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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 631 OF 2019

Kolhapur District Central Cooperative Bank Ltd., Kolhapur Having its Office At 1092, "E" Ward, Shahupuri, Kolhapur, Through its I/c. Asstt. Manager Shri. Rajendrakumar Shantinath Mithari	)))) …	**Petitioner**

V/s.

1.	**Indira Gandhi Mahila Sahakari Soot Girani Ltd., Ichalkarani**, having registered Office & Mills site, Awade Nagar Shivnakwadi, Taluka Shirol, District Kolhapur, Through its Managing Director	))))	
2.	**Divisional Joint Registrar,** Cooperative Societies, Kolhapur Division Kolhapur	)))	
3.	**State of Maharashtra** Through the Hon'ble Minister for Cooperation, Marketing and Textile Having its office at Mantralaya, Mumbai-400 032.	)))) …	**Respondents**

Mr. S. S. Patwardhan a/w Mr. B. R. Mandlik for the Petitioner.

Mr. A. M. Kulkarani a/w Mr. S. S. Diwan for Respondent No.1.

Mr. V. A. Thorat, Special Counsel a/w Ms. V. S. Nimbalkar, AGP for Respondent Nos. 2 and 3 - State.

CORAM : C.V. BHADANG, J.

JUDGMENT RESERVED ON :24th JANUARY 2020

JUDGMENT PRONOUNCED ON: 10th FEBRUARY 2020

JUDGMENT :

1. Rule made returnable forthwith. The learned counsel for respective respondents waive service. Heard finally by consent of parties.

2. The challenge in this petition under Article 226 and 227 of the Constitution of India, is to the judgment and order dated 13th July 2018 passed by the Respondent No.3 in Appeal No. 654 of 2016 thereby confirming the order dated 20th May 2016, passed by No.2 under section 79AA (1) of the Maharashtra Co-operative Societies Act, 1960 (for short "Act").

3. The brief facts necessary for the disposal of the petition, may be stated thus:

. That in the year 1997 the Respondent No.1 which is a co-operative spinning mill, had obtained financial assistance from the Petitioner. The loan availed by the Respondent No.1 became irregular. On 17th March 2007 the State Government floated a scheme for interest subvention on the loan raised by spinning mills in the co-operative sector. The subvention facility was to be extended subject to certain conditions and in the event of default, the benefit of the subvention was to be withdrawn.

4. The Petitioner agreed to extend the facility of the said

scheme to the Respondent No.1 and accordingly a Memorandum of Understanding (for short "MOU") came to be executed on 30th March 2007. In terms of the said agreement, the Respondent No.1 agreed to acknowledge the sum which is due and payable, as on the date of the said MOU. The Respondent No.1 accordingly by a communication dated 24th March 2008 acknowledged the amount due and outstanding as on the date of the said MOU.

5. However, it appears that subsequently disputes and differences arose between the parties on the point of the extension of the facility of the subvention scheme. According to the Petitioner, the Respondent No.1 failed to adhere to the revised repayment schedule. On the contrary the Respondent No.1 claimed that the benefit of the subvention scheme was not properly extended to the Respondent No.1, and the Respondent No.1 sought reworking of the accounts.

6. On 30th March 2015 the Respondent No.1 applied to the Respondent No.2 for reworking of the amount due and payable as on the date of the MOU between the parties. The Respondent No. 2 by an order dated 20th May 2016 directed that the MOU entered into between the parties be re-examined and the amount be reworked. The said direction is purportedly given, in exercise of the powers under Section 79AA(1) of the Act. The petitioner made an unsuccessful attempt to

get the order reviewed when the application for review was rejected, as not maintainable.

7. Feeling aggrieved, the petitioner challenged the same in an appeal under Section 152 of the said Act, before the Respondent No. 3 which appeal has been dismissed by the impugned order dated 13th July 2018. Hence this petition.

8. I have heard Mr. Patwardhan the learned counsel for the petitioner, Mr. Kulkarni the learned counsel for the Respondent No.1 and Mr. Thorat the Special Counsel for the Respondent No. 2 and 3. Perused record.

9. Mr. Patwardhan, the learned counsel for the Petitioner has raised two grounds. First is that, the impugned order could not have been passed by virtue of the powers conferred under S. 79AA(1) of the said Act or any other enabling power in the Divisional Joint Registrar. It is submitted that S. 79AA of the Act contemplates power to give directions to frame regulations. It is submitted that dispute of the present nature between two co-operative societies, in relation to their status as a creditor and a debtor, is beyond the scope of S. 79AA and for the matter of that, any other provision under which the Registrar can derive powers to give directions. It is submitted that the directions contemplated under S. 79AA are of administrative nature and cannot

deal with dispute *inter se* between the two co-operative societies. Secondly, it is submitted that even on merits, no case for issuance of such directions is made out. The learned counsel in this regard has pointed out that interest subvention was applied in terms of the Government resolution dated 17th March, 2007 and the terms of MOU dated 30th March, 2007 between the parties. It is submitted that after execution of the MOU, the first Respondent by a letter dated 24th March, 2008 had acknowledged the amount due and outstanding at Rs.540.90 lakhs and had agreed to pay the balance within ten years with moratorium of two years. It is submitted that the Respondent also paid eight out of the ten installments as per the restructuring loan. It is submitted that the first Respondent now cannot turn around and claim that the amount be reworked.

10. On behalf of the Petitioner, reliance is placed on the decisions of this Court in the case of -

> (i) *Mohanlal Bhagwan Pandey Vs. Apurva Co-Op. Hsg. Society Ltd. Bombay &Ors.*[1]*;*
>
> *(ii) Sudhir Co-Op. Housing Society Ltd., Akola Vs. State of Maharashtra& Ors.*[2]*;*
>
> *(iii) Shivshankar Dudh Vyavsayek Va Utpadak Sanstha Maryadit, Alani, district Osmanabad & Anr. Vs. State of Maharashtra & Ors.*[3].

1 2009(5) Mh.L.J. 326
2 2010(1) Mh.L.J. 240
3 2004(1) Mh.L.J. 779

11. The learned counsel for the Respondent No. 1 and the learned special counsel for Respondent Nos. 2 and 3 have supported the impugned order. It is submitted that the Petitioner has not applied, and has not correctly restructured the loan in terms of Government Resolution dated 17th March, 2007, particularly with regard to the date from which the revised interest was applicable. It is submitted that the authorities below have found that the MOU is not in consonance with the Government Resolution and therefore, the authorities below were justified in issuing the direction. The learned counsel in this regard referred to the minutes of the meeting dated 28th September, 2015, held in presence of the Commissioner of Co-operation. It is submitted that as per the directions issued by the Government on 25th March, 2015 and 2nd September, 2015, the Petitioner was asked to rework the accounts, inasmuch as the Petitioner had accepted the 3% interest subsidy from the Government. It is submitted that a specific direction was given to the Petitioner to rework the accounts as per the Government Resolution dated 17th March, 2007 and in spite of that the Petitioner did not take any action.

12. The learned special counsel for Respondent Nos. 2 and 3 submitted that even assuming that such a direction cannot be given under S. 79AA of the Act, the direction was clearly competent in

exercise of the powers under S.79A of the Act. The learned special counsel pointed out that if the power is otherwise available, merely because it is shown to be exercised under a wrong provision, will not be decisive.

13. I have carefully considered the rival circumstances and the submissions made. On the contrary, it transpired during the course of arguments at bar that although GR contemplates reworking of the interest from the date of obtaining of the financial assistance / loan, the Petitioner has reworked the interest from the date of the MOU.

14. The interest subvention scheme in terms of the GR of 2007 contemplates that the banks and financial institutions shall not charge any compound interest / penal interest on the financial assistance obtained, by the co-operative spinning mills. The said scheme further contemplates that the amount of interest shall be reworked at the simple rate of 10% , from the date of obtaining of the loan till 31st March, 2006. Out of this, the Government was to give subsidy to the extent of 3% p.a. and the bank / financial institution was to bear / give a further concession of 3% p.a. The net result was that the interest would be charged at the rate of 4% p.a. The Government Resolution of the year 2007 contemplates a memorandum of

understanding being executed between the bank / financial institution and the co-operative spinning mill.

15. In the present case, it is contended on behalf of the Petitioner that the first Respondent, in fact, has paid 8 out of 10 installments and the dispute was raised only thereafter. It is further contended that the first Respondent had also acknowledged the balance due and outstanding after the execution of the MOU. In my considered view, it is not necessary to dwell into merits of the matter, inasmuch as, in my considered view, such a direction could not have been issued either under S. 79AA(1) or S. 79A of the said Act, and therefore, the petition ought to succeed on this first count alone.

16. Section 79A and S. 79AA(1) of the Act, which are relevant for the purpose, read thus:

> “**79- A. Government's powers to give directions in the public interest, etc.-** (1) If the State Government, on receipt of a report from the Registrar or otherwise, it satisfied that in the public interest or for the purposes of securing proper implementation of co-operative production and other development programs approved or undertaken by Government, or to secure the proper management of the business of the society generally, or for preventing the affairs of the society being conducted in a manner detrimental to the interests of the members, or of the depositors or the creditors thereof, it is necessary to issue directions to any class of societies generally or to any society or societies in particular, the State Government may issue directions to them from time to time, and all societies or the societies concerned, as the case may be, shall be bound to comply with such directions.

(2) The State Government may modify or cancel any directions issued under sub-section (1), and in modifying or canceling such directions may impose such conditions as it may deem fit.

(3) Where the Registrar is satisfied that any person was responsible for complying with any directions or modified directions issued to a society under sub-sections (1) and (2) and he has failed without any good reason or justification, to comply with the directions, the Registrar may by order —

(a) if the person is a member of the committee of the society, (declare him to be disqualified to be or to continue to be a member of a committee of any society) for a period of six years from the date of the order.

(b) if the person is an employee of the society, direct the committee to remove such person from employment of the society forthwith, and if any member or members of the committee, without any good reason or justification, fail to comply with this order, declare them disqualified as provided in clause (a) above:

. **Provided** that, before making any order under this sub-section, the Registrar shall give a reasonable opportunity of being heard to the person or persons concerned and consult the federal society is affiliated.

Provided further that, such federal society shall communicate its opinion to the Registrar within a period of forty-five days from the date of receipt of communication, failing which it shall be presumed that such federal society has no objection to take action under this section and the Registrar shall be at liberty to proceed further to take action accordingly.

Any order made by the Registrar under this section shall be final.

79AA. Registrar's powers to give directions to frame regulations.— (1) If the Registrar or an officer not below the rank of District Deputy Registrar is of the opinion that having regard to the financial condition of the society and financial interest of Government therein, it is necessary to regulate the manner of carrying on its trade or business, he may, subject to

> any rules made in this behalf, direct such society to make regulations in that behalf and forward them to him for approval.
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> (2) On receipt of the regulations made by the society, the Registrar or such officer may approve them with or without modifications. On approval of such regulations, the society shall carry on its business in accordance with such regulations.
>
> (3) If any society fails to forward such regulations to the Registrar or such officer when directed by him under sub-section (1) within a period of three months from the date on which the direction is given, the Registrar or such officer shall himself make or cause to be made such regulations and require the society to carry on its business in accordance with such regulations and thereupon the society shall be bound to comply with such requirement."

17. It can thus, clearly be seen that S. 79AA envisages / confers powers on the Registrar to give directions to frame regulations. Thus, the impugned direction, in my considered view, could not have been given under S. 79AA. The learned special counsel for Respondent Nos. 2 and 3 contended that such a power is available under S. 79A of the Act. There cannot be any manner of dispute that mere mention of a wrong provision is not decisive, if the power is otherwise traceable to some other provision. It is therefore, necessary to see whether the impugned direction could have been given under S.79 of the Act.

18. If we paraphase S. 79A, it provides for the government's power to give direction (i) in public interest; or (ii) for the purpose of securing proper implementation of co-operative production and other

development programmes approved or undertaken by the government; or (iii) to secure proper management of the business of the society generally; or (iv) for preventing affairs of the society being conducted in a manner detrimental to the interest of the members or of the depositors or the creditors thereof. If we consider nature of the impugned direction given in the context of the powers available under S. 79, as aforesaid, the conclusion is inescapable that no such direction could have been given in exercise of the powers under S. 79A of the Act. It is necessary to note that both S. 79A and 79AA fall under Chapter VII titled as “Management of Societies”. It can thus, be seen that the directions under S. 79A and for the matter of that, S. 79AA, which pertain to the directions to frame regulations, are intended for proper management of the societies. S. 79A, in particular, envisages such directions being given either in public interest or in the interest of the co-operative production and development programes approved or undertaken by the government in general or to secure proper management of the business of the society generally and for preventing of the affairs of the society being conducted in a manner detrimental to the interest of the members or depositors or creditors thereof. None of these situations contemplate *inter se* dispute between two co-operative societies, of the present nature, which essentially is a dispute between the two co-operative societies, which stand in the relation as a creditor and a debtor. The principal issue is as to whether the interest subvention scheme, as floated by 2007 Government Resolution, has properly been implemented and applied or not. Such a dispute, in my considered view, cannot be subject matter of direction under S. 79AA and for the matter of that S. 79A of the said Act.

19. I have gone through the impugned orders passed by the authorities below. The revisional authority has only stressed on the part of S. 79A of the Act, pertaining to "financial interest of the government therein" in order to hold that the direction could be given under S. 79AA. What the revisional authority lost sight is that the power under the said section is to give direction to frame regulations and not otherwise.

20. In that view of the matter, petition is allowed. The impugned orders are hereby set aside.

21. It is, however, made clear that this Court has not examined the issue on merits of the inter se dispute between the Petitioner and the first Respondent on the point of the application of the scheme in the light of the Government Resolution of the year 2007.

. Rule is made absolute in the aforesaid terms, with no order as to costs.

Vinayak P. Halemath

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Sd/-
C. V. BHADANG, J.