IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2422 OF 2013

BAPUSAHEB RAMBHAJI KHEMNAR
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

WITH
WRIT PETITION NO.3724 OF 2013

BABAN TABAJI KALE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for the Petitioners : Shri Shermale K. N.
AGP for Respondents 1 and 2/ State : Shri A.A. Jagatkar
Advocate for Respondent 4 : Shri Prashant R. Nangare
...

CORAM: SMT. BHARATI H. DANGRE, J.

DATE :- 31st January, 2022

Per Court:

1. In both these writ petitions, the petitioners are aggrieved by the dismissal of their revision applications by the Divisional Joint Registrar, Co-operative Societies, on the technical ground of not depositing 50% of the amount as contemplated under Section 154(2a) of the Maharashtra Co-operative Societies Act, 1960 (for short "the MCS Act"). The revision applications being preferred by the respective petitioners, challenging the certificates issued under Section 101 of the MCS Act, by

the Assistant Registrar, Co-operative Societies, Parner on 12.08.2002. Since the petitioners failed to make the statutory deposits, the revisions are declined with the result that the properties of the guarantors stand attached in the wake of the certificates issued by the Assistant Registrar and the petitioners make a solemn statement, which is not denied by the learned counsel Shri Nangare appearing for respondent No.4 / Sugar Factory, to the effect that the amount has been recovered from the salaries of the petitioners, but it was not remitted to the Patsanstha i.e. respondent No.3/ Society, from whom the petitioners have obtained the loan.

2. The learned counsel for the petitioners submits that upon an application being preferred by the petitioners to respondent No.3/ Society, the loan came to be sanctioned and disbursed in favour of the petitioners. The said loan was guaranteed by two guarantors being respondent Nos.5 and 6 to the petition, along with an indemnity bond/ letter from the respondent No.4/ the Parner Taluka Sahakari Sakhar Karkhana Ltd., who was the employer of the petitioners, to indemnify the petitioners, which is placed on record at page No.20 of the petition. It is pertinent to note that the petitioners were employees of respondent No.4/ Sugar Factory and respondent No.4 indemnified respondent No.3/ Society by undertaking that the amount of loan would be deducted from the salary of the respective employees and these letters alongwith the respective amounts to be recovered from the employees, also form a part of record.

In terms of the indemnity letter and letter of guarantee submitted by the petitioners, since the services of the petitioners were terminated, the respondent No.4 deducted the amount of installments from the salary of the guarantors and the entire loan amount with interest was deducted and this fact was informed to respondent No.3, by respondent No.4.

3. As far as the petitioner in Writ Petition No.2422/2013 is concerned, the amount of Rs.13,500/- is deducted from the salary of the guarantor and the certificate to that effect has been issued by the Liquidator of respondent No.4/ Sugar Factory. But, in case of the petitioner in Writ Petition No.3724/2013 is concerned, an amount of Rs.21973/- came to be deducted from his own salary.

4. In the wake of the peculiar facts involved, it can be seen that the loan was obtained by both the petitioners from respondent No.3/ Society and respondent No.4/ employer indemnified respondent No.3 against the said loan and even the amount of loan due and payable was deducted from the salary of the petitioners/ guarantors. While certifying that the amount has been deducted, it is also declared in the certificate by the Liquidator that respondent No.4/ Sugar Factory is now under liquidation and the amount, which has been recovered from the salary of employees i.e. the petitioners, in terms of the preference in the liquidation proceedings, shall be paid over to respondent No.3/ Society.

However, this fact has been completely ignored by the Assistant Registrar, who directed the proceedings to be initiated under Section 101 of the MCS Act for attachment of the properties of the guarantors. When the petitioners knocked the doors of the Appellate Authority, he refused to grant any relief on the ground that the petitioners ought to have deposited 50% of the amount.

5. This is a peculiar case where, the condition of statutory prerequisite deposit of 50% ought not to have been imposed as a condition to entertain the revision under Section 154 of the MCS Act. However, the issue could have been resolved here before this Court, but respondent No.3 is not represented by any counsel, though I have heard the learned counsel for the petitioner and respondent No.4 and the learned AGP.

6. In any case, since respondent No.4 has already certified and has indemnified respondent No.3 qua the amount due and payable to respondent No.3, which shall be made over to respondent No.3 as per the proceedings in liquidation, the Assistant Registrar shall reconsider his order of attachment of the properties, after giving an opportunity of hearing to respondent No.3.

7. In the wake of the aforesaid circumstances, the impugned orders passed by the Assistant Registrar issuing the certificate of recovery under Section 101 of the MCS Act, is quashed and set aside. The Assistant Registrar, after affording an opportunity of hearing to the petitioners, the

respondent No.3/ Society to whom the amount is due and payable and respondent No.4, employer of the petitioners, who has indemnified respondent No.3 and who has admitted that the amount of loan has been deducted from the salary of the petitioners/ guarantors to be made over to respondent No.3, shall pass an appropriate order within a period of six weeks from today.

The Writ Petitions are allowed in the aforesaid terms.

8. The petitioner in Writ Petition No.2422/2013 was directed to deposit an amount of Rs.12,000/- and the petitioner in Writ Petition No.3724/2013 was directed to deposit an amount of Rs.5000/- in this Court vide order dated 28.08.2017, subject to which, it was directed that no coercive steps would be taken against them.

In the wake of the aforesaid order being passed directing the Assistant Registrar to re-hear the parties before passing an order under Section 101 within the stipulated period, the petitioners are permitted to withdraw the amounts deposited by them, respectively, along with interest, if any accrued thereon.

kps **(SMT. BHARATI H. DANGRE, J.)**