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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO. 9136 OF 2017

THE THANE DISTRICT CENTRAL CO-OPERATIVE BANK LTD. ....PETITIONER

V/s.

MISTRY NAGAR CO. OP. HSG. SOC. LTD. AND ORS .....RESPONDENTS

Mr. Ajit M. Savagave Advocate for the Petitioner
Ms. J. A. Sarkhot i/b Devashree Raut a/w Mubeen Sarkhot Advocate for Respondent no. 1

CORAM : NITIN W. SAMBRE, J.

DATE: JULY 13, 2022.

P.C.:

1) Heard respective counsel.

2) Respondent no. 1 initiated a dispute being Dispute Application No. CCT/150 of 2013 on the file of Judge, Cooperative Court, Thane as the Petitioner-opponent herein has initiated proceedings under Section 101 of The Maharashtra Co-operative Societies Act, 1960 (Hereinafter referred to as 'the Act' for the sake of brevity) for recovery of loan due.

3) In the said proceedings, Respondent no. 1 has taken out Application Exh. 5 under sub-section 4 of Section 95 of the Act for staying the proceedings initiated under Section 101 of the Act by the Petitioner and also restraining the Petitioner from creating third party interest in relation to property of the disputant society.

4) The claim in the Dispute is based on allegation that Respondent nos. 1 to 3 who were office bearers of the disputant society at the relevant time has siphoned of the amount of loan instead of spending the same for the cause for which it was borrowed from the Petitioner-bank i.e. for carrying out repairs to the building of society.

5) Judge, Cooperative Court vide order dated 07/03/2014 allowed the said prayer with following observations.

> "1) Proceeding pending before DRCS Vasai u/s 101 of M.C.S. Act between opponent no. 4 bank and disputant society is hereby stayed till final disposal of this case.
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> 2) Opponent no. 1 to 3 are hereby restrained from creating third party interest and parting with possession of their respective flats i.e. B 4/9 and 11, B 2/105 and B 4/214 to any third party either themselves or through their agent.

> 3) Disputant society is hereby directed to pay the installment to the opponent no. 4 bank till further orders."

6) Respondent-disputant being aggrieved by the directions incorporated in clause 3 of the said order of injunction, preferred an Appeal being AO No. 39 of 2015 before The Maharashtra State Co-operative Appellate Court. Appellate Court vide impugned order dated 31/07/2015 was pleased to allow the Appeal and set aside the above referred clause 3 whereby Respondent disputant was directed to repay the loan amount in installments. Feeling aggrieved, opponent bank has preferred this Petition.

7) The contentions are, object with which remedy under Section 101 of the Act is provided is to have speedy recovery of the public money which are advanced by the Petitioner-bank to the borrowers. In case if such borrower commits default, proceedings are required to be taken up under the said provisions before the Asst. Registrar. According to the counsel for the Petitioner, Cooperative Court while granting injunction was sensitive to the said fact and as such, has incorporated a rider in the order dated 07/03/2014 by putting the Respondent-disputant to the condition of deposit of amount of loan

installment. He would further urge that subject to compliance of such condition, proceedings under Section 101 of the Act were stayed, however, without understanding the significance of the same, order impugned is passed whereby blanket stay of not only the recovery proceedings under Section 101 of the Act is granted but also Petitioners are restrained from carrying out any recovery proceedings by taking recourse to other mode.

8) While opposing the prayer, counsel for the Respondent-opponent would support the order impugned as according to her, order impugned is in operation for last more than 7 years. She would invite attention of this Court to the directions issued by the Appellate Court directing Cooperative Court to decide the Dispute within 6 months from 31/07/2015. According to her, since it was *prima facie* demonstrated that amount of loan discharged by the Petitioner was siphoned of, both the Courts below were justified in granting relief of stay to the recovery. It is further claimed that Trial in the Dispute has reached at an advanced stage as the witness of the disputant is under cross-examination. It is claimed that Petitioners are intentionally delaying the trial in the Dispute. As such, prayer for

dismissal of the Petition is made.

9) I have appreciated rival claims.

10) What can be noticed from the nature of the order impugned passed by the Cooperative Appellate Court is, Petitioner is restrained from taking recourse to statutory remedy, particularly the one provided under Section 101 of the Act so as to recover alleged lawful dues. The fact that the loan was sanctioned and part of the same was disbursed can be ascertained from the record of the Petitioner-Cooperative Bank. In this background, statutory remedy of Section 101 of the Act is very much available to the Petitioner and by way of injunction, Petitioner society cannot be restrained from taking recourse to legal/statutory remedy. Order of injunction as such goes contrary to the provisions of Specific Relief Act. In the aforesaid legal background, if the nature of relief granted by the impugned order is appreciated, Protection to the Respondent should have been subjected to compliance of reasonable viz. regular condition of deposit of installments.

11) Fact remains that Respondent-disputant has neither deposited the amount of installment nor proceedings under Section 101 of the

act are permitted to be continued, as a sequel, Petitioner who is holding the shareholders' amount in Trust (public money) is unable to recover the same by establishing its case before the Registrar in proceedings U/s. 101 of the Act.

12) In this background, order impugned dated 31/07/2015 is held to be contrary to the provisions of law and as such is hereby quashed and set aside.

13) Respondent is hereby directed to continue to deposit the amount of installment forthwith.

14) Two consecutive defaults on the part of the Respondent-disputant in depositing the amount of installment shall entail the Petitioner to prosecute his proceedings initiated under Section 101 of the Act.

15) Petition stands allowed in the above terms.

16) At this stage, counsel for Respondent-Disputant submits that Dispute be directed to be decided expeditiously.

17) Counsel for the Petitioner assures that Petitioner shall complete the cross-examination of the witness of the Respondent-Disputant

expeditiously and in any case within two dates from the next scheduled date of hearing of the Dispute and shall extend all cooperation with the Cooperative Court in expeditious disposal of the Dispute.

18) Hearing of the Dispute is expedited as the same is pending for more than 5 years.

[NITIN W. SAMBRE, J.]