IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1466 OF 2020

. Sou. Shalini W/o Dinkar Fattepure
Age: 50 years, Occ. Agri.,
R/o: Narangwadi, Tq. Omarga,
Dist. Osmanabad. **... Petitioner**

Versus

1. State of Maharashtra
Through its Secretary,
Co-operative Department,
Mantralaya, Mumbai-32.

2. The Divisional Joint Registrar
Co-operative Society, Latur,
Division Latur.

3. The District Deputy Registrar
Co-operative Societies,
Osmanabad.

4. The Assistant Registrar
Co-operative Societies, Omarga,
Dist. Osmanabad.

5. Mahadu S/o Rama Lohar
Age: 75 years, Occu. Agri.,
R/o: Narangwadi, Tq. Omarga,
District: Osmanabad. **... Respondents**

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Advocate for the Petitioner : Mr. Ganesh J. Kore
AGP for Respondent Nos.1 to 4: Mrs. V. S. Choudhari
Advocate for Respondent No.5: Mr. S. N. Patne

...

CORAM : N. B. SURYAWANSHI, J.

DATE : 23rd November, 2021

ORAL JUDGMENT :

1. **RULE.** Rule made returnable forthwith. Heard finally with the consent of the respective parties.

2. This petition challenges proceedings lodged by Respondent No.5 under Section 18 of the Maharashtra Money Lending (Regulation) Act, 2014 (For short "the said Act").

3. By a registered sale deed dated 01-08-2001, Respondent No.5 sold his land admeasuring 1 Hectare 20 R from Gut No.105/4, situated at village Narangwadi, Taluka Omerga, District Osmanabad to the Petitioner. Accordingly, mutation entry No.2000 was certified in favour of the Petitioner.

4. On 14-10-2010, the Respondent No.5 filed application before Respondent No.4 contending that the transaction between him and the Petitioner was a money lending transaction. An inquiry was conducted into the application and after recording statements of the witnesses and considering the documents placed on record, the Respondent No.4 by order dated 30-12-2010 held that the transaction between Respondent No.5 and the Petitioner was not a money lending transaction and

therefore, the proceedings under Section 13-B of the Bombay Money Lenders Act, 1946 can not be initiated. The Respondent No.5 did not challenge the said decision and the said decision has become final.

5. On 30-04-2014, the Respondent No.5 filed an application under Section 18 of the said Act before Respondent No.3, making the same allegations as were made in the earlier proceedings that the transaction between him and the Petitioner was a money lending transaction.

The Petitioner appeared in the proceedings before the Respondent No.3 and raised the point of maintainability of the proceedings on the ground of limitation. The same was not considered and the Respondent No.3 proceeded with the inquiry initiated on the basis of application filed by Respondent No.5. Hence, the present petition seeking quashing of the proceedings before Respondent No.3 on two grounds; first on the ground of limitation and second ground is that earlier complaint filed by the Respondent No.5, on the same grounds was rejected on merits.

The Respondent No.5 has also filed R.C.S. No.176/2014 in the Court of Civil Judge, Junior Division, Omarga seeking re-conveyance of the suit property.

6. Heard the learned advocate for the Petitioner, learned Assistant Government Pleader for the Respondent Nos.1 to 4/State and learned advocate for Respondent No.5.

7. The learned advocate for the Petitioner submits that when the earlier complaint making similar allegations was rejected on merits, the second complaint on the same allegations is not maintainable. He further submits that the second complaint is beyond limitation as prescribed under Section 18 of the said Act and therefore, the proceedings are liable to be quashed and set aside. In support of his submissions, he relied on the decision of this Court in Writ Petition 3898/2017.

8. The learned Assistant Government Pleader, on the other hand, opposed the prayer of the Petitioner contending that the second complaint lodged by the Respondent No.5 was within limitation and the same is rightly being entertained by the Respondent No.5.

9. The learned advocate for the Respondent No.5 also supports the proceedings contending that some new documents were found by the Respondent No.5, on the basis of which, the second proceeding was initiated. According to him, the second complaint lodged by him is within limitation of fifteen years as prescribed under Section 18 of the said Act. He, therefore, submitted that the petition being devoid of merit is liable to be dismissed.

10. The record reveals that the first complaint lodged under the 1946 Act came to be dismissed on merits vide order dated 30-12-2010. The act of 2014 was promulgated on 04-04-2014. Section 18 of the said

Act prescribed limitation of five years to take cognizance of the application from debtor. The limitation of ‘five years’ was substituted by ‘fifteen years’ by amendment dated 25-06-2014.

11. Admittedly, the second application/complaint was filed by Respondent No.5 on 13-04-2014, at that point of time, limitation of five years was in operation. The complaint of the Respondent No.5 pertaining to transaction of 2001 was beyond limitation of five years, on the date of filing it and was not maintainable. Fact remains that the earlier application filed by the Respondent No.5 was considered on merits and after recording evidence it was dismissed.

12. The submission on the part of the learned advocate for Respondent No.5 and learned Assistant Government Pleader that the second application/complaint filed by the Respondent No.5 was within limitation of fifteen years cannot be accepted as the fifteen years period came to be substituted on 25-06-2014. The decision of the learned Single Judge of this Court in WP No. 3898/2017 supports the case of the Petitioner and the second complaint/application filed by the Respondent No.5 was beyond the period of limitation of five years.

13. In the light of above, the writ petition succeeds and the same is allowed in terms of prayer clause “B”. The application filed by the Respondent No.5 dated 30-04-2014 before the Respondent No.3 is hereby

quashed and set aside. Rule is made absolute in the above terms with no order as to costs.

(N. B. SURYAWANSHI, J.)

Sameer