IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1037 OF 2022

Vaibhav Dilip Bhivate .. Petitioner

Versus

Divisional Joint Registrar, Co-Op.
Societies & Ors. .. Respondents

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Mr.Satyajeet Mirajkar for the Petitioner.

Mr.Tripathi i/b Mr.Shantanu Kalekar for the Respondent Nos.3 and 4.

Mr.C.D.Mali, AGP for the State.

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CORAM: RAVINDRA V. GHUGE, J.
DATED : 04th FEBRUARY, 2022

P.C:-

1. The petitioner is before this Court challenging the judgment dated 23/11/2020, delivered by the Divisional Joint Registrar, Co-Operative Societies, Kolhapur vide which his Revision Application No.11 of 2019 has been rejected under Section 154 of the Maharashtra Co-Operative Societies Act, 1960.

2. This matter was heard extensively on 03/02/2022 and was overnight part-heard. Today as well, the learned Advocates canvassed extensive submissions.

3. The following factors are undisputed :-

(a) The petitioner has availed of the bank loan from respondent No.3-Bank, in 2010.

(b) The amount of loan was Rs.47,00,000/-, vide 2 loan accounts.

(c) The loan agreement and documents have been duly signed voluntarily by the petitioner.

(d) There has not been any complaint by the petitioner that the bank has obtained his signatures surreptitiously or that the documents on which the signatures have been obtained, were fraudulently created.

(e) The rate of interest was 15% p.a. and 14% p.a. on the two loan accounts that were created.

(f) The loan accounts were declared NPA in 2012.

(g) Section 101 certificate was issued for recovery of the unpaid amounts i.e. the dues against the petitioner.

(h) There was a flood like situation in Kolhapur in 2019.

(i) The Covid-19 pandemic paralyzed the country since March, 2020.

(j) The loan was taken for setting up of a rice mill and the said rice mill is non-functional, since 2013.

4. The disputed factors are as under :-

(a) The petitioner submits that he has repaid about Rs.58,00,000/- to Rs.60,00,000/- till today.

(b) The bank submits that it's account clearly indicates that the petitioner has repaid only Rs.43,00,000/-.

(c) The outstanding dues towards the petitioner today, are more than Rs.70,00,000/-.

(d) The petitioner did not come forward with any concrete proposal by which the bank could be satisfied that the OTS would be successful in this case.

(e) Though the OTS applications are filed on two or three occasions, there has not been any definite step taken by the petitioner.

5. It appears from the record that the bank was about to auction the mortgaged property of the petitioner in 2016. Accordingly, advertisement was published pursuant to the orders obtained under Section 100 and Rule 85 under the Maharashtra Co-Operative Societies Act and the Regulations. That the advertisements dated 22/02/2016 were published in Dainik Pudhari on 21/03/2016 and 29/06/2016. However, on account of the pending proceedings, the property could not be auctioned.

6. It is quite clear from the facts and circumstances that emerge from the records that the petitioner had availed of the total loan amount of Rs.47,00,000/- for the purpose of running a rice mill. The rice mill was shut down in 2013. The loan accounts were declared NPA in 2012. It is, therefore, clear that the petitioner is unable to generate enough funds to satisfy the outstanding loan dues. In these circumstances, no

relief can be granted to the petitioner.

7. I have perused the reasons assigned by the Revisional Authority, which convinced him that the petitioner is not in a position to generate funds for repaying the loan amount. It could only be through auction of the mortgaged property that that the amounts could be recovered.

8. In the light of the above, this petition is dismissed.

9. At this juncture, the learned Advocate for the petitioner submits, on instructions from the petitioner who is present with him on-line in his chamber, that the petitioner would tender another proposal for OTS.

10. The learned Advocate for the bank submits that if the petitioner comes forward with a proper proposal within two weeks and satisfies the bank that discretion could be exercised in favour of an OTS, only then the bank would consider the said proposal. The bank is aware that here before, the petitioner had tendered such proposals, which could never have been accepted by the bank.

11. In view of the above, the parties are left to their own options.

(RAVINDRA V. GHUGE, J.)

M.M.Salgaonkar