

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.1782 OF 2016

Bharti C. Thakkar @ Bharti Chetan Rathod ...Petitioner
vs.
Veershaiva Co-op. Bank Ltd. & Ors. ...Respondents

....

Mr. Sampatrao Pawar, Advocate for Petitioner.

Dr. D. S. Hatle a/w. Deepak Jamsandekar, Advocate for Respondent Nos.1 & 6.

Mr. P. P. Pujari, AGP for Respondent No.5.

CORAM : C. V. BHADANG, J.

RESERVED ON: 15th JANUARY, 2020

PRONOUNCED ON: 03rd FEBRUARY, 2020

PC.

. The challenge in this petition is to the order dated 28/11/2011 passed by the Dy. Registrar, Co-operative Societies, issuing recovery certificate under Section 101 of the Maharashtra Co-operative Societies Act ('Act' for short), in favour of the first respondent and the order dated 27/1/2016 passed by the sixth respondent for attachment.

2. I have heard the learned counsel for the petitioner and learned counsel appearing for the respondent Nos.1 to 6. I have also heard learned AGP for respondent No.5. Perused record.

3. It is submitted by learned counsel for the petitioner that the petitioner never stood as guarantor to the loan granted by the first respondent to the second respondent Payal Traders. It is submitted that the petitioner had not received any notice in the application filed by the first respondent, for grant of the certificate under Section 101 of the said Act. It is submitted that the petitioner's maiden name is Bharti C. Thakkar and after her marriage in the year 2006 her name is Bharti Chetan Rathod. It is submitted that the petitioner was not residing at the address at Andheri (East), Mumbai. After her marriage, the petitioner is residing at Mulund and in any event, the petitioner is not shown to have been served with a notice of the proceedings under Section 101 of the said Act. It is also submitted that the petitioner is not a shareholder of the first respondent and therefore even otherwise no financial assistance could have been granted on the purported guarantee of the petitioner herein. It is submitted that the learned Dy. Registrar was in error in granting the recovery certificate.

4. On behalf of the petitioner, reliance is placed on the decision of this Court in the case of 1) **Kushal s/o. Narayanrao Mundhe Vs. State of Maharashtra and others**, 2007(4) Mh.L.J. 333 2) **Sundeep Polymers Pvt. Ltd. & Ors. Vs. State of Maharashtra & Ors.** 2010 (6) ALL MR 550 and 3) **Vithal s/o. Laxman Fatangade & Anr. Vs. The State of Maharashtra and Ors.** 2011(2) Mh.L.J. 194, in order to submit that the recovery certificate issued without following the prescribed procedure is illegal.

5. The learned counsel for the sixth respondent and the learned AGP have supported the impugned order.

6. On 20/4/2016, considering the nature of the dispute, the fifth respondent was directed to file an affidavit alongwith documents, disclosing that the petitioner is a privy to the loan transaction and that she has received notice of the proceedings under Section 101 of the said Act. Subsequently, on 18/12/2019, learned counsel for the first respondent had sought time to produce copy of the share certificate of the petitioner in order to meet the case of the petitioner that she is not a shareholder of the first respondent Bank. On behalf of the respondent No.1, a letter dated 11/1/2016 was pointed out in which the petitioner had accepted about having stood as a guarantor to the said loan. Learned counsel for the petitioner submitted that said letter is obtained under coercion.

7. In my considered view, it is not at all shown whether the petitioner was indeed a shareholder of the first respondent Bank and there is no acceptable material on record to show that the notice of the proceedings under Section 101 of the said Act was served on the petitioner. In order to appreciate the rival contentions, in this regard, it is necessary to make a reference to the affidavit dated 10/1/2020 filed by the learned Dy. Registrar alongwith annexures. It is contended on behalf of learned Dy. Registrar that there was a notice issued to the petitioner in the proceedings and she had also appeared alongwith other respondents by filing vakalatnama of Advocate Ajay R. Karuwatn. Learned Dy. Registrar has also inclosed the copy of the application filed by the first respondent. However, a bare perusal of the acknowledgement (at page 193) shows that the signature thereon entirely differs from the purported signature of the petitioner on the vakalatnama of Advocate Karuwatn (at page No.194 of the compilation). To add to it, both these signatures

significantly differs from the signature purportedly on the loan documents which have been produced on record and particularly the statement / declaration by the sureties (page 88 of the compilation). It is further significant to note that in the impugned certificate dated 28/11/2011 the petitioner (the respondent No.2 before the Dy. Registrar) is shown to be absent.

8. It has been held by the Division Bench of this Court in the case of **Sundeep Polymers Pvt. Ltd.** (supra) that it is mandatory for the authorities to follow the rules provided in Chapter VIII-A of the Maharashtra Co-operative Societies Rules, 1961, while issuing the recovery certificate and a certificate issued in violation of these provisions, would be invalid and bad in law.

9. On facts, I find that there is no acceptable material to show that the petitioner was indeed served with a notice of the proceedings or had appeared through Advocate Karuwatn as claimed. It is only the petitioner who had approached this Court by way of this petition and therefore the consideration as to the breach of principles of natural justice is restricted insofar as the petitioner is concerned.

10. It also transpires during the course of argument, at bar, that the first respondent has gone into liquidation and the liquidator is appointed to it who is not made a party.

11. In the result, the petition is allowed. The impugned orders to the extent issuing a recovery certificate against the petitioner and

the order of attachment affecting the petitioner are hereby set aside.
In the circumstances, there shall be no order as to costs.

C.V. BHADANG, J.