IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 159 OF 2007

Jalgaon Janata Sahakari Bank Ltd.
Jalgaon, through its Chief Executive Officer,
having its registered office at Navi Peth,
Jalgaon, District Jalgaon. .... Applicant
(Ori. Disputant)

Versus

1. Sau. Ratnaprabha Radhakisan Deore
Age. Major, Occ. Business,
R/o. Rajkiran, 9-B, Phule Colony,
Dhule.

2. Mohan Baburao Pardeshi,
Since deceased,
Through his Legal representatives,

2-A) Smita W/o. Mohan Pardeshi,
Age. 60 years, Occ. Household,

2-B) Swati D/o. Mohan Pardeshi,
Age. 30 years, Occ. Household,

2-C) Mukesh S/o. Mohan Pardeshi,
Age. 25 years, Occ. Education,

2-D) Harshal S/o. Mohan Pardeshi,
Age. 20 years, Occ. Education,

All R/o. Plot No. 31, Renuka Nagar,
Wadi-Bhokar Road, Deopur,
Dhule.

3. Pralhat Onkar Mangale,
Age. Major,

R/o. Govt. Quarters, Dhule. ....Respondents
(Ori. Opponents)

Advocate for Applicant : Mr. L.V. Sangit
Advocate for Respondent No. 1 : Mr. S.P. Shah

CORAM : RAJESH S. PATIL, J.
DATE : 17.11.2022

JUDGMENT :

FACTS :

1. This CRA is filed for challenging concurrent findings of both the Courts below. The applicant – Bank had earlier filed proceedings under Section 101 of the Maharashtra Co-operative Societies Act. The said proceedings were dismissed after hearing all the parties. The applicant – Bank had thereafter, preferred Revision before the Revisional Authority. However, they chose not to appear before the Revisional Authority and the Revision was dismissed for default. It is an admitted fact that no steps were taken by the applicant – Bank for restoration of the said Revision or else challenging the said order of dismissal before the higher Court.

2. Much latter thereafter, proceedings under Section 91 the Maharashtra Co-operative Societies Act, filed by the applicant – Bank. The proceedings under Section 91 of the Maharashtra Co-operative Societies Act, filed by the applicant

were dismissed by order dated 22.08.2006. An appeal was preferred against the said decision and the same was also dismissed. The present Civil Revision Application is filed challenging the said orders passed by the both forum below.

SUBMISSIONS :

3. Learned Advocate for the applicant has argued that even though, proceedings under Section 101 of the Maharashtra Co-operative Societies Act, were dismissed, still this Court can entertain the present Revision which arises from Section 91 of the Maharashtra Co-operative Societies Act, proceedings. It is further argued that it is a public money at stake and the respondents have admittedly not paid the money. It is further argued that once the applicant – bank has merged by way of an amalgamation, the assets and liabilities of the transferor bank has been taken over by a transferee bank i.e. appellant – bank.

4. It is further argued that the scheme has to be right and the respondent cannot say that in view of para 6 notice has to be issued.

5. It is further argued that the Advocate of the applicant – Bank had issued a notice, however, immediately after issuance of notice the proceedings were not filed before the Co-operative Court. It is further stated that the Civil Revision Application should be allowed.

6. Learned Advocate for the respondent / borrower has argued that she had applied for hypothecation loan of Rs. 1 Lakh from Dhule People Co-operative Bank, with 16% interest.

7. It is further argued by the Advocate for the borrower that respondent No. 1 has not taken any loan from the applicant / Jalgaon Janta Sahakari Bank. The proceedings filed by Jalgaon Janta Sahakari Bank against the applicant under Section 101 were dismissed and appeal carried against the said order was also disposed of as the applicant / Bank did not show any interest in arguing the matter on merits. No further Appeal was filed against the said order neither any efforts were made by the Bank for restoration of the Appeal. That itself shows the Bank was awarded that there is no merit in the proceedings. Thereafter, filing the proceedings under Section 91 would in real sense have no meaning and is an after thought. The scheme of amalgamation is very clear and the Bank does not want to follow the scheme, therefore, the proceedings under Section 91 were also dismissed and further an appeal before the Co-operative Appellate Bench was also dismissed. Hence, the present Civil Revision Application has no merits and the same should also be dismissed.

ANALYSIS :

8. It is an undisputed fact that borrower / respondent

No. 1 had obtained loan from Dhule People Co-Operative Bank and not from Jalgaon Janta Sahakari Bank Limited (applicant).

9. It is also not disputed that in the earlier round of litigation, the present applicant had preferred an application under Section 101 of the Maharashtra Co-Operative Societies Act for grant of recovery certificate against the respondent No. 1 / borrower. It is also not disputed that the said proceedings was dismissed and an appeal filed before the Divisional Joint Registrar was also dismissed for default. It is also not disputed that the said order was not carried forward neither there were any steps for restoration. Therefore, in my opinion the order passed under proceedings of Section 101 attained finality.

10. It is only then the proceedings under Section 91 of the Maharashtra Co-Operative Societies Act, have been preferred by the applicant / Bank. Taking into consideration Section 91 of the Maharashtra Co-Operative Societies Act, the same Section applies to any dispute between the Bank and its members nor the dispute was touching the business of the society. Respondent No.1 is not a member of the applicant / Bank nor there is any provision for transfer of membership automatically under the scheme which is filed in the proceedings.

11. A copy of the scheme of the Dhule People Co-Operative Bank being amalgamated with the applicant / Bank was tendered before this Court. By an order dated 24.02.1993 passed by the Commissioner of Co-Operation, the assets and liabilities of Dhule People Co-Operative Bank was transferred to Jalgaon Janta Sahakari Bank Limited (applicant). The scheme which is filed along with the order on record shows there is no provision as regards transfer of membership automatically. The para No. 6 Sub Clause 2 of the scheme mentions that the transferee Bank shall take all available steps to demand and enforce the payments of the amount. As per para No. 6 Sub Clause No. 4, there is a provision which states that the transferee Bank shall give to any person to whom any payment may be due under this clause such reasonable notice not exceeding three months and not being less than one month. As it may considered appropriate for the payment being due.

12. Therefore, it was compulsion for transferee Bank to give notice to the respondent No. 1 / borrower. In the matter in hand no evidence has been shown as to whether any such notice was given by the applicant / Bank to the respondent No. 1 / borrower. Hence, I conclude that the condition imposed in para No. 6 is not followed by the applicant / Bank.

13. So also I conclude that once proceedings under Section 101 had attained finality. Fresh proceedings, in the given circumstances under Section 91 of the Maharashtra Co-Operative Societies Act, would not be maintainable. No fault can be found from both the orders passed below. Hence, the present Civil Revision Application is dismissed.

(RAJESH S. PATIL, J.)

SPChauhan