

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

LETTERS PATENT APPEAL NO.289 OF 2011
IN
WRIT PETITION NO.5014 OF 2009 (D)

1. The Akola District Central Co-operative
Bank Limited, through its General Manager,
R/o Akola, Tah. And Dist. Akola

2. The Special Recovery Officer and
Sales Officer, Akola District Central
Co.op. Bank Limited, Manora,
Branch Manora, Tah. Manora,
Dist. Washim

... Appellants

-vs-

1. Shantabai wd/o Shrinivasji Singhee,
since dead by L.Rs.

A. Giriraj S/o Shrinivasji Singhee,
Aged : Major

2. Dhanraj S/o Shrinivasji Singhee,
(Also as heir of Shantabai Singhee)
Aged about 42 years, Occ. Cultivator
Both R/o Singdoh, Tah. Manora,
Dist. Washim

3. Sakhardoh Seva Sahakari Society,
A Society registered under Mah.
Co-operative Societies Act, bearing
registration No.858, through its
Secretary at Sakhardoh, Tah. Manora,
District Washim

4. Narendra S/o Shankarrao Raut,
Aged Major, Occ. Cultivator,
R/o At Pc: Jawala, Tah. Manora,
District Washim

5. Assistant Registrar,
Co-operative Societies at Manora
Dist. Washim

6. Divisional Joint Registrar,
Co-operative Societies, Amravati
Division, Amravati

Shri A. P. Tathod, Advocate for appellants.

Shri B. N. Mohta, Advocate for respondent Nos.1 and 2.

Smt S. Jachak, Assistant Government Pleader for respondent Nos.5 and 6.

WITH
LETTERS PATENT APPEAL NO.256 OF 2010
IN
WRIT PETITION NO.5014 OF 2009 (D)

1. Shantabai wd/o Shrinivasji Singhee,
since dead by L.Rs.

A. Giriraj S/o Shrinivasji Singhee,
Aged : Major

2. Dhanraj S/o Shrinivasji Singhee,
(Also as heir of Shantabai Singhee)
Aged about 42 years, Occ. Cultivator
Both R/o Singdoh, Tah. Manora,
Dist. Washim

... Appellants

-vs-

1. The Akola District Central Co-operative
Bank Limited, having its Head Office
at Akola, through the
Director/Chief Executive Officer.
2. The Special Recovery Officer and
Sales Officer, Akola District Central
Co.op. Bank Limited, Manora,
Branch Manora, Tah. Manora,
Dist. Washim
3. Sakhardoh Seva Sahakari Society,
A Society registered under Maharashtra
Co-operative Societies Act, bearing
registration No.858, through its
Secretary at Sakhardoh, Tah. Manora,
District Washim
4. Assistant Registrar,

Co-operative Societies at Manora
Dist. Washim

5. Divisional Joint Registrar,
Co-operative Societies, Amravati
Division, Amravati

6. Narendra S/o Shankarrao Raut,
Aged Major, Occ. Cultivator,
R/o and Post Jawala, Tah. Manora,
District Washim

... Respondents

Shri B. N. Mohta, Advocate for appellants.

Shri A. P. Tathod, Advocate for respondent Nos.1 and 2.

Smt S. Jachak, Assistant Government Pleader for respondent Nos.4 and 5.

CORAM : A. S. CHANDURKAR AND G. A. SANAP, JJ.

Arguments were heard on : November 30, 2021

Judgment is pronounced on : December 06, 2021

Common Judgment : (Per A. S. Chandurkar, J.)

Since both these Letters Patent Appeals raise challenge to the judgment of the learned Single Judge in Writ Petition No.5014/2009 dated 11/02/2010, they are decided together by this common judgment.

The facts relevant for adjudicating these appeals are that the original appellant in Letters Patent Appeal No.256/2010 had availed agricultural loan from the appellant-Bank in Letters Patent Appeal No.289/2011 for purchasing tractor and trolley. Loan amount of Rs.3,11,000/- was accordingly sanctioned in November 1996 and the same was to be repaid in seven annual instalments. In the year 2001-2002 there was a default on the part of the borrower in paying the instalments and hence on 02/01/2002 the Bank attached the tractor and trolley. This was pursuant to an order passed by the Recovery Officer. The borrower therefore

filed a complaint before the Assistant Registrar, Co-operative Societies, Manora. The Recovery Officer thereafter on 24/12/2002 proposed to auction the said tractor and trolley. Such auction was held on 11/02/2003. It is the case of the borrower that this auction was in breach of provisions of Rule 107 of the Maharashtra Co-operative Societies Rules, 1961 (for short, the said Rules). The borrower therefore moved a revision application before the Divisional Joint Registrar, Co-operative Societies, Amravati under Section 154 of the Maharashtra Co-operative Societies Act, 1960 (for short, the said Act). The Divisional Joint Registrar by his order dated 29/04/2006 partly allowed the revision application and declared that the auction of the tractor and trolley held on 11/02/2003 was not in accordance with Rule 107 of the said Rules and therefore after setting aside the same, the proceedings were remanded to the Recovery Officer to take a fresh decision after hearing the parties.

2. The Bank challenged the aforesaid order in this Court by filing Writ Petition No.4245/2006. The learned Single Judge by his order dated 24/07/2007 confirmed the order of the revisional Authority after finding that the procedure laid down in Rule 107 of the said Rules had not been duly followed. While maintaining the order of remand it was directed that the auction purchaser could be joined in the proceedings after remand so as to grant him an opportunity of hearing. Letters Patent Appeal No.267/2007

preferred by the Bank was withdrawn by it on 22/10/2007.

After remand the Special Recovery Officer heard the parties and by the order dated 30/04/2008 held that the auction that was conducted on 11/02/2003 was in accordance with law and there was no need to re-open the same. The auction proceedings that were confirmed on 03/03/2003 were found to be proper. The borrower being aggrieved by the aforesaid order filed a revision application before the Divisional Joint Registrar, Co-operative Societies, Amravati. The revisional Authority found that though the tractor and trolley was seized on 02/01/2002, the auction had been held after a period of more than one year on 11/02/2003. The damage caused was on account of the delay in holding the auction was directed to be calculated by the special auditor and the amount determined was to be deposited in the account of the borrower. The amount of Rs.1,21,000/- which was received on 24/02/2003 towards proceeds of the auction was directed to be deposited in the account of the borrower and interest for the period from 24/02/2003 to 10/06/2008 at the rate of 9% per annum was directed to be credited in the account of the borrower. This order dated 18/07/2009 was made the subject matter of challenge by the borrower in Writ Petition No.5014/2009. The learned Single Judge by his judgment dated 11/02/2010 held that the order passed in Writ Petition No.4245/2006 dated 24/07/2007 had attained finality and therefore it was necessary to implement the same. The directions while remanding the proceedings had

not been taken into account by the revisional Authority while passing the order dated 18/07/2009. This order passed by the Divisional Joint Registrar was thus set aside and the Bank alongwith its Recovery Officer were directed to arrange for re-auction of the tractor and trolley by following the procedure prescribed under Rule 107 of the said Rules. This judgment is the subject matter of challenge in these Letters Patent Appeals.

3. Shri B. N. Mohta, learned counsel for the borrower submitted that despite the specific direction to comply with the procedure prescribed by Rule 107 of the said Rules, the same was not done and infact the provisions of Rule 107(5)(m) and (n) of the said Rules were ignored. In view of provisions of Section 60 of the Code of Civil Procedure, 1908 the tractor and trolley could not have been attached while seeking to recover the alleged dues. Though the aforesaid aspect was not specifically raised before the Recovery Officer or before the Divisional Joint Registrar, it being a question of jurisdiction, such question could be raised at any stage of the proceedings. Learned Single Judge ought to have taken into consideration the said aspect. It was further submitted that in view of the Scheme for waiver of agricultural loan in the year 2008 it was clear that the loan advanced for purchase of agricultural equipment could not have been recovered by the Bank in view of the said policy. Moreover, the borrower had satisfied the outstanding dues and hence there was no reason to again auction the tractor and trolley as

directed. He therefore submitted that since the impugned judgment did not consider these aspects in their proper perspective the same was liable to be set aside.

4. Shri A. P. Tathod, learned counsel for the Bank submitted that since the non-payment of the loan was in the year 2002 and the tractor and trolley had been attached and thereafter auctioned, there was no reason to direct re-auction of the tractor and trolley. The revisional Authority erred in observing that the officers of the Bank had kept the tractor and trolley idle for a long time. As these observations were without any legal basis, the learned Single Judge ought to have set aside those observations while deciding the writ petition. As the State Government or for that matter the Central Government had not wiped off the agricultural loan in question, the right of the Bank to recover the entire amount of dues remained intact. In these facts it was submitted that the learned Single Judge was not justified in directing re-auction of the tractor and trolley by following the correct procedure. The judgment of learned Single Judge was therefore liable to be set aside.

5. During pendency of the Letters Patent Appeals the parties were referred to the Mediator at their request so as to make an attempt for resolving their dispute. The same has however not been successful.

Thereafter both the parties have placed on record additional documents in support of their respective contentions. On behalf of the borrower a copy of the “ कृषी कर्जमाफी आणि थकीत कर्जसाहाय्य योजना 2008 ” of the Central Government has been placed on record to indicate entitlement of the borrower to waiver of the loan availed for purchasing the tractor and trolley. Attention was invited to Clause 3.3(a) and 3.6 of the said Scheme. In response the Bank has filed the affidavit of its Chief Officer, Loan and Supervision Department in which it has been stated that the borrower is not entitled to claim any relief under the said Scheme in view of the fact that the borrower was holding land admeasuring 11H 63R when the loan was sanctioned. Reference has also been made to a hypothecation deed executed by the borrower and it has been further stated that as on 30/06/2021 an amount of Rs.1,41,342/- was outstanding from the borrower. By filing further rejoinder the borrower has disputed the contents of the affidavit filed on behalf of the Bank.

6. We have heard the learned counsel for the parties at length and with their assistance we have perused the material placed on record. Before considering the challenge raised to the judgment of learned Single Judge it would be necessary to note that after the revisional Authority in exercise of power under Section 154 of the said Act had dismissed the revision application preferred by the borrower on 29/04/2006 by setting aside the auction and remanding the proceedings for fresh decision that order had

been challenged by the Bank by filing Writ Petition No.4245/2006. On 24/07/2007 the learned Single Judge found that the procedure prescribed by Rule 107 of the said Rules had not been followed and hence the revisional Authority was justified in remanding the proceedings for fresh adjudication. This order was challenged by the Bank in Letters Patent Appeal No.267/2007 which came to be withdrawn on 22/10/2007. Thus in effect the order of remand passed by the revisional Authority after setting aside the auction that was held on 11/02/2003 became final. It would therefore now not be permissible to go into the aspect of justification for remand of the proceedings at this stage. The only events to be considered now are those that being transpired after passing the order dated 24/07/2007 in Writ Petition No.4245/2006.

7. It is seen that the Divisional Joint Registrar on 18/07/2009 after hearing the parties proceeded to set aside the order dated 30/04/2008 that was passed by the Recovery Officer who had confirmed the auction proceedings after remand. The revisional Authority directed that as regards the period that was spent from 02/01/2002 when the tractor and trolley were seized till 11/02/2003 when it was auctioned, a report was directed to be submitted by the special auditor and the amount determined was to be deposited in the account of the borrower. The amount of Rs.1,21,000/- received pursuant to the auction on 24/02/2003 was directed to be deposited

in the loan account of the borrower. Interest at the rate of 9% per annum from 24/02/2003 to 10/06/2008 was also directed to be deposited by the Bank in the borrower's loan account. The learned Single Judge while considering the challenge to this order at the instance of the borrower did not go into the question as to whether the tractor and trolley could have been attached for recovery of the liability in view of the fact that in the earlier adjudication no such challenge was raised by the borrower. Similarly the stand taken by the Bank that in view of the auction conducted earlier the tractor and trolley had been sold and third party interest was created was also not permitted to be raised since the Bank had withdrawn its Letter Patent Appeal earlier. It was found that the directions issued in Writ Petition No.4245/2006 with regard to the mandatory procedure while conducting the auction not being followed had not been adverted to by the revisional Authority. On that count the order dated 18/07/2009 passed by the revisional Authority was set aside and the Bank was directed to arrange for re-auction of the tractor and trolley by following the procedure in view of Rule 107 of the said Rules.

8. We find that both the parties have sought to re-agitate the same questions/arguments that were raised before the learned Single Judge while deciding Writ Petition No.5014/2009. These arguments have not been accepted by the learned Single Judge by assigning reasons with which we

agree. We do not find that any other view of the matter could be taken especially when in the earlier round of litigation it was noted that the auction conducted on 11/02/2003 was without following the procedure prescribed by Rule 107 of the said Rules. It was for that purpose that the proceedings had been remanded and despite so the said aspect was found not to have been considered by the revisional Authority after remand. It is in these facts that the learned Single Judge was required to set aside the order dated 18/07/2009 and we do not find any illegality in the adjudication by learned Single Judge.

9. As regards the contention that the tractor and trolley could not have been attached for purposes of recovery, said aspect has rightly not been entertained by the learned Single Judge for the reasons stated in the impugned order. As regards the benefit under the Scheme of 2008, we find that the joint holding of the borrower being 11H 63R was over and about the minimum holding that was prescribed under the said Scheme for being entitled to benefit thereunder. The learned Single Judge has observed that the existence of the loan liability and the same having been cleared thereafter were aspects which could be raised before the Competent Authority when such re-auction takes place. These grounds had been kept open for consideration by the said Authority and hence no prejudice is caused to either party.

10. In that view of the matter we do not find any case made out to interfere with the judgment of the learned Single Judge dated 11/02/2010 in Writ Petition No.5014/2009 either at the instance of the borrower or the Bank. The respondent Nos.4 and 5 shall ensure that the directions as issued in Writ Petition No.5014/2009 are carried out in their true letter and spirit in accordance with law. Thus Letters Patent Appeal Nos.256/2010 and 289/2011 stand dismissed leaving the parties to bear their own costs.

(G. A. Sanap, J.)

(A. S. Chandurkar, J.)

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