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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 322 OF 2021

Mangal Cooperative Bank Limited ….. Petitioner.
V/s
The Divisional Joint Registrar,
Cooperative Socieities, Mumbai
Division and Others. …. Respondents.

Ms. Suvarna Joshi a/w Ms. Anushree Koparkar for the Petitioner.
Mr. Hemant R. Horyan, AGP for Respondent No.1.
Mr. Prashant P. Kulkarni for Respondent Nos. 2 to 5.

WITH
WRIT PETITION NO. 221 OF 2021

Mangal Cooperative Bank Limited ….. Petitioner.
V/s
The Divisional Joint Registrar,
Cooperative Socieities, Mumbai
Division and Others. ….. Respondents

Ms. Survarna Joshi a/w Ms. Anushree Koparkar for the Petitioner.
Mr. S.B. Gore, AGP for Respondent No.1.
Mr. Prashant Kulkarni for Respondent Nos. 2 to 5.

CORAM: NITIN W. SAMBRE, J.

DATE: JUNE 6, 2022.

P.C.:-

1] Both these Petitions are preferred by Co-operative Bank. Challenge in the Petition is to the order passed by the Divisional Joint

Registrar, Co-operative Societies, Mumbai i.e. Respondent No.1, whereby Revision preferred under Section 154 of the Maharashtra Co-operative Societies Act (Hereinafter referred to as “the Act” for the sake of brevity), came to be rejected.

2] Facts and claim in detail is taken from Writ Petition No.322 of 2021. However, reasons and principle for deciding both these Writ Petitions are identical.

3] Facts necessary for deciding present Writ Petitions are as under:-

4] It is the case of the Petitioner that it is a Co-operative Bank and is in the business of lending loans, accepting deposits etc. According to the Petitioner, Respondent Nos. 3 and 4 have availed Cash Credit facility of Rs 19 lakhs in the year 1999 which was to carry interest @ 18% per annum. In the event of default, it was agreed by the said Respondents to pay penal interest @ 2% per annum. According to the Petitioner, Cash Credit Account No.5225 accordingly was opened on 22/3/1999 and operation of Cash Credit Account was started.

5] Petitioner alleges default on the part of Respondent Nos. 2 and 3 in repaying amount in the aforesaid Cash Credit Account and alleged to have issued demand notice dated 19/1/2006, stating outstanding amount of Rs 9,71,255.17.

6] In view of remedy available under Section 101 of the Maharashtra Co-operative Societies Act, Petitioner has approached Deputy Registrar, Co-operative Societies for issuance of Recovery Certificate under the aforesaid provisions of the Act. In the said proceedings Respondent Nos. 2 and 3 were given notice and after hearing the parties, Recovery Certificate dated 22/08/2007 for sum of Rs 2,58,150/- was issued which was to carry interest @ 3.5% thereon from 31/12/2005 and penal interest @ 2% thereon from 1/1/2006 under Section 101 of the Act. Deputy Registrar, Co-operative Societies vide order dated 22/08/2007 was pleased to hold that Respondent Nos. 2 to 4 are not liable to pay the amount. However, Deputy Registrar directed payment of Rs 50,000/- towards fees and Rs 5,225/- towards costs. The order was challenged before the

Divisional Joint Registrar, Co-operative Societies, who, in turn, dismissed the Revision vide order dated 25/4/2016 for want of prosecution. The said Authority i.e. Respondent No.1 dismissed the Application for restoration of Revision vide order dated 31/5/2019 which came to be set aside in Writ Petition No.9882 of 2019 with Writ Petition No.9889 of 2019 vide order dated 01/10/2019. This Court vide aforesaid order at the time of restoring Revisions on the file of Respondent No.1 directed hearing of the Revisions on merit. Accordingly Applications were heard by Respondent No.1 and came to be dismissed vide order dated 13/5/2020. As such these Writ Petitions.

7] As far as Writ Petition No.221 of 2021 is concerned, the challenge is identical wherein Recovery Certificate was issued against the loan agreement which is produced at Annexure-A. The Recovery Certificate in the said matter was issued on the same date i.e. 30/05/2014 for an amount of Rs 11 lakhs. The Petitioner feeling aggrieved has preferred Revision which was dismissed, however, restored by this Court vide order dated 01/10/2019 which is already referred to in the facts of earlier case. Revision Application was dismissed on 13/5/2020 by observing that Recovery Certificate issued was for an amount of Rs 19,80,600/- with interest @ 13.50% per annum from 15th June, 2014 which was sought to be enhanced by invoking revisional jurisdiction.

8] Heard learned Counsel for the Petitioner and learned Counsel for the Respondents.

9] Contentions of Counsel for the Petitioner are, the amount due and recoverable from the said Respondents is to the tune of Rs 76,59,429.19. It is claimed that the Petitioner survives only on recovery of interest, as it is not only required to give dividends to shareholders but also has to meet day-to-day expenses including payment of salary to its employees, rent etc. According to him, Respondent No.1 while passing the order impugned was not at all sensitive to the very claim made in the Revision viz amount due and payable from Respondent Nos. 2 and 3. He would further urge that Revisional Authority ought to have considered that Deputy Registrar while passing the order impugned has not only failed to exercise jurisdiction but it was for the Revisional Authority to correct the exercise of jurisdiction by passing an appropriate order in the matter. According to him, merely because proceedings remained pending before the District Deputy Registrar, Respondent No.1 – Divisional Joint Registrar and this Court in earlier round of litigation by itself will not exonerate the said Respondents of their liability. It is further claimed that calculation of the interest is as per Rules and the Circular provided by Reserve Bank of India and what has been charged is interest in accordance with the Rules.

10] Counsel for the Petitioner has also sought to rely on the guidelines issued by the Reserve Bank of India on 01/07/2015, particularly guideline Nos. 4.5 and 4.5.3 so as to claim that non-received interest can be simultaneously be shown as accrued interest separately or can be parked in separate account so that interest receivable on such NPA Account is computed. The Counsel also claimed that the guidelines further provide for non-debitable interest accrued in respect of Non-performing Advances to the borrowers' Account, is required to be shown separately under interest receivable account.

11] While countering aforesaid submissions, learned Counsel for Respondent Nos.2 to 5 would support the order impugned as according to him, principal amount was only Rs 10 lakhs. In spite of there being repayment, Recovery Certificate was sought and came to be issued for an amount o Rs 7,03,115/-. According to him, Revisional Authority has rightly noticed that there is no failure of exercise of jurisdiction and as such exorbitant penal interest and the interest charged or sought to be charged demonstrates that Revision is rightly rejected by Revisional Authority which is Respondent No.1. As such, he has sought dismissal of the Petitions.

12] I have considered aforesaid submissions.

13] Fact remains that Respondent Nos. 2 and 3 have availed Cash Credit Facility of Rs 10 lakhs in 1999.

14] In Recovery Application preferred on 21/04/2006 claim for the amount of Rs 9,71,255/- was moved in which interest was claimed @

13.50% from 11/02/2006. Till the said date, it appears that the said Respondents have regularly repaid the amount as per installments as were due. The Authority having regard to the claim made for issuance of Recovery Certificate issued Recovery Certificate for an amount of Rs 7,03,115/- which was to carry interest @ 13.50%. Same was based on reasoning that calculation of interest was not as per RBI guidelines and the interest was levied at much higher rate without following the schedule. In the Chart dated 01/01/2020 which was preferred before the Revisional Authority i.e. Respondent No.1 repayment of Rs 76,59,429.19 was shown to be due. The said Chart is based post order of remand/restoration of Revision Application passed by this Court on 01/10/2019. The Revisional Authority thereafter noticed that claim made before Deputy Registrar is at variance as amount of interest @ 18% was settled from 01/04/2006 to 31/12/2019. In any case, Revisional Authority has noted that issuance of Recovery Certificate for the amount which was never claimed before the Authority below while canvassing claim under Section 101 of the said Act can neither be looked into nor appreciated in revisional jurisdiction. The order impugned passed by the

Revisional Authority is based on aforesaid principle viz claim before Deputy Registrar under Section 101 of the Act was for small amount, whereas in the revisional jurisdiction amount was sought to be enhanced. There appears to be substance in the observations made by Respondent No.1 in its order impugned. Principal amount for which cash credit facility was obtained was just Rs 10 lakhs as against which claim today is made for Rs 17 lakhs and odd that too without there being any proper justification but for baseless calculation provided before the Revisional Authority.

15] So far as reliance placed by Counsel for the Petitioner on the guidelines issued by Reserve Bank of India is concerned, in the case in hand, on the date of passing of the order under Section 101 of the Act, aforesaid guidelines were neither in existence nor it is demonstrated by the Counsel for the Petitioner that such guidelines are retrospective i.e. can be applied to Recovery Certificates which were issued prior to 01/07/2015 i.e. the date of issuance of guidelines. As such, contention of the Counsel for the Petitioner to the extent that order of Revisional Authority is contrary to the RBI's guidelines dated 01/07/2015 is without any basis.

16] In this background, no error of jurisdiction could be noticed on the part of Revisional Authority in passing the order impugned. In that view of the matter, both these Writ Petitions are dismissed.

[NITIN W. SAMBRE, J.]