IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF DECEMBER, 2020

BEFORE

THE HON'BLE MR.JUSTICE S.G.PANDIT

WRIT PETITION NO.16413 OF 2014 (CS-RES)

BETWEEN:

THE MANGALORE CATHOLIC
CO-OPERATIVE BANK LTD
ADMINISTRATIVE OFFICE AT:
ST.ALOYSIUS COLLEGE ROAD,
HAMPANKATTA,
MANGALORE-576 001.
REP. BY ITS GENERAL MANAGER

... PETITIONER

(BY SRI. VIJAY KRISHNA BHAT, ADVOCATE)

AND:

1. THE DEPUTY REGISTRAR OF
   CO-OPERATIVE SOCIETIES,
   MANGALORE, D.K-575 001.

2. SMT.NORA D'SOUZA
   W/O WILFRED D'SOUZA
   AGED 52 YEARS
   SOUZA CASHEW INDUSTRIES COMPOUND,
   KULSHEKAR,
   MANGALORE,
   D.K-575 001.

3. THE RECOVERY OFFICER (RULE 441)
   KARNATAKA URBAN BANKS FEDERATION,

K.H.ROAD,
BANGALORE-560 027.

... RESPONDENTS

(BY SRI.SRIDHAR N.HEGDE, HCGP FOR R1 & R3;
SRI.AJAY PRABHU, ADVOCATE FOR
SRI.SACHIN.B.S., ADVOCATE FOR R2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED ORDER DATED 28.05.2010 PASSED BY THE R-1 IN APPEAL NO.7/2007-08 AT ANNEXURE-D AND CONSEQUENTLY DISMISS THE SAID APPEAL FILED BY THE R-2 BEFORE THE R-1 AND ETC.,

THIS WRIT PETITION COMING ON FOR PRELIMINARY HEARING 'B' GROUP THIS DAY **THROUGH VIDEO CONFERENCE**, THE COURT MADE THE FOLLOWING:

ORDER

The petitioner is before this Court under Articles 226 and 227 of the Constitution of India, praying for a writ of certiorari to quash the impugned order dated 28.05.2010 passed by the 1st respondent in Appeal

No.7/2007-08 (Annexure-D) and consequently to dismiss the appeal filed by the 2nd respondent.

2. Brief facts of the case are that the 2nd respondent borrowed loan from the petitioner-Bank in a sum of Rs.50,00,000/- on 02.11.1998. As 2nd respondent committed default, the petitioner-Bank raised dispute before the Joint Registrar of Co-operative Societies, Bengaluru in Dispute No.JRD/UBF/1495/2004-05. In the said dispute after contest, award was passed in favour of the petitioner-Bank on 05.05.2006. The 2nd respondent had not filed any appeal against the said award. The said award had become final. The petitioner-Bank subsequently filed execution to execute the award dated 05.05.2006 before the Assistant Registrar of Co-operative Societies and Recovery Officer. In the said execution, demand notice in Form No.2 under Rule 34(3) was issued to the 2nd respondent, demanding a

sum of Rs.59,66,119/- due as on 12.11.2007. The 2nd respondent-Loanee instead of replying to the demand notice filed an appeal before the 1st respondent in Appeal No.7/2007-08 under Section 106 of the Karnataka Co-operative Societies Act, 1959 (for Short 'the Act'). The petitioner herein appeared before the 1st respondent in the said appeal and filed its objection contending that appeal would not be maintainable against the demand notice and there is no order to file appeal under Section 106 of the Act. It is also contended that prayer made in the appeal is beyond its jurisdiction. The 1st respondent-Deputy Registrar by order dated 28.05.2010 modified the award dated 05.05.2006 directing the 2nd respondent herein to repay the amount due as per the chart enclosed to the said order and also reduced the interest to 10% per annum. Against the order of the 1st respondent dated 28.05.2010, the petitioner is before this Court in this writ petition.

3. Heard Sri.Vijay Krishna Bhat, learned counsel for the petitioner and Sri.Ajay Prabhu, learned counsel for Sri. Sachin B.S, learned counsel for respondent No.2 as well as Sri.Sridhar N.Hegde, learned High Court Government Pleader for respondent Nos.1 and 3.

4. Learned counsel for the petitioner would submit that the impugned order is wholly without jurisdiction. It is submitted that the 1st respondent could not have entertained the appeal under Section 106 of the Act, since there was no order passed in the execution proceedings. The 2nd respondent could not have filed an appeal against the demand notice issued by the Assistant Registrar of Co-operative Societies in the execution proceedings initiated under Rule 34(3) of the Karnataka Co-operative Societies Rules, 1960 (for short 'the Rules'). Further the learned counsel would submit that the 1st respondent committed grave

error in modifying the award dated 05.05.2006, which had become final. It is also submitted that the 1st respondent had no jurisdiction to reduce or to modify the rate of interest. Thus, he prays for allowing the petition.

5. Per contra, learned counsel for the 2nd respondent submits that the appeal was filed under Section 106 of the Act challenging the demand notice issued in Form No.2 under Rule 34(3) of the Rules as the petitioner had not satisfied the pre conditions stated therein. It is his submission that the demand notice issued was wholly without application of mind since Rule 34(3) of the Rules requires the Assistant Registrar to apply his mind and only if he is satisfied with amount indicated therein, he shall issue demand notice. Further, learned counsel submits that there was no amount due by the 2nd respondent and on the other hand, he contends that 2nd respondent has

made excess payment which was not accounted by the petitioner-Bank. Further, learned counsel would also submit that the objection filed by the 2nd respondent before the Assistant Registrar-Recovery Officer was not considered. Hence, the 2nd respondent rightly filed an appeal under Section 106 of the Act. Thus, he prays for dismissal of the writ petition.

6. The 2nd respondent availed loan from the petitioner-Bank, which remained unpaid and resulted in Dispute No.JRD/UBF/1495/2004-05 before the Joint Registrar, Co-operative Societies/Arbitration Cell, Bengaluru. In the said dispute, after contest, award came to be passed on 05.05.2006 permitting the petitioner-Bank to recover a sum of Rs.43,60,345/- with interest at the rate of 12% from the 2nd respondent. It is an admitted fact that the 2nd respondent accepted the award and no appeal was

filed against the said award. The award dated 05.05.2006 had become final.

7. The petitioner initiated execution proceedings to execute the `award dated 05.05.2006 before the Assistant Registrar of Co-operative Societies and Recovery Officer. The Executing Court issued demand notice in Form No.2 under Rule 34(3) of the Rules demanding Rs.59,66,119/- due as on 12.11.2007. The 2nd respondent instead of replying to the said demand notice by appearing before the executing court i.e., Assistant Registrar of Co-operative Societies and Recovery Officer, filed an appeal under Section 106 of the Act. Section 106(1) of the Act reads as follows:

> "106. Appeals to other authorities: (1) [2][Subject to the provisions of Section 108-A, an appeal shall lie under this section] against,—
> [3][(a) an order of the Registrar under Section 7
> *[[3][(b) an order of the Registrar under Section 12];

[4][[5][(c) an order of the Registrar made under Section 17;]
(d) an order of the Registrar under sub-section (2) of Section 27;
[6][(d-1) an order of the Registrar made under Section 28-A(5);
[7][*[8][(d-2)] an order of the Registrar under Section 29C;]
(e) an order of the Registrar [9][xxxxxx] made under section 30;
[1][(e-1) an order of the Registrar [2][xxx] under sub-section (1) of Section 31;]
(f) the seizure and impounding of books or property under Section 66;
(g) an order made by the Registrar under section 67 apportioning the costs of an inquiry held under section 64 or an inspection made under section 65;
(h) an order of the Registrar under section 68;
[3][(i) x x x x]
(j) an order made by the Registrar under Section 72 [4][xxxxxx];
(k) any order made by the Liquidator of a co-operative society in exercise of the powers conferred on him by section 74, other than a determination under clause (f) of sub-section, (2) of that section;
[5][(k-1) an order made by the Registrar under section 99;]
(l) an order made by the Registrar under section 101; or
(m) an order for attachment of any property made by the Registrar under section 103 other than an order referred to in clause (e) of section 105.
[6][(n) x x x]
[7][(n) an order made by the Registrar under Section 105A;

(o) an order of the Registrar made under Section 111]"

The above provision provides for appeal against an order passed under various provision of the Act including Section 101 of the Act. Section 101 of the Act provides for execution of orders or award made under Section 71 of the Act. In the instant case, no order was passed in the execution proceedings and only demand notice was issued. As there was no order passed in the execution proceedings, the appeal could not have been filed under Section 106 of the Act and the 1st respondent could not have entertained the appeal without there being an order. The entire proceedings entertained by the 1st respondent is misconceived and the impugned order is wholly without jurisdiction. The demand notice which is placed on record as Annexure-R1 to the statement of objection cannot be considered as an order to file an appeal under Section 106 of the Act.

8. The contention of the 2nd respondent that there was no amount due and he had already repaid the loan amount would not be a ground to file an appeal under Section 106 of the Act. If the 2nd respondent had repaid the entire amount, he could have appeared before the executing court i.e., Assistant Registrar of Co-operative Societies and Recovery Officer and filed objection demonstrating that no amount is due to the petitioner-Bank. Further, when the award was not challenged and award dated 05.05.2006 was not the subject matter of the appeal before the 1st respondent, the 1st respondent had no jurisdiction to modify the award directing the 2nd respondent to pay the amount due as per the chart attached to the impugned order nor to reduce the rate of interest. The action of the 1st respondent in entertaining the appeal filed under Section 106 of the Act and in modifying award dated 05.05.2006 is wholly without jurisdiction.

9. For the reasons stated above, order dated 28.05.2010 in Appeal No.7/2007-08 (Annexure-D) is set aside and the Appeal No.7/2007-08 stands dismissed.

All the contentions of the parties are left open.

Sd/-
JUDGE

RKA/SMJ