

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

WRIT PETITION NO. 10478 OF 2018

1. Nitin Balasaheb Degwekar

2. Saurabhi Nitin Degwekar

Add; 4, Pranav Darshan CHS Ltd.,
Modern English School Road,
Pandurang Wadi,
Dombivali (E), Thane

..Petitioners

V/s.

1. The State of Maharashtra

through The District Deputy Registrar
Co.Operative Societies-2 (East Subarub)
Add; Raoom No.202, 2nd Floor,
Kokan Bhavan, C.B.D. Belapur,
Navi Mumbai- 400 614

2. Shivkripa Sahakari Patpedi Lrd.

Add: 219/3111, Tagore Nagar,
Group No.1, Vikhroli (E),
Mumbai-400 083.

3. Amogh Rajendra Risbood

B-3, Ekdant Heritage C.H.S. Ld.,
M.I.D.C., Donbivali (E), Thane.

4. Pooja Rajendra Risbood

B-3, Akdant Heritage CHS Ltd.,
MIDC, Dombivali (E),
Dist-Thane-421 201

5. Madhur Vijay Amrute

2 Bhagat Nivas, Subhash Road,
Opp. Bali Vishnu Tower,
Naupada, Dombivali (W),
Dist-Thane-421 202.

..Respondents

Mr.Bipul R. Maity for the Petitioners.

Mr.M.S. Bane, AGP for Respondent No.1.

Mr.Bhupesh V. Samant for Respondent No.2.

CORAM : C.V. BHADANG, J.

JUDGMENT RESERVED ON : 17/01/2020

JUDGMENT PRONOUNCED ON : 16/03/2020

JUDGMENT :

1. The challenge in this petition is to the order dated 16th May 2018 passed by the respondent No.1, District Deputy Registrar, in Revision Application No.607 of 2018. By the impugned order the respondent No.1, while allowing the Revision Application filed by the respondent No.2, has granted a recovery certificate against the petitioners and in favour of the respondent No.2.

2. The brief facts are that the respondent No.2 had sanctioned a loan of Rs.90 lakhs to the petitioners in which the respondent Nos.3 to 5 are guarantors. The loan was granted somewhere in 2015. As the petitioners failed to repay the said loan as per the terms agreed, the respondent No.2 filed application No.285 of 2017-18 against the petitioners and the respondents Nos.3 to 5, under Section 101 of the Maharashtra Co-operative

Societies Act 1960 ('Act' for short) for issuance of a recovery certificate. The learned Deputy Registrar, by an order dated 22nd December 2017 refused to grant the recovery certificate on the ground that the matter involves disputed and complicated question of facts. Feeling aggrieved the respondent No.2 challenged the same before the learned District Deputy Registrar, in Revision Application No.607 of 2018. The learned District Deputy Registrar, by the impugned order has granted the recovery certificate. Hence, this petition.

3. I have heard the learned counsel for the petitioners and the learned counsel for respondent No.2. I have also heard the learned Assistant Government Pleader for the respondent No.1. None appears for the respondent Nos.3 to 5. Perused record.

4. It is submitted by the learned counsel for the petitioners that the learned Deputy Registrar, was justified in refusing to grant the recovery certificate as the matter involved disputed and complicated questions of fact, as noticed by the learned Deputy Registrar, in his order dated 22nd December 2017. It is submitted that the petitioners have never availed any loan and there is no explanation forthcoming from the respondent No.2 as to how the

loan amount was transferred to the account of the respondent No.3, who is a guarantor.

5. It is submitted that the Revision Application filed under Section 154 of the said Act was not maintainable. In the submission of the learned counsel for the petitioners, the Revision is maintainable only at the instance of the borrowers/guarantors and not at the instance of the bank or the creditor. For this purpose the learned counsel has placed reliance on Section 152(2A) of the said Act, in order to submit that the entertainment of the Revision is subject to the condition of deposit of the 50% of the 'total recoverable dues', which according to the learned counsel is indicative of the fact that the revision is only maintainable at the instance of the debtors/guarantors, against whom a recovery certificate has been granted and not at the instance of the creditor, where the grant of such recovery certificate is refused. For this purpose reliance is placed on the decision of the Supreme Court in the case of (i) M.Pentiah & Ors. V/s. Muddala Veeramallappa & Ors.¹ (ii) Mannalal Khetan V/s. Kedar Nath Khetan & Ors.² (iii) Union of India & Ors. V/s. A.K. Pandey³

1 AIR 1961 SCC 1107

2 AIR 1977 SCC 536

3 2009 10 SCC 552

6. It is next submitted that even on merits no case for grant of recovery certificate is made out. It is submitted that in any event the Revisional Authority could not have interfered with the well reasoned order passed by the learned Deputy Registrar, refusing to grant recovery certificate. It is submitted that when disputed questions of law fact are involved, the remedy under Section 101 is not the appropriate remedy. Reliance for this purpose is placed on the decision of this Court in the case of ***TJSB Sahakari Bank Ltd V/s. M/s.Vasudeo Khachermal and Co.,***⁴and ***Top Ten V/s. State of Maharashtra.***⁵

It is submitted that the learned District Deputy Registrar, also failed to comply with the principles of natural justice, which are embedded in Rule 86A to F of the Maharashtra Co-operative Societies Rules 1961 ('Rules' for Short) which are mandatory in nature. Reliance in this regard is placed on the Division Bench judgment of this Court in the case of ***Sundeep Polymers Pvt. Ltd. V/s. State of Maharashtra***⁶. It is submitted that the Revisional Authority failed to adhere to Section 101(3) read with Section 154 of the said Act. It is submitted that the original application filed before the District Deputy Registrar, was also not

4 Writ Petition No.8657 of 2014 decided on 12th February 2018

5 2012(2) Bom.C.R. 647

6 2010 SCC Online Bom 1305

properly stamped. He therefore, submits that the petition be allowed and the order granting recovery certificate be set aside.

7. The learned counsel for respondent No.2 has supported the impugned order. It is submitted that a revision under Section 154 of the said Act is clearly maintainable at the instance of the bank or the creditor, where the grant of the recovery certificate is refused. It is submitted that there is no material to show that there is non-compliance with the principles of natural justice or that there was violation any Rule. It is submitted that the Revisional Authority has dealt with each and every ground on which the learned Deputy Registrar had refused to grant the recovery certificate. It is submitted that there is no dispute in this case about the amount which is recoverable and therefore the contention that the matter involves disputed and/or complicated questions of fact cannot be accepted.

8. I have considered the submissions made. The following points arises for my determination in this petition :-

(1) Whether a Revision Application under Section 154 of the Maharashtra Co-operative Act is maintainable at the instance of the bank or the creditor,

against an order refusing to grant recovery certificate under Section 101 of the said Act?

(2) If yes, whether the Revisional Court was justified in interfering with the order passed by the learned Deputy Registrar, and in granting the recovery certificate, in the facts and circumstances of the present case?

9. **Point No.1:-** In order to appreciate the rival submissions made, it is necessary to reproduce Section 154 of the said Act which reads thus :-

Section 154 - Revisionary powers of State Government and Registrar :-(1) The State Government or the Registrar, suo motu or on an application, may call for and examine the record of any inquiry or proceedings of any matter, other than those referred to in sub-section (9) of section 149, where any decision or order has been passed by any sub ordinate officer, and no appeal lies against such decision or order for the purpose of satisfying themselves as to the legality or propriety of any such decision or order, and as to the regularity of such processdings. If in any case, it appears to the State Government, or the Registrar, that any decision or order so called for should be modified,

annulled or reversed, the State Government or the Registrar, as the case may be, may, after giving the person affected thereby an opportunity of being heard, pass such orders thereon as to it or him may seem just.

(2) Under this section, the revision shall lie to the State Government if the decision or order is passed by the Registrar, the Additional Registrar or a Joint Registrar, and to the Registrar if passed by any other officer.

(2A) 2 [No application for revision shall be entertained against the recovery certificate issued by the Registrar under [section 101](#) unless the applicant deposits with the concerned society, fifty per cent. amount of the total amount of recoverable dues.

(3) No application for revision shall be entertained, if made after two months of the date of communication of the decision or order. The revisional authority may entertain any such application made after such period, if the applicant satisfies it that he had sufficient cause for not making the application within such period.

(4) The State Government may, by order, direct that the powers conferred on it by this section shall, in such circumstances and under such conditions, if any, as may be specified in the direction, be

exercised also by an officer of the rank of Secretary to Government.]

It can thus clearly be seen that under Section 154(1), the State Government or the Registrar can call for and examine the record of any enquiry or proceedings, other than those referred to in Sub-section 9 of Sub-Section 149, where any decision or order has been passed by any Subordinate Officer and no appeal lies against such decision or order. It is necessary to note that sub-section (1) of Section 154 confers general revisionary powers on the State Government and the Registrar, against any decision order passed by the Subordinate Officer, except those referred to in Sub-section 9 of Section 149. Sub-section (2A) which has been introduced by amending Act No.41 of 2000 provides that no such application for revision shall be entertained against the recovery certificate issued by the Registrar under Section 101, unless the applicant deposits with the concerned society, 50% of the amount of the total amount of recoverable dues. The learned counsel for the petitioner has strenuously urged that use of word “shall” in sub section 2A of Section 154 would indicate that it is mandatory and therefore the revision would only lie at the instance of the debtors/guarantors, against an order granting recovery certificate. The contention in my considered view cannot be accepted. Sub-section 2A of Section 154,

would apply only to a Revision Application filed by a debtor or a guarantor against an order granting recovery certificate under Section 101 of the said Act. Sub-section 2A of Section 154 cannot govern or control sub-section 1 of Section 154, which confers general revisionary powers on the State Government and the Registrar, where such Revision Application, is filed or is entertained, at the instance of the creditor or the financial institution. It is obvious that sub-section 2A which imposes a condition of deposit of 50% of the total amount of recoverable dues would only apply where the Revision Application is filed by the debtor or the guarantor. However this cannot be interpreted to mean, that no such application would lie at the instance of the bank or the creditor under Section 1 of Section 154 against an order refusing to grant recovery certificate.

10. The reliance placed on the decision in the case of *M.Pentiah & Ors. V/s. Muddala Veeramallappa & Ors., Mannalal Khetan V/s. Kedar Nath Khetan & Ors. and Union of India & Ors. V/s. A.K. Pandey* is clearly misplaced. There cannot be any manner of dispute with the proposition that prohibitive or negative words are ordinarily indicative of mandatory nature of the provision. It is difficult to see as to how aforesaid cases can come to the aid of the

petitioners in this case. The negative expression employed in Sub-section 2A of Section 154 is albeit mandatory. However it would only apply where the Revision Application is filed or the revisional jurisdiction is invoked by the debtor or the guarantor against the grant of the recovery certificate. By no stretch of imagination the said expression can be interpreted to mean that no revision shall lie under sub-section 1 of Section 154 at the instance of the bank or the creditor or the financial institution against an order refusing to grant the recovery certificate. The point is accordingly answered in the negative.

11. **Point No.2:-** This takes me to the merits of the matter. The record discloses that the respondent No.2-society had granted a loan of Rs.90 lakhs to the petitioners on the guarantee of the respondent Nos.3 to 5 on 20th June 2015. The loan carried interest @ 15.25% and was repayable in 84 installments. The loan was purportedly sanctioned for the purposes of return of hand loan taken from the relatives of the petitioners.

12. Be that as it may a perusal of the order passed by the Deputy Registrar shows that the Deputy Registrar has refused to grant the recovery certificate on the following grounds :-

- (i) That the monthly income of the borrowers is shown to be Rs.30,326/- which indicates that the borrowers had no capacity to repay the loan.
- (ii) As a co-lateral security for the loan the property belonging to the petitioner No.1 and the respondent No.3 was obtained. However, there are other loans obtained on the basis of these properties which are also over due;
- (iii) Out of the loan amount sanctioned Rs.80 lakhs has been credited to the account of the respondent No.3 by RTGS which indicates that the loan has not been paid or transferred to the account of the borrower and;
- (iv) That there is no resolution produced in respect of the legal representatives of the deceased guarantor Dr.Rajendra Risbood.

This in the opinion of the learned Deputy Registrar involved complicated and disputed questions and therefore the Deputy Registrar has found that the recovery certificate could not be granted.

13. Coming to the order passed by the Revisional Authority it indicates that the Revisional Authority has dealt with each of these findings recorded by the Deputy Registrar. The District Deputy Registrar has found that the observations and findings of the Deputy Registrar are not as per facts obtaining from the record. The Revisional Authority has found that the petitioners (respondent No.2 and 3 before the Revisional Authority) were engaged in service as well as in business and their consolidated income was shown to be Rs.2,40,326/- and documentary evidence supporting the said income was produced. Thus, the petitioner-society has verified the repayment capacity of the borrowers. The Revisional Authority has further found that the guarantor Mr.Amogh Risbood is related to the borrowers and a property worth Rs.7,31,25,000/- of Mr.Amogh Risbood was taken as a collateral security in respect of which Mr.Amogh Risbood has given a written consent. In such circumstances, the Revisional Authority has found that the loan was advanced with sufficient security and after verifying the repayment capacity of the borrowers.

14. Insofar as the transfer of Rs.80 lakhs to the account of the Mr.Amogh Risbood is concerned, the Revisional Authority on facts has found that the amount, after having deposited in the

account of the borrowers and with their consent has been transferred to the account of Mr.Amogh Risbood by RTGS. Lastly, it has also been found that there is a resolution passed by the petitioner about legal representatives of the deceased guarantor i.e. Dr.Rajendra Risbood.

15. In my considered view, all the circumstances on the basis of which the Deputy Registrar had come to the conclusion that the matter involves disputed and complicated questions have been dealt with by the Revisional Authority on the basis of the facts and circumstances as obtaining from the record. Thus, no exception can be taken to the impugned order granting the recovery certificate.

16. Insofar as the ground about breach of principles of natural justice is concerned there is nothing on record that the petitioners were denied of an any such opportunity either before the learned Deputy Registrar or the learned District Deputy Registrar. The contention about breach of some procedural provisions as contained in Rule 86 also cannot be accepted. It was contended that the application for grant of the recovery certificate requires a stamp duty of Rs.200/- however a sum of only Rs.100/- is affixed. These

procedural aspects in my considered view are not such, as to vitiate the impugned order passed.

17. There cannot be any manner of dispute that if complicated and disputed questions of fact genuinely arise in the matter the appropriate remedy would be to take recourse to raising a dispute under Section 91 of the said Act. However, whether there are any such questions, would always depend upon the facts and circumstances of the each case.

18. I have already held the finding by the Revisional Authority that there are no such questions involved is a finding of fact which is properly recorded on the basis of the circumstances obtaining. The impugned order does not suffer from any infirmity so as to require supervisory jurisdiction of this Court under Article 227 of the Constitution of India. It is however, made clear that the observations and the findings recorded herein, are for the limited purpose of deciding the validity of the order granting the recovery certificate. These observations and findings will not come in the way of the petitioner, if they take recourse to any substantive remedy, including the one under Section 91 of the said Act before the appropriate Court. The petition is without any merit and is accordingly dismissed, with no order as to costs.

**Nilam
Kamble**

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Nilam Kamble
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C.V. BHADANG, J.