BDP-SPS-TAC

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3138 OF 2019

M/s Shilpa Shares and Securities & Ors …. Petitioners.
V/s

The National Cooperative Bank Limited
and Others …. Respondents.

Mr. Vishal Ghosalkar for the Petitioner.
Mr. Bharat Jain i/b Economic Law Practice for Respondent No.4.
Mr. P.P. Pujari, AGP for Respondent Nos. 5 and 6.
Ms. Asha Bhuta a/w Ansul Bhuta a/w Aditya Pawar i/b Bhuta and Associates for Respondent Nos. 1 and 2.
Mr. Hemant R. Sapale, Petitioner No.2 is present in Court.

CORAM: NITIN W. SAMBRE, J.

DATE: JUNE 16, 2022

P.C.:-

1] The Petitioners, borrowers of Respondent-Bank, suffered recovery proceedings under Section 101 of the Maharashtra Co-operative Societies Act (Hereinafter referred to for the sake of brevity as “MCS Act”). Section 154 of the MCS Act provides for remedy of revision which is rightly so invoked by the Petitioners. For making such Revision maintainable, sub-section 2A of Section 154 of the MCS Act provides for the Petitioners to deposit 50% of the amount recoverable under such recovery certificate. Petitioners accordingly on 23/11/2018 through their Chartered Accountant A.D. Kulkarni carried out appropriate calculations as regards deposits which should be made in compliance of the provisions of Section 154 of the MCS Act. According to the Petitioners, recoverable amount from them under recovery certificate was Rs 1,34,84,181/-. As such, it is the claim of the Petitioners that they were liable to deposit 50% of the aforesaid amount which comes to Rs 67,42,091/-. Out of the aforesaid amount of Rs 67,42,091/-, it is the claim of the Petitioners that an amount of Rs 10,82,591/- was deposited through cheque, whereas balance amount of Rs 56,59,500/- was prayed to be adjusted against the Fixed Deposit made by the Petitioners in compliance with the order of the Supreme Court passed in SLP No. 24712 of 2014.

2] So as to counter the same, Respondent-Bank has come out with objection to the calculations of the Petitioners. As is claimed, the aforesaid amount of Fixed Deposit cannot be considered in the present proceedings, as same is directed to be kept in Fixed Deposit by virtue of aforesaid order of the Supreme Court in the matter of consideration of one time settlement proposal ("OTS") of the Petitioners. By way of impugned order, Divisional Joint Registrar, the Respondent No.5 herein, was pleased to dismiss the Revision Application of the Petitioners for non-compliance of the mandate under sub-section 2A of Section 154 of the MCS Act, which has prompted the Petitioners to approach this Court in extra ordinary jurisdiction.

3] Submissions of Mr. Ghosalkar, learned Counsel for the Petitioners are, both the proceedings viz. OTS Scheme which is pending adjudication in this Court in Writ Petition No.173 of 2014 and present recovery proceedings are arising out of one and the same loan transaction. He would further urge that amount of Fixed Deposit which was ordered by the Supreme Court for entertaining SLP, thereby directing deposit of Rs 44,97,000/- is to test bonafides of the Petitioners qua the settlement of the loan liability. According to him, even if the condition is incorporated by the Apex Court while deciding the aforesaid SLP of keeping the said amount in Fixed Deposit with further directions to the High Court to deal with the issue of the said Fixed Deposit at the time of decision of the Writ Petition, fact remains that the said amount is in the custody of the Respondent-Bank. He would further urge that once the amount directly or indirectly is deposited by the Petitioners, Divisional Joint Registrar was expected to consider the same in the matter of recording satisfaction as regards compliance of condition under sub-section 2A of Section 154 of the MCS Act. Additional contentions of Mr. Ghosalkar are, Respondent-Bank has come out with calculations which are completely unreasonable, as what can be considered for the purpose of giving effect to the provisions of sub-section 2A of Section 154 of the MCS Act is the amount recoverable under certificate issued under Section 101 and not the various expenses such as exorbitant interest @ 19% for unreasonable period, various debit entries and the amount kept against legal expenses and the expenses incurred under the Head "Legal Cases". As such, he would urge that calculations of the Bank which are endorsed by Respondent No.5 – Divisional Joint Registrar of the recoverable amount from the Petitioners under 101 certificate is to the tune of 2,04,88,265/- is not only unreasonable but without any basis. As such, according to him, order impugned warrants interference, thereby quashing the order of dismissal of revision with further directions that Petitioners have satisfied the mandate under sub-section 2A of Section 154 of the MCS Act and Revision of the Petitioners needs to be decided on merits.

4] Counsel for the Respondent-Bank and the Auction purchaser would support the order impugned. Contentions are, once the Apex Court has passed an order, thereby putting the Petitioners to condition of deposit of amount and since such amount is in the Fixed Deposit, same cannot be considered towards satisfaction of aforesaid statutory liability. It is claimed that Revisional Authority was justified in recording finding that not only the Petitioners have not complied with the statutory requirements but also failed to deposit sufficient amount even if amount of Fixed Deposit is adjusted for the sake of arguments. It is claimed that Petition is liable to be dismissed.

5] Considered rival submissions.

6] It is not in dispute that proposal of OTS of loan liability moved by the Petitioners was rejected by the Bank. As such, decision of rejecting the OTS proposal of the Petitioners is a subject matter of challenge in Writ Petition No.173 of 2014 The said Petition is presently pending adjudication before Division Bench of this Court.

7] One of the offshoots was taken out by the Petitioners before the Apex Court and for issuance of notice, Apex Court has put the Petitioners to condition of deposit of an amount of Rs 44,97,000/- which the Petitioners have complied with by showing their bonafides. The aforesaid SLP was disposed of by the judgment of the Apex Court on 19/4/2016 with direction to the High Court to decide Writ Petition No.173 of 2014 and pass appropriate orders with regard to the said amount of deposit of Rs 44,97,000/-.

8] As a sequel of pendency of aforesaid Petition, fact remains that neither any order as regards aforesaid deposit was passed nor any findings are invited by the Petitioners as to whether they have liberty or option to consider said deposit in the matter of satisfaction of statutory liability under the aforesaid provisions of Section 154 of the MCS Act.

9] In the aforesaid backdrop, this Court is of the view that once the Apex Court has incorporated condition in its order, thereby directing the Petitioners to deposit the amount and such deposit has to be dealt with in pending Writ Petition No.173 of 2014, in my opinion, Divisional Joint Registrar was justified in recording finding that amount of such deposit as against the OTS proposal of the Petitioners cannot be considered towards satisfaction of the statutory liability. If contentions of Petitioners of adjustment of the aforesaid deposit are accepted, virtually same amounts to modifying the order of the Supreme Court which, in any case, is not permissible in law and beyond the jurisdiction of this Court.

10] It was expected of the Petitioners in the aforesaid backdrop to get clarification from the Division Bench which is seized with hearing of the Writ Petition No.173 of 2014 to the aforesaid effect. Apart from above, fact remains that the Petitioners have come out with a case that calculations which were provided by the Respondent-Bank in the matter of calling upon statutory compliance under Section 154 are not satisfactory. Counsel for the Petitioners has invited attention of this Court to various Heads which, according to him, cannot be considered to be part of recovery certificate under Section 101 of the MCS Act. However, this Court is required to be sensitive to the fact that once this Court has reached to a conclusion that Petitioners cannot be permitted to use Fixed Deposit which he has made in Writ Petition No.173 of 2014 in the present proceedings, such issue, in my opinion, need not be considered. This court is sensitive to the Scheme of Section 154 of the MCS Act. Statutory compliance as regards deposit to be made is mandatory for making the Revision maintainable at the behest of the borrowers like the Petitioners. As such, this Court gave an option to the Petitioners as to whether today they are in a position to deposit 50% of the amount which is recoverable under section 101 certificate. To the above, Petitioners have responded in the negative. In this backdrop, in my opinion, order of Divisional Joint Registrar passed in exercise of revisional powers under Section 154 appears to be quite justified.

11] That being so, no case for interference is made out. Petition as such fails and same stands dismissed.

12] At this stage, Counsel for the Petitioners submits that since last about more than two years, ad-interim protection is in operation, same may be continued for a period of six weeks. Prayer is objected by the Counsel for Respondents.

13] However, having regard to the fact that already an amount to the extent of more than Rs 50 lakhs is secured, it will be appropriate to continue ad-interim relief in favour of the Petitioners for a period of six weeks from today. Order accordingly.

(NITIN W. SAMBRE, J.)