IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8038 OF 2017
WITH
WRIT PETITION NO. 8494 OF 2017

Jankalyan Sahakari Bank Ltd	.. Petitioner
Versus	
Divisional Joint Registrar Co-operative Societies and ors	.. Respondents

...

Mr. Omkar V. Warange for the petitioner in both petitions.
Mr.Dilip Bodake for respondent nos.3 and 4 in both petitioner.
Mr.V.S. Gokhale 'B' Panel counsel for respondent no.1 in both the petitions.

CORAM: BHARATI DANGRE, J.
DATED : 30th NOVEMBER, 2021

P.C:-

1 Heard learned counsel for the petitioner, learned counsel for the respondent and learned AGP for the State.

2 The petitioner is aggrieved by communication by the Divisional Joint Registrar, Co-operative Societies dated 17th November 2016, when he preferred an application seeking issuance of the execution certificate.

The facts reveal that in Revision Application filed before the Divisional Joint Registrar, Co-operative Societies, Mumbai under Section 156 of the Maharashtra Co-operative

Societies Act, Consent terms were drawn between the bank on one hand and the opponents on the other, pursuant to an amicable settlement. The terms recorded that the opponents jointly and/or severally admit and acknowledge their indebtness towards the bank of an amount of Rs.1,54,25,845/- as on 31st May 2003 plus interest @ 20.50% p.a. till date and the Consent Terms further record that there will be a decree on admission in favour of the Bank and against the opponents.

The Schedule of payment was set out in paragraph no.3 and paragraph no.8 contain a recital to the effect that on receipt of payment of Rs.128.00 lakhs from the opponents, the Bank shall release the mortgage property and hand over title deed to the rightful owner along with the release letter. Based on the aforesaid consent terms, it was recorded that since the parties have agreed to settle their dispute, the consent terms are taken on record and in view of the consent terms, the Revision Application is disposed of.

3 Since the terms agreed upon were not adhered to, by the respondent, an application was preferred before the Divisional Joint Registrar requesting for an execution certificate under Section 98 of the Maharashtra Co-operative Societies Act for executing the consent decree which was based on consent terms dated 13th December 2020. This application is rejected by the impugned order by reasoning that the authority i.e. Divisional

Registrar, Co-operative Societies, Mumbai has no power to remand the execution certificate and therefore, he should approach the appropriate Court.

4 The Divisional Joint Registrar, Co-operative Societies has filed an affidavit on record on 16th July 2018, wherein he makes the following statement :-

> *"5. I say that since the Revision Applications are disposed off by consent and in view of the consent terms dated 13.12.2010 therefore the terms maintained in said consent terms are binding upon both the parties and in the event if any default is made by the debtor the clause (2) and (4) became executable. The consent terms is annexed with the petition.*
>
> *6. In the above event three consecutive defaults in payment of the installments of as specified hereinabove in clause no.3, all the concessions granted in the claim, interest, payable by installments or any other concessions stand withdrawn forthwith and the disputant bank shall be entitled to recover the amount to the tune of Rs.128.00 lakhs as agreed in the clause (2), after giving credits for the payments made by the opponents."*

The aforesaid statement in the affidavit clearly indicate that what the authority is indicating is that there is challenge to the consent terms filed in the Revision Application and the petitioner ought to have approached the appropriate authority for execution of the consent order, the underlying factor being, since the order was based on consent terms and was binding on both the parties, in case of default, clause nos.2 and 4 of the consent terms can be executed.

5 Section 98 of the Maharashtra Co-operative Societies Act make it imperative for a certificate being issued by the Registrar and the said Section reads as under :-

> *98. Money how recovered.— Every order passed by the Official Assignee of a de-registered society under sub-section (3) of section 21A or every order passed by the Registrar or a person authorised by him under Section 88 or by the Registrar or the Co-operative Court under section 95 or by the Co-operative Court under section 96, every order passed in appeal under the last preceding section, every order passed by a Liquidator under section 105, every order passed by the State Government in appeal against orders passed under section 105 and every order passed in revision under section 154 shall, if not carried out;*
>
> *(a) on a certificate signed by the Official Assignee or the Registrar or the Co-operative Court or a Liquidator, be deemed to be a decree or a Civil Court, and shall be executed in the same manner as a decree of such Court, or*
> *(b) be executed according to the law and under the rules for the time being in force for the recovery of arrears of land revenue:*
>
> *Provided that, any application for the recovery in such manner of any such sum shall be made by the Collector,*

> *and shall be accompanied by a certificate signed by the Registrar. Such application shall be made within twelve years from the date fixed in the order and if no such date is fixed, from the date of the order.*

The proviso appended to the said Section make it clear that any application for recovery of any sum shall be accompanied by a certificate signed by the Registrar of Co-perative Court. Merely, because the decree was drawn on consent terms, the Divisional Joint Registrar has not adverted to the fact that the consent terms recorded that it will amount to decree on admission in favour of the disputant and the Revisional Authority by taking the consent terms on record has disposed of the Revision Application by its order dated 13th December 2010.

In such circumstances, for execution of the terms when there is default, the Bank has rightly approached the Divisional Joint Registrar and clause nos.2 and clause 4 of the Consent Terms, no doubt provide a consequence for withdrawal of the concessions in case of default of payment of instalment, but since the opponent had already admitted liability of Rs.1,54,25,845/- along with interest as on 31st May 2003, the amount being not cleared as per the consent terms and the undertaking/consent terms being not abided by, the Bank has rightly approached the Divisional Joint Registrar for a certificate upon issuance of which, the order will be deemed to be a decre e of a Civil Court and shall be executed. Failure to entertain the application, therefore, cannot be justified on the ground that the consent terms are entered by consent of the parties and therefore, the only course available is to act in terms of clauses 2 and 4 of the Consent Terms. Since it was a compromise which has been entered into and the Revision Application filed by the Bank came to be disposed of. Based on the undertaking, the Bank is entitled to for a certificate subject to which it will be at liberty to execute the terms of the consent.

6 The impugned order, therefore, is quashed and set aside. The authority is directed to issue a certificate in terms of Section 98(a) within a period of six weeks from today.

SMT. BHARATI DANGRE, J