IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6708 OF 2016

The Nagarik Sahakari Bank Ltd., Bhiwandi .. Petitioner
v/s.
Kamlakar Kashinath Taware & Ors .. Respondents

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Mr. Kishor S. Patil for the Petitioner.
Mr. Girish G. Togani for Respondent No.1.
Mrs. V. S. Nimbalkar, AGP for the Respondent-State.

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CORAM: SHARMILA U. DESHMUKH, J.

DATE : 29 NOVEMBER 2022

P. C:-

By this petition, the Petitioner impugns the order dated 22/6/2011 passed by Respondent No.6-Hon'ble Minister, Department of Co-operation, Mantralaya, Mumbai, in Revision Application No. RVA-1709/PK679/15C, whereby the Hon'ble Minister allowed the Revision Application and quashed the order dated 12/8/2009 of Respondent No.4 directing an enquiry to be held under section 88 of the Maharashtra Co-operative Societies Act, 1960 (MCS Act) and the order of the Enquiry Officer dated 24/3/2011 assessing the damages against the Respondent Nos 1 to 3 based on preliminary enquiry report.

2. Heard the learned counsel for the parties.

3. At the outset, Learned counsel for the Petitioner submits that the review application filed by the Petitioner and pending before the Hon’ble Minister will be withdrawn. In any event, the said application has been filed in the year 2013 and has not been heard till date by the Hon'ble Minister and as such no prejudice will be caused to any of the parties if the said review application is permitted to be withdrawn.

4. It is the case of the Petitioner that the Respondent Nos. 1 and 3 were members of the Petitioner. Certain irregularities and financial frauds were noticed in the yearly audit of the year 2004-05 and 2005-06, which lead to the District Deputy Registrar to direct an enquiry under section 88 of MCS Act. By order dated 12/8/2009, an enquiry officer was appointed for holding enquiry. The Enquiry Officer passed order dated 24/3/2011 assessing the damages against the Respondent Nos 1 to 3. Against the said enquiry report, Respondent Nos.1 and 3 preferred revision application under section 154 of MCS Act, which was allowed by the impugned order.

5. Learned Counsel for the Petitioner assails the said order on various grounds. It is the contention of the learned counsel for the Petitioner that in spite of availability of a remedy under section 152 of

MCS Act, the Hon'ble Minister has entertained the Revision Application. He further contends that impugned order is based on erroneous finding that the procedure prescribed under Rule 72(1) and 72(2) of MCS Act has not been followed. He further contends that in the revision Application filed by Respondent Nos.1 to 3, the Petitioner was not made a party and in the absence of the Petitioner, the impugned order has been passed.

6. Learned counsel appearing for the Respondent Nos 1 to 3 supported the impugned order. He submits that there is no loss caused to the Society and it is the case of Respondent Nos. 1 to 3 that investment was made in the bonds subsequent to the resolution of the Petitioner-Bank itself and, therefore it cannot be said that it is Respondent Nos.1 to 3 who are liable for the loss, if any, sustained by the Bank. Learned Counsel was at pains to point out that in the enquiry report, there is no finding recorded that any loss has been caused to the Petitioner and therefore no liability can be fastened upon the Respondent Nos 1 to 3.

7. With the assistance of learned counsel for the parties, I have perused the enquiry report and the order passed on 24/3/2011. The order of 24/3/2011 clearly records that a preliminary inquiry had been conducted, show cause notices were issued to the Respondent Nos 1 to 3. The hearing was adjourned from time to time to grant

opportunity of hearing to the Respondent Nos 1 to 3, detailed submissions were made on behalf of Respondent Nos 1 to 3 and thereafter the order dated 24/3/2011 was passed. The order also deals with the contentions raised by the Respondent Nos 1 to 3 regarding the transaction in question namely the purchase of bonds. Necessary records were inspected. Upon perusal of the order dated 24/3/2011, I am satisfied that the procedure prescribed under the MCS Act and the Rules framed thereunder have been followed. The final finding in the enquiry which is at Page 38 of the Petition paper book clearly records that the Petitioner has suffered a loss of Rs 7,05,03,382/ and hence the contention of the Learned Counsel for Respondent Nos 1 to 3 to the contrary is liable to be rejected. The findings in the impugned order that the procedure under Rule 72(1) & 72(2) of MCS Rules have not been followed is clearly unsustainable considering the order dated 24/3/2011.

8. As far as the submission of the Learned Counsel for the Petitioner that Petitioner was not made a party to the Revision application is concerned, the preliminary enquiry has been conducted based on the audit report of the Petitioner-Bank and the findings in the preliminary enquiry shows that the loss has been caused to the Petitioner and the liability has been fastened on Respondent Nos.1 to 3. The Petitioner Bank was likely to be directly affected by the outcome of the proceedings in the Revision Application and was

therefore a necessary party and on that ground itself the revision application deserves to be set aside.

9. I find considerable force in the submission of the Learned Counsel for the Petitioner, that the remedy under Section 154 of MCS Act cannot be availed since the statute provided for an Appeal. Section 154 of MCS Act clearly provides that only in case where no appeal lies against the decision or order, revisionary power of the State Government can be exercised.

10. Considering the aforesaid, the impugned order dated 22/6/2011 cannot be sustained and is liable to be quashed and set aside. However, in my view, considering that the Respondent Nos 1 to 3 are fastened with huge liability of about Rs.6 crores, it is in the interest of justice to grant liberty to the Respondent Nos 1 to 3 to file an appeal under section 152 of MCS Act, before the concerned Authority to assail the preliminary enquiry report as provided by law. The learned counsel for the Petitioner submits that the said preliminary enquiry report is of the year 2011 and remedy under section 152 of the said Act is clearly time barred.

11. Keeping all contentions of the parties open including the contention on the point of limitation the following order is passed:

(i) The impugned order dated 22/6/2011 passed by Respondent No.6 in Revision Application No.

RVA-1709/PK679/15C is hereby quashed and set aside.

(ii) Respondent Nos.1 to 3 are at liberty to file necessary application under section 152 of the MCS Act before the concerned Authority.

(iii) All contentions of both the parties including the question of limitation are kept open.

(iv) The concerned Authority to decide the Appeal on its own merits uninfluenced by the observations made in the present order.

12. Writ Petition is accordingly disposed of.

(SHARMILA U. DESHMUKH, J.)