It is also part of record that Sangh had sold out entire assets of Sahakar Laxmi Sangh for Rs.14.48 lacs and the same amount came to be deposited towards repayment of the loan amount availed from the respondent Bank.

4. In fact, it is the case of the petitioner that the said amount should have been deposited with the petitioner bank, but to deprive the petitioner bank, the said amount was deposited with respondent bank. The petitioner bank being secured creditor had preferential right to recover the amount than the other unsecured creditors. The said fact was duly communicated to the respondent bank and also to the said Sangh and requested to transfer the said amount. However,

they have refused for the same.

5. On 2.2.1991 the petitioner bank has debited the amount in the account of the respondent bank and accordingly given copy of the advise to the respondent bank. It is the case of the petitioner that the said debit entry was done only after discussion with the Chairman of both the Banks. However, the respondent bank issued notice through its advocate seeking refund of the said amount with interest and also raised dispute No. 179 of 1996 before the Co-operative Court, Jalgaon.

6. The petitioner bank appeared in the matter and accordingly resisted the said dispute by filing written statement, denied the claim and also raised various grounds, including the point of limitation. The Co-operative Court, Jalgaon was pleased to dismiss the dispute by judgment and order dated 7.12.2010 on the ground of limitation but had decided issue Nos. 1 and 2 in favour of the respondent bank regarding debit entry.

7. Being aggrieved by the same, the respondent Bank has preferred appeal No. 18 of 2011 before the Co-operative Appellate Court, Bench at Aurangabad and learned Member of the Co-operative Appellate Court, by judgment and order dated 11.7.2011 allowed the appeal and set aside the finding to issue No.3 given by the Co-operative Court in the judgment and award dated 7.12.2010

and further recorded the finding to point No.3 in affirmative and decreed the dispute filed by the disputant respondent bank. Hence, this writ petition.

8. Learned counsel for the petitioner submits that the dispute is between the Apex bank and the District Central Co-operative Bank pertaining to recovery of the amount and as such, the said dispute is squarely covered by the provisions of Section 92 (1) (a) of the Societies Act, for which three years limitation is prescribed. In the instant case, the dispute has been raised after the period of five years, 9 months, 13 days and as such beyond the period of limitation. Learned counsel submits that the Co-operative Appellate court has not considered this important aspect and erroneously allowed the appeal by recording the finding in affirmative to point No.3.

9. Learned counsel for the respondent submits that finding has been recorded by the Co-operative court to issue Nos. 1 and 2 whereby the Co-operative Court has accepted the case of the respondent pertaining to the debit entry made by the petitioner bank illegally, however, dismissed the dispute only on the point of limitation. So far as the finding recorded to point Nos. 1 and 2 are concerned, the petitioner bank has not preferred any appeal or counter appeal in the appeal preferred by the respondent Bank. Consequently, the Co-operative Appellate Court has only considered

the point of limitation and in terms of the provisions of Section 92 (1) (b) of the Societies Act, recorded the finding to the point of limitation in affirmative. Learned counsel submits that even though the petitioner bank has received letters dated 11.2.1991 and 18.2.1991 issued by the respondent Bank, the petitioner bank has kept the matter under consideration and further informed to the respondent bank that the decision will be communicated as soon as it is taken. Learned counsel submits that the dispute has been raised within a period of six years as contemplated under the provisions of Section 92(1) (b) of the Societies Act. The Co-operative Appellate Court has rightly considered the said provisions and accordingly allowed the appeal preferred by the respondent bank. There is no substance in this writ petition. The writ petition is liable to be dismissed.

10. On careful perusal of the judgment and order passed by the Co-operate Court, Jalgaon dated 7.12.2010 in Dispute No. 179 of 1996, it appears that the Co-operative Court has recorded finding to issue Nos. 1 and 2 in affirmative and thus recorded that the respondent-original disputant proved that an amount of Rs.4.38 lacs has been wrongly debited to the account by the petitioner bank and the respondent-original disputant is entitled to recover the amount with interest. However, learned Judge of the Co-operative court has dismissed the dispute only on the point of limitation. Learned Judge of Co-operative court has held that the provisions of Limitation Act will be applicable and as such, the dispute pertaining to recovery

ought to have been raised within three years from the date of last transaction. Since the last transaction took place in the year 1991, the dispute ought to have been filed on or before 1993. The application for condonation of delay was not filed in terms of the provisions of Section 92(3) of Societies Act. Learned Judge of the Co-operative Appellate Court has considered the dispute in terms of the provisions of Section 92(1) (b). Section 92 of the Societies Act is reproduced herein below:-

> ***Section 92 -*** *(1) Notwithstanding anything in [the Limitation Act, 1963], but subject to the specific provisions made in this Act, the period of limitation in the case of a dispute [referred to the Co-operative Court] under the last preceding section shall--*
>
> *(a) when the dispute relates to the recovery of any sum, including interest thereon, due to a society by a member thereof be computed from the date on which such member dies or ceases to be a member of the society;*
>
> *(b) when the dispute is between a society or its committee, and any past committee, any past or present officer, or past or present agent, or past or present servant or the nominee, heir or legal representative or a deceased officer, deceased agent or deceased servant of the society, or a member, or past member, or the nominee, heir or legal representative of a deceased member and when the dispute relates to any act or omission on the part of either party to the dispute, be six years from the date on which the act or omission with reference to which the dispute arose, took place;*
>
> *(c) when the dispute is in respect of any matter touching the constitution, management or business of a society which has been ordered to be wound up under section 102, or in respect*

of which a nominated committee [or an administrator or committee or authorized person has been appointed under Section 77A, 78 or 78A, be six years from the date of the order issued under Section 77A, 78 or 78A or, under Section 102, as the case may be];

(d) when the dispute is in respect of an election of [a committee or officers] of the society, be [two months] from the date of the declaration of the result of the election.

(2) The period of limitation in the case of any other dispute except those mentioned in the foregoing sub-section which are required to be referred to [the Co-operative Court] under the last preceding section shall be regulated by the provisions of [the Limitation Act, 1963], as if the dispute were a suit and [the Co-operative Court] a Civil Court.

(3) Notwithstanding anything contained in sub sections (1) and (2), [the Co-operative Court] may admit a dispute after the expiry of the limitation period if the applicant satisfies [the Co-operative Court] that he had sufficient cause for not referring the dispute within such period and the dispute so admitted shall be a dispute which shall not be barred on the ground that the period of limitation had expired."

11. So far as the clause (a) of section 92 (1) is concerned, it relates to recovery of any sum including the interest thereon, due to a society by a member thereof. In the instant case, though the petitioner bank has passed resolution to right off the remaining amount of Rs.4.38 lacs, since the competent authority has refused to grant approval the said right off proposal, the petitioner bank on 2.2.1991 has debited the said amount from the account of the respondent bank. Though indirectly the dispute is raised in respect of

recovery of the amount, however, in the given set of facts, the dispute relates to act or omission on the part of party to the dispute.

12. In the instant case, though I find that the dispute pertains to certain amount for which the decision has been taken mutually by the petitioner and the respondent bank, however, without there being any further discussion on the said point, as on 2.2.1991 the petitioner bank has taken debit entry in respect of the said amount. In view of the same, since six years time has been prescribed under Section 92(1) (b) from the date on which the act or omission with reference to which the dispute arose, took place, I find no fault in the findings recorded by the Co-operative appellate court on the point that the dispute raised by the respondent bank is well within limitation. There is no dispute at least on the point that the respondent bank has raised dispute within a period of six years from the said date on which the petitioner bank has made debit entry.

13. In view of the same, I do not find any substance in this writ petition. Hence, the writ petition is hereby dismissed.

(V. K. JADHAV, J.)

rlj/