IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8905 OF 2016

Hina Shahin Co-operative Urban
Bank Ltd., Beed ..Petitioner

Vs.

Mohammad Jahed Siddiqui s/o.
Mohammad Jafar ..Respondent

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Mr.M.P.Gude, Advocate for petitioner
Mr.H.V.Tungar, Advocate for respondent

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CORAM : R.G. AVACHAT, J.
RESERVED ON : FEBRUARY 05, 2021
PRONOUNCED ON : APRIL 06, 2021

ORDER :-

The challenge in this Writ Petition is to the order dated 28.02.2014 passed by the Co-operative Court, Aurangabad, in C.C.A. No.222 of 2012 and confirmed by learned Member, Maharashtra State Co-operative Appellate Court, Mumbai, at Aurangabad, in Appeal No.3 of 2015.

2. The petitioner is a Co-operative Bank Ltd. ("the bank", for short). It went into liquidation. A Liquidator, therefore, came

to be appointed. The bank issued notice under Section 105 of the Maharashtra Co-operative Societies Act, 1960 ("the Act",) for short) by publication in the daily dated 08.10.2010. Vide the said notice, the respondent was shown as one of the defaulters of the loan advanced by the bank. The respondent was called upon to pay the outstanding loan amount. Before issuance of the public notice, a personal notice had been issued on 08.10.2010, calling upon the petitioner to repay the amount of loan of Rs.12,65,006/- due as on 28.02.2010. The respondent, therefore, filed a dispute in the Co-operative Court, challenging the notice issued under Section 105 of the Act. It was dispute No.222 of 2012. Relief of declaration was sought to the effect that the notice issued under Section 105 of the Act, is illegal and void. In short, it was the contention of the respondent that he has repaid entire loan amount and nothing was due to the bank. The bank authorities, therefore, issued him `no-dues certificate'.

3. The Co-operative Court, Aurangabad, allowed the dispute holding the notice under Section 105 of the Act to be

illegal and it was, therefore, set aside. The petitioner – bank has been unsuccessful in the appeal preferred against the judgment and order passed in C.C.A. No.222 of 2012. Hence, the present Writ Petition.

4. Mr.Gude, learned counsel for the petitioner, would submit that the respondent – borrower has not paid any amount due from him under the loan account. It was cash credit facility granted by the bank to the respondent. The cash credit account limit is of Rs.3,50,000/-. The respondent availed the cash credit facility on the said account many a time. During the bank audit, it was found that the members of the Board of Directors, bank officials and its employees committed misappropriation of funds. Prosecution has been launched against them. It was also found that the bank officials, without receiving any amount from the borrowers, issued no-dues certificate.

5. On appointment of the Liquidator, it was found that the respondent and few others owed the bank amount received

by them under their loan accounts. The Liquidator, therefore, took necessary steps for recovery of the loan amounts. A notice under Section 105 of the Act, was one of such steps taken by the Liquidator. Public Money has been involved. Learned counsel, therefore, urged for allowing the Writ Petition with remand of the matter to the Co-operative Court for deciding it afresh.

6. Mr.Tungar, learned counsel for the respondent, would, on the other hand, submit that nothing has been due from the respondent on his loan account. The responsible bank officials issued the respondent no dues certificate. It was for the bank officials to account for the amount received from the respondent towards repayment of loan. It is for the bank to suffer for the mischief, if any, committed by its officials and persons in the management thereof. According to learned counsel, both the courts below have concurrently held the respondent to have repaid the loan amount. No interference is, thus, warranted with the impugned order.

7. Admittedly, the respondent had availed the cash credit facility amounting to Rs.3,50,000/- way back in the year 2003. The bank went into liquidation. Liquidator came to be appointed. He found the respondent to have been in arrears of repayment of loan. The impugned notice under Section 105 of the Act, therefore, came to be issued. The respondent filed dispute in Co-operative Court challenging the impugned notice. Before the Co-operative Court. The respondent produced documents (Exhibits 17 to 19). Exhibit 17 was loan-nil certificate issued by the bank officials. The witness examined on behalf of the bank admitted said certificate to have been issued on behalf of the bank. As such, genuineness of the said certificate was not in dispute. The bank witness went on to admit that the bank employees have been charged for accepting loan amount from its borrowers but not accounting the same to the bank. Exhibits 18 and 19 were receipts showing total repayments of Rs.16,01,525/- till 17.0.2008. Both the courts below have concurrently held that the payment made by the respondent towards clearance of loan account has

not been reflected in the statement of accounts of the bank. A bank employee intending to misappropriate money deposited in the bank, will not make entry thereof in the books of accounts. Same might have happened in the present case.

8. On preponderance of probabilities, both the Courts below have found the bank to have failed to prove that the amount, as has been shown in the notice under Section 105 of the Act, was due from the respondent. Since the conclusion arrived at by both the courts below is probable one on the basis of the evidence in the case, no interference therewith is called for in exercise of the writ jurisdiction.

9. The Writ Petition, therefore, failed. The same is dismissed.

[**R.G. AVACHAT, J.**]

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