

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

**WRIT PETITION NO. 9157 OF 2020
WITH
CIVIL APPLICATION NO. 873 OF 2021**

Dadasaheb Keruji Chitalkar and others ... Petitioners

Versus

Abhudaya Co-operative Bank Ltd., and others ... Respondents

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Mr. V. D. Hon, Senior Advocate i/b Mr. A. V. Hon and Mr. A. D. Shinde, Advocates for the petitioners

Mr. Balraj Kulkarni, Advocate for respondent No.1

Respondent No.2 – formal party

Mr. A. B. Chate, AGP for respondent No.3

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CORAM : R. G. AVACHAT, J.

RESERVED ON : 18th FEBRUARY, 2021

PRONOUNCED ON : 18th MARCH, 2021

ORDER :-

. Civil application No.873 of 2021, seeking permission to join as petitioner No.11 in the present petition, is allowed.

2. The challenge in this writ petition is to the order dated 03.12.2020, passed by the Recovery Officer of the Abhudaya Co-operative Bank Limited (respondent No.1) for attachment of the immovable properties (agricultural lands) of the petitioners herein with a direction to the revenue authorities to take entry of attachment of the lands in the revenue record.

3. Shri V. D. Hon, learned Senior Advocate for the petitioners would submit that the petitioners were the members of the managing committee of the Nagar Taluka Sahakari Sakhar Karkhana Limited (respondent No.2). Respondent No.1 bank had granted the respondent No.2 a loan of Rs.228.00 Lacs for the purpose of starting a sugar factory. Respondent No.2 went into liquidation. The loan taken from respondent No.1 could not be repaid. The respondent No.1, therefore, initiated proceedings under Section 84 of the Multi-State Co-operative Societies Act, 2002 (for short 'the Act of 2002') before the Arbitrator appointed by the Central Registrar. The petitioners and other members of the managing committee, were parties to the said proceedings. The Arbitrator passed the award on 05.09.2011. The proceedings preferred by respondent No.2 under Section 34 of the Arbitration and Conciliation Act, 1996, has been dismissed. Some of the immovable properties of respondent No.2 have been sold. A sum of Rs.39.00 Lakhs has been recovered from the sale of the immovable properties. The Maharashtra State Co-operative Bank Limited (lead bank) has been authorised to recover the outstanding dues from respondent No.2. About 7 - 8 banks have granted loan to the respondent No.2. All such banks constituted consortium. The

Maharashtra State Co-operative Bank Limited is a lead bank in the consortium. The banks in the consortium have authorised the Maharashtra State Co-operative Bank Limited to recover all the outstanding dues from the respondent No.2. Learned Senior Advocate would further submit that respondent No.2 has 150 *Acres* of land. By sale of said land, all the dues could have been recovered. He would further submit that the execution proceedings initiated by respondent No.1, has been dismissed in default. The loan has been repaid. If anything is due from the respondent No.2, the same could be recovered from itself instead of proceedings against the individuals. Learned Senior Advocate, therefore, urged for allowing the writ petition.

4. Shri Balraj Kulkarni, learned Advocate appearing for respondent No.1, would on the other hand, submit that the award passed by the Arbitrator, has attained finality. The applicants and respondent No.2, have been held liable, jointly and severally, to pay the loan amount. It is for the petitioners to obtain the decree satisfaction certificate, if at all the entire amount due under the loan has really been repaid. So is not the case. The learned Advocate, therefore, urged for dismissal of the writ petition.

5. Admittedly, the respondent No.2 had obtained a loan of Rs.228.00 Lacs from respondent No.1. As it could not repay the loan, the respondent No.1 initiated Arbitration proceedings before the Central Registrar. The Arbitrator passed his award on 05.09.2011 directing the respondent No.2, the petitioners and other members of the managing committee to pay the respondent No.1 a sum of Rs.3,69,23,123.00 (Rupees Three Crore Sixty Nine Lakh Twenty Three Thousand One Hundred Twenty Three only) with 15% p.a. interest from 01.09.2010 to the date of repayment of the entire amount. Respondent No.1 was also authorised to sell the properties mortgaged by the respondent No.2 as a security to the loan. The award of the Arbitrator was challenged before the Principal District Judge, Ahmednagar in a proceeding under Section 34 of the Arbitration and Conciliation Act, 1996. The said proceeding went against the respondent No.2. The award of the Arbitrator had not been challenged by the petitioners herein and other members of the managing committee, although they were the respondents in the said proceeding. As such, the award dated 05.09.2011 has attained finality. The applicants, respondent No.2 and other members of the managing committee have been jointly and severally liable to pay

the amount under the award. Few of the immovable properties of the respondent No.2, were sold. A sum of Rs.39.00 Lakhs came to be recovered from the sale proceeds thereof. The petitioners could not show that the entire loan amount has been paid and nothing is due.

6. By virtue of Section 97 of the Act of 2002, the Central Registrar has been authorised to attach and sell immovable properties for recovery of the loan amount. In exercise of power under Section 97 of the Act of 2002, the Central Registrar has passed the order impugned in this petition for attachment of the immovable properties of the petitioners herein.

7. Since the petitioners have been jointly and severally liable along with the respondent No.2 to repay the loan amount, they cannot be heard to say that the impugned order is illegal and therefore, liable to be set aside. There is no merit in the writ petition. The writ petition, therefore, stands dismissed.

[R. G. AVACHAT, J.]