

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION (ST) NO. 4057 OF 2020

Mr. Sadanand Belvalkar & Anr. ...Petitioners

vs.

The State of Maharashtra and Ors. ...Respondents

Mr. Sachin Mandlik a/w Sayali Phansikar a/w Upendra Mahadik i/by
Fast Track Legal – Advocate for the Petitioners.

Mr. A. P. Vanarse – AGP for the Respondent No. 1-State.

Mr. Shrivallabh Panchpor a/w Mr. Ankit Dhindale – Advocate for
Respondent No. 2.

CORAM : S. M. MODAK, J.

RESERVED ON : 10th DECEMBER, 2021

PRONOUNCED ON : 13th JANUARY, 2022

JUDGMENT:-

. Rule. The only issue arise in this petition is whether order passed by the Maharashtra State Co-operative Appellate Court, Mumbai bench at Pune in Revision Application No. 27 of 2019 dated 17/12/2019 is open for interference in a supervisory jurisdiction under Article 227 of the Constitution.

2. The order under challenge was passed on the Revision application filed by Vidya Sahakari Bank limited (hereinafter referred to as said bank). Present Petitioner is Respondent therein.

He is one of the guarantor to the loan sanctioned by the bank to the borrower M/s Mbelles Labs present Respondent No. 3.

3. The bank has obtained recovery certificate on 14 July 2017 under Section 101 of Maharashtra Co-operative Societies Act, 1960. The present Petitioner being guarantor to the loan has filed a dispute on 10 June 2018 before Co-operative Court Pune by taking recourse to the provisions of Section 91 of Maharashtra Co-operative Societies Act, 1960. There is Government Resolution dated 25/11/2017 issued by the Government of Maharashtra Department of Corporation. By that resolution guidelines are given to the Urban Co-operative banks in respect of one time settlement towards the dues. The guarantor/Petitioner made grievance before the Co-operative Court that bank has not accepted his proposal for one time settlement vide letter dated 23 February 2018 (whereas in fact bank itself vide notice dated 23 November 2017 has advised to participate in OTS) and hence he sought direction from the Co-operative Court to bank. He made following request –

- (a) declaration that bank is bound to extend benefit of OTS.
- (b) bank to issue no due certificate.

4. Apart from bank, special recovery officer was also made as a party opponent. After appearance the bank took objection as to the maintainability of the said dispute by taking recourse to the provisions of Order 7 Rule 11 (d) of Code of Civil Procedure. It was turned down by the Co-operative Court as per the order dated 10th December, 2018. The bank got aggrieved and approached the Appellate Court. There they succeeded and the dispute/plaint was returned as held not maintainable as per the order dated 17 December 2019. This order is challenged before this Court.

5. I have heard Mr. Sachin Mandlik, learned counsel for the Petitioners, Mr. A. P. Vanarse, learned AGP for the Respondent/State, and Mr. Shrivallabh Panchpor, learned counsel for the Respondent No. 2.

6. This Court is aware of the limitation on exercising the supervisory jurisdiction. It can be exercised to remedy grave cases of injustice or failure of justice. It is to be exercised with restraint to ensure that the court or tribunal act within the bounds of their authority. Considering the effect of the two orders passed as referred above, this Court feels that the petition cannot be dismissed simply by refusing to exercise supervisory jurisdiction. Two aspects are

important.

(a) Nature of the dispute made before the Co-operative Court and whether the nature is misleading that is to say it is the outcome of clever drafting.

(b) In given set of facts whether the plaint can be rejected by invoking the provisions of order 7 Rule 11 (d) of Code of Civil Procedure.

7. First glaring mistake is noticed in the impugned operative order. The Appellate Court has directed to return the plaint whereas if a grievance falls under Order 7 Rule 11 (d) of Code of Civil Procedure, the plaint has to be rejected and not to be returned. If the suit is barred by any law, plaint has to be rejected. For that purpose it will be relevant to consider the averments in the protest application made by the bank.

Avernment in the Application

8. There is specific averment in the application about bar of jurisdiction under Section 91 of Maharashtra Co-operative Societies Act (said Act). Firstly for the reason that dispute does not fall within the parameters of the Section and secondly as per proviso the present dispute is carved out of the purview of Section 91 of the said Act. Further more there is emphasis on the provisions of Section 101

of the said Act.

9. Considering the above averments, the nature of the grievance made by the bank certainly falls within the purview of Order 7, Rule 11(d) of the Code of Civil Procedure (that is barred by any provisions of law).

Provisions of Maharashtra Co-operative Societies Act

10. The learned Advocate Shri Shrivallabh Panchpor submitted that if there is grievance about recovery certificate issued under Section 101 of the said Act, such grievance does not fall within the purview of the dispute under Section 91 of the said Act. For that purpose he relied upon the observations in the case of *Vijay Shamrao Bhokre and Ors. Vs. Shri Mumbadevi Jilla Nagari Sahakari Pat Sanstha Maryadit, Kopargaon*¹.

11. Learned advocate Shri Panchpor submitted that the scope of the jurisdiction under Section 9 of the Code of Civil Procedure of Civil Court is much wider than the scope of jurisdiction of Co-operative Court under Section 91 of the said Act of 1960. According to him, it could not be presumed that Co-operative Court is having

¹ 2010 (4) Mah. LJ 381

jurisdiction to decide every kind of Co-operative dispute (just like of Civil Court). He invited my attention to the prayer clause no. 2 of the dispute before Co-operative Court. It reads as follows :-

“The opponent No. 2 be directed to issue no due certificate to the disputant.”

12. The learned Advocate Shri Shrivallabh Panchpor emphasized on impleadment of special recovery officer and according to him he is not the party described as one of the party under Section 91 of 1960 Act. It is true that special recovery officer is made as opponent no. 1 before Co-operative dispute. Whereas the learned Advocate for the Petitioner submitted that even though there is recovery certificate issued, he has not challenged that certificate but that prayer is an ancillary prayer. His focus is on the applicability of that Government Resolution. He read over certain clauses of Government Resolution.

13. According to him, the dispute application is the outcome of clever drafting and in order to find out real nature of the dispute and responsibility of the Court to deal with the said dispute, he relied upon the observations in case of Sopan Sukhdeo Sable and Ors. Vs. Assistant Charity Commissioner and Ors.² and more specifically para

² 2004(3) SSC 137

no. 12.

DISCUSSION

14. In order to fall a dispute within the scope of Section 91 of the said Act, there are two material parameters. One is a kind of parties and second is nature of dispute. In order to give jurisdiction to Co-operative Court the party has to satisfy both these parameters. If a dispute pertains to management or business of the society, it is one of the disputes prescribed under Section 91 of the said Act, which falls within the jurisdiction of the co-operative court. The bank is dealing with the business of lending amounts and accepting deposits. The Petitioner is a member of the bank and a guarantor to the loan in question. He has raised a dispute about denying the benefits by the bank of OTS.

There are two aspects. One is whether the Petitioner comes within the scope of the Government Resolution and second is, the policy decision of the bank to whom the benefit of GR is to be granted. Certainly, the dispute raised by the Petitioner pertains to the business carried out by the bank and as such, the first parameter is satisfied by the petitioner. Section 91 further lays down the parties who can approach the co-operative court. In the present

petition, there is a dispute in between the bank and one of its members. Both of them falls within the category of parties laid down under Section 91(1) of the said Act. No doubt, it is true that special recovery officer is not the party prescribed in either of the categories of clause (a) to clause (e) of Section 91(1) of the said Act. This objection on behalf of the bank can certainly be considered if the decision challenged herein is reversed. Because, otherwise also, the co-operative court can direct the parties to delete the name of a party whose presence is not at all required.

15. It is true that in case of Vijay Bhokare, Aurangabad Bench of this court has elaborately discussed about the provisions of Sections 91, 101, 152, 163 and other provisions of the said Act. There was a suit filed before the Civil Court making a grievance that certificate obtained under Section 101 of the said Act is a nullity. There was a jurisdictional objection taken. It was rejected and that is how, this court dealt with the issue. The relevant discussion find place in para-6 to para-23 of the said judgment. It was held that legality of the proceedings under Section 101 of the said Act cannot be challenged by filing a dispute under Section 91 of the said Act. The main grievance in that matter was issuing certificate without giving

an opportunity of hearing.

16. This court feels that the contingency involved in this matter and the background of the litigation is different. The wordings of Section 101 of the said Act starts with the words “Notwithstanding anything contained in Sections 91, 93 and 98”. It means irrespective of the contents of above three sections, the provisions of Section 101 is given pre-dominance. If there is a due to certain society, it can be recovered as an arrears of land revenue on obtaining certificate of recovery. Whereas, under Section 91, the kinds of dispute to be referable to a co-operative court are laid down. No doubt, when there is a dispute in between bank and a borrower/guarantor on the point of recovery of a due, it certainly falls within the purview of Section 91 of the said Act. However, this kind of dispute has been specifically excluded from the purview of Section 91 of the said Act considering the wordings of Section 101 of the said Act.

It will be material to note that Section 91 starts with the words “Notwithstanding anything contained in any other law for the time being in force”. It does not say “Notwithstanding anything contained in other provisions of this Act”. It is true that as per the proviso to Section 91 of the said Act, certain kinds of dispute are specifically

excluded from the categories of co-operative disputes. Those kinds of dispute may satisfy the two parameters of Section 91. In spite of that, they have been specifically excluded. If those kinds of dispute are perused, this court does not feel that the kind of dispute raised before the co-operative court (granting benefit of OTS) will fall under that proviso.

17. There is emphasis on behalf of the bank on the provisions of Section 163 of the said Act and specifically sub-section (3) of the said Act. It bars the jurisdiction of civil and revenue courts. It does not say that in respect of particular kind of dispute, the co-operative court will be having no jurisdiction. In respect of two kinds of dispute, the jurisdiction of civil and revenue court is expressly barred. It is as per sub-section (1) (three kinds of contingencies) and as per sub-section (3). Any order, decision or award passed in accordance with the Act, it cannot be set aside or modified by any court on any ground (Section 163(3)). The remedy of appeal or revision is provided in Section 163(3) of the said Act only. So there is inbuilt mechanism for redressal of grievances.

18. My attention is invited to the provisions of Section 152 of the said Act relating to appeals. It is true that a certificate granted under

Section 101 of the said Act is not specifically provided (for preferring an appeal) under this section. However, it is true that State Government or Registrar can examine the record in exercise of revisionary powers under Section 154 of the said Act.

19. On this background, it needs to be verified, whether the grievance made in the dispute application can be meted out by taking recourse to the provisions of Section 154 of the said Act. On this background, if the averments in the dispute application are perused, we may find that he has pleaded about grant of loan, issuance of recovery certificate. He has also pleaded about issuance of a GR dated 15 November 2017 and correspondence made by him and by the bank. So, foundation of filing of a dispute is refusal by bank to give benefit of OTS. It is true that the GR to grant one time settlement was issued on 15 November 2017. The contingency of granting one time benefit is not specified as one of the categories, wherein dispute may arise. Granting benefit of one time scheme will arise only when the borrower is categorized as non-performing assets. Such contingency will arise on the background of issuance of recovery certificate. So what this court feels is that issuance of recovery certificate is one aspect and grant of benefit of one time

settlement is another aspect.

Even though, there is a recovery certificate, bank may think of giving benefit of one time settlement. What this court feels is that in order to have uniformity in the procedure and to assist the bankers for deciding their policies, the Government must have issued this GR. So, the present dispute though connected to the outstanding loans, still it falls out of the purview of Section 101 of said Act. This court feels that the dispute arising out of refusal to grant one time settlement will not fall within the purview of provisions of Section 154 of the said Act. As per Section 154 of the said Act, the authorities can examine the record for the purpose of ascertaining the legality and correctness of the decisions. Whereas, the decisions to refuse benefit of one time settlement has to be tested on the lines of the guidelines given as per the GR. Hence, the dispute is clearly maintainable under Section 91 of the said Act.

20. The Revisional Court has referred to the judgment in case of **Sardar Associates Vs. Punjab & Sind Bank**³. The issue was source of power on the part of Reserve Bank of India to issue circular as regard one time settlement. Loan was granted by Punjab & Sind Bank and

3 2009 8 SCC 257

borrower has sought for directions to accept one time settlement proposal. The issue involved was whether the tribunal can direct the respondent bank to consider said proposal. It was answered in the affirmative. It was held that the circular issued by the statutory body certainly confers a legal right upon an aggrieved person.

21. Whereas, recently, the Hon'ble Supreme Court in case of **The Bijor Urban Cooperative Bank Limited Vs. Meenal Agarwal**⁴ has observed that “High Court cannot in exercise of its power under Article 226 of the Constitution of India can direct the bank to positively consider the benefit of one time settlement to writ petitioner”. The relevant clauses of that scheme were also considered (para-5). On reading them, it was observed that “Petitioner cannot pray for acceptance as a matter of right”. Even the Hon'ble Supreme Court has considered the contingency that in given case it may happen that a person would borrow huge amount, for example Rs.100 crores and after availing the loan, he may deliberately not pay any amount towards installments, though, able to pay it and would wait of OTS scheme (para-9). This judgment is pronounced after the matter is closed for orders on 10.12.2021. It

4 Civil Appeal No.7411 of 2021, decided on 15.12.2021

is necessary for this court to consider the observations and its background prior to dealing the controversy.

22. On reading the observations in case of Meenal Agarwal, it does not find that the observations in case of Sardar Associates were brought to the notice. Furthermore, it is important to note that in both these petitions, the request to grant benefit OTS scheme was made before concerned High Courts. The request was not made before the trial court, i.e. cooperative court or debt recovery tribunal. Whereas, in a case before us, the request is made before the court of first instance, i.e. cooperative court. The relief sought in the present case (to direct the bank to accept one time settlement proposal) and the reliefs sought in above mentioned two judgments (originally before High Court) are of the same nature. This court can issue different kinds of writs under Article 226 of the Constitution of India and it has got supervisory jurisdiction under Article 227 of the Constitution of India. Such reliefs are determined on the basis of pleadings, documents and arguments and on the basis of correctness of the impugned order. Whereas, the nature of relief sought before the co-operative court is also mandatory in nature. Such relief can be decided after full fledged trial. The impugned order was passed by

cooperative appellate court while deciding the interim application of the bank. The issue before co-operative court and appellate court was “whether the dispute needs to be continued till completion of trial or whether the dispute can be decided at an interim stage itself”. At an interim stage, the co-operative court was expected to decide the dispute on the basis of averments in the plaint only. Whereas after hearing the dispute finally after evidence, the cooperative court is expected to decide whether to grant relief or not. The apprehension expressed in case of Meenal Agarwal “about possible misuse of OTS scheme by defaulter”, is justified. However, if the dispute is allowed to be continued till the completion of the trial, it does not mean that the right of the bank to oppose for the prayer is taken away. So what this court feel is that the issue before this court is involved in different background. So this court feels that the observations in case of Meenal Agarwal will not be useful to the bank. Because an aggrieved person should not be remedyless. There has to be a forum for his redressal. The clauses in the Government Resolution does give right to defaulter to seek one time settlement.

23. If the judgment challenged before this court is considered, we

may find that the appellate court has not considered the provisions of the said Act as discussed above and came to erroneous conclusion. The provisions of the said Act, and particularly, Section 91, Section 101, Section 154 and Section 163 ought to have been interpreted by considering the mandate given in the government resolution in question. This resolution is the outcome of deliberations and situations created much after passing of the said Act. This court has certainly to consider the principle behind introducing the government resolution. Even clause no. ७ (ई) reads thus:-

"एन.पी.ए. ची तारीख व वर्गवारी बँकेच्या दफतराप्रमाणे व लेखापरिक्षकानी प्रमाणित केल्याप्रमाणे निश्चित करण्यात यावी. कर्ज परतफेडीसबधी बाबीमधील वाद महाराष्ट्र सहकारी संस्था अधिनियम, १९६० चे कलम ११ अंतर्गत सोडविण्याची तरतूद आहे. त्याप्रमाणे सदर योजनेचा लाभ देणेचे अनुषंगाने अगर तडजोड रकमेबाबत काही वाद निर्माण झाल्यास त्याबाबत संबंधित तरतूदीप्रमाणे कार्यवाही करण्यात यावी."

It considers the resolving the dispute under Section 91 of the said Act. This fact is also not considered by the appellate court. Issuing Government Resolution is part of delegated legislation. It certainly cannot expand the scope of jurisdiction of co-operative Court. Section 91 of the said Act lays down "business dispute" as one of the kind of dispute. Clause ७ (ई) only specified which is one more kind

of business dispute.

24. This court does not feel that the prayer and averments of dispute application is the outcome of clever drafting as observed in case of Sopan Sabale. This court feels that the averments pertain to the events that have taken place in between the parties and denial of benefit of government resolution. It is very well true that as observed in para-13 of the said judgment, the plaint has to be rejected in entirety and not in part if there is no cause of action. This observation will not be applicable to the present case, because the request before the cooperative court is made as per the provisions of Order 7 Rule 11 (d) and not under the provisions of Order 7 Rule 11 (a) of the Code of Civil Procedure 1908.

25. This court is inclined to hold that the dispute so far as prayer clause (a) of the application can certainly entertained and inquired by the cooperative court. The prayer clause (b) “to issue no due certificate”, certainly, encroaches on the power of the Registrar to issue recovery certificate under Section 101 of the said Act. However, this court feels that it is ancillary relief and it can be granted only if prayer clause (a) will be allowed and not otherwise. So till the time prayer clause (a) is decided, the co-operative court

can certainly entertain and inquire prayer clause (b) also.

26. For the above discussion, this court is inclined to allow the petition and proceed to pass the following order.

OPERATIVE ORDER

(a) Writ petition is allowed.

(b) The order dated 17 December 2019 passed by the Member, Maharashtra State Cooperative Appellate Court, Mumbai, Bench at Nagpur in Revision Application No.27 of 2019 is set aside.

(c) The application filed by the bank under Order 7 Rule 11 (d) of the Code of Civil Procedure Code 1908 is dismissed.

(d) The cooperative court is directed to proceed further in the matter as per the law and decide it as per merits.

(e) The bank is at liberty to file their reply/written statement/ version to the dispute application, within the period of 45 days from today, if it is not filed earlier.

(f) The present Petitioner is directed to delete the name of Special Recovery Officer from the array of opponent from the file of the proceedings before the cooperative court on the first date of appearance before it after this order.

(g) The parties to bear their own costs.

(h) With above observations, Co-operative Court to decide the dispute.

27. Rule is made absolute.

(S. M. MODAK, J.)