IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

23 **WRIT PETITION NO.1556 OF 2016**

Shri B. J. Khatal Janata Sahakari, ...**PETITIONER**
Bank Limited, Sangamner,
Tq. Sangamner, Dist. Ahmednagar
Through Liquidator
Shivnath Mahantyappa Swami

VERSUS

1. The Ahmednagar District Central, ...**RESPONDENTS**
Co-operative Bank Ltd. Ahmednagar
Station Road, Ahmednagar
Through its Managing Directors

2. The Deposit Insurance and Credit
Guarantee Corporation having its office
at 2nd Floor, RBI Building,
Opp. Mumbai Central Railway Station
Mumbai, Through its General Manger

Mr. Vitthal H. Dighe Advocate for the petitioner
Mr. V. R. Dhorde, Advocate for respondent No.1
Mr. S. V. Adwant, Advocate for respondent No.2

CORAM : KISHORE C. SANT, J.
RESERVED ON : 20th SEPTEMBER, 2023
PRONOUNCED ON : 01st DECEMBER, 2023

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1. The petitioner bank has approached this court

challenging the judgment and order passed by the learned President State Cooperative Appellate Court, Bombay in Appeal No. 108/2012. The learned President by way of impugned judgment has dismissed the appeal of the petitioner. The petitioner had challenged the award passed by the Cooperative Court, Nagar allowing the dispute filed by the Ahmednagar District Central Cooperative Bank-respondent No.1 against the petitioner bank and members of the board of directors. Dispute is partly decreed. The petitioner bank was held to be liable to repay to the respondents an amount of Rs.37,83,663.33/- with interest @ 12% with 6 monthly rests from 30-09-2006 till realization. This award was passed by the judgment and order dated 31-03-2012. In this petition, subsequently respondent No.2-Deposit Insurance and Credit Guarantee Corporation came to be added. Respondent No.2 is the Corporation established under Section 3 of the Deposit Insurance and Credit Guarantee Corporation Act, 1968 ('DICGC' for short) and was having control over petitioner bank as the bank was under liquidation.

2. Facts in short, giving rise to the present petition are as below:

3. That respondent No.1 is the District Central Cooperative Bank having jurisdiction over Ahmednagar District. It gives loans to the Cooperative Banks and Credit Cooperative Societies, the petitioner as well as respondent No.1 bank are registered under the Maharashtra Cooperative Societies Act, 1961. The respondent-bank had granted loan of Rs.50,00,000/- to the petitioner bank by passing resolution dated 16-09-2005 @ 12% p.a. for a term till 30-09-2006. The petitioner bank pursuant to sanction of loan withdrew the amount from time to time for giving it to its members. However, the petitioner could not repay amount of loan regularly. The petitioner bank thereafter went in liquidation under the order of District Deputy Registrar Cooperative Societies, Ahmednagar dated 16-06-2008. Since, the loan was not repaid the respondent bank filed a dispute for recovery of amount of outstanding against the petitioner bank as well as Members of Board of Directors.

4. The petitioner appeared through its Liquidator. In written statement it is stated that bank is under liquidation. The bank is therefore, governed by respondent No.2-Corporation. The dispute is not maintainable for nonjoinder of the parties. Under the Act, the DICGC bank had accepted to deposit the amount and therefore no amount can be paid without its permission. It was stated that because of Rules of DICGC the amount needs to be deposited with only DICGC.

5. The learned Judge of the Cooperative Court, Ahmednagar allowed the dispute as stated above only against the petitioner bank. The petitioner approached the Co-oprataige Appellate Court, Bombay by filing a appeal No. 108/2012 on the ground that the provisions of DICGC are applicable to the bank and therefore, the bank cannot be directed to pay the amount. Further ground was taken that the appellate bank is in liquidation since 2008 and Liquidator is looking after the affairs of the bank. In view of the Maharashtra Cooperative Societies

Act dispute is not maintainable. Another ground taken was that the General Manager of DICGC was a necessary party to the dispute and the dispute was not maintainable for non-joinder of the parties. Initially, though the General Manger of DICGC was added but subsequently same was deleted by the petitioner. Learned President of the Cooperative Societies after hearing of the parties held that the disputant was entitled to recover loan amount with interest by confirming the judgment and order passed by the learned Member of Cooperative Court. The petitioner is thus before this court challenging the judgment and order in appeal.

6. Respondent Nos.1 and 2 have filed their affidavits. Respondent No.1 has opposed the petition as devoid of merits. Respondent No.2 has filed say supporting the petition and submits that the judgment and order passed by the appellate court deserves to be quashed and set aside. It is prayed that the respondent No.1 be directed to refund the amount of Rs.55,55,088.72/- as settled by the DICGC. It is the stand of the

DICGC that sum of Rs.6,78,29,397.99/- was paid by DICGC to the Cooperative Bank through its Liquidator for settling the main claim and in supplementary claims of Rs.7,90,08,263.72/-. It is stated that the petitioner bank had refunded the amount of Rs.6,99,77,610.40/- and thus the amount of Rs.34,75,565.20/- is lying with the Corporation and towards disbursal amount refunded by the Liquidator. Thus, total amount due as on date was Rs. 55,55,088.12/-. In the meantime the property of the bank is attached and therefore, Liquidator could not take any action and could not disburse the amount as per priorities.

7. In the above facts, the learned advocate Mr. Dighe for petitioner submits that on the date of filing of the suit, the Liquidator was holding the charge of the petitioner bank. No suit was maintainable against the bank without adding the Liquidator as a party. In written statement it was specifically mentioned that the bank is under Liquidation and therefore Liquidator is a necessary party. Still the Cooperative Court has not framed such an issue. Decree passed in the dispute was only

against the petitioner bank. He submits that the points were not properly framed. Even in the appeal specific grounds were taken as regards non-joinder of the necessary party. In spite of such grounds the learned Appellate Court has not framed necessary points. It was necessary for the President of the Appellate Court to consider the effect of appointment of Liquidator on the bank and also that the provisions of DICGC Act are applicable and appeal ought to have been allowed. He submits that the learned court below has wrongly placed reliance upon the Rule 106(7) and 106(8) of the Cooperative Societies Act and the points were framed. Since the points were not framed necessary for adjudication there was no discussion. The discussion is only about the liability about which there was a dispute. In view of section 103 of the MCS Act it was incumbent on the part of the Cooperative Court and the Appellate Court to add Liquidator as party. At the most it could have been directed the disputant bank to approach the Liquidator. The Liquidator upon the claim of the bank would have taken care of repayment by considering the provisions of DICGC Act.

8. In view of section 105 a person having a decree has to approach the Liquidator for payment of decreetal amount. It is further submitted that the suit was filed with prior permission from the District Deputy Registrar. While granting permission District Deputy Registrar had specifically granted permission subject to provisions of law as regards liquidation and DICGC. Looking to the prayer in dispute, he submits, that the respondent has exceeded such permission and this aspect is also not considered by both the courts below and they have committed illegality. He submits that since the property was attached the recovery officer of the respondent bank had approached the Deputy Director of Land Record, Nashik Region, Nashik who directed to show the charge on the property CTS No.2578 belonging to the petitioner. He submits that therefore, even a writ petition was filed bearing No. 1695/2012 showing that the bank is required to approach the Liquidator. The Liquidator would then give the amount as per the priorities. It was necessary for respondent to stand in the queue. He lastly

submits that the courts have not passed the order on merits and considering the provisions of the Act.

9. Learned advocate for the respondent No.1-bank submits that various grounds and points in respect of the Liquidator and the DICGC Act have been raised for the first time. These points were never raised before the trial court. He submits that after the award is passed now the action would follow under the provisions of MCS Act. The petitioner did not in fact pursue the matter in the appellate court and at one point the appellate court was constrained to pass an order of dismissal for default as the appellant remained absent. He submits that the main ground in the petition appear to be not considering the merits in the matter and the provisions of the Act and for that purpose the matter can be remanded. The appellate court can very well go through the merits and the legal submission again. Respondent No.2 was initially made a party in the appeal however subsequently it was deleted by the petitioner itself, no grievance now can be made before this court about the same.

Even in this writ petition respondent No.2 was not a party but is subsequently added. Since the Liquidator did not take prompt action, therefore, the bank had no option but to go for attachment of the property and consequential action under MCS Act. He submits that respondent No.2 will have no say as it stood deleted in the appeal. Mr. Dhorde further submits that order under section 107 of the MCS Act was passed in this case a permission from the Registrar was sought to file the dispute and therefore bar under Section 107 would not be attracted. Recovery Officer has rightly acted and proceeded in furtherance of under Rule 107 (10) of the MCS Rules. He further submits that to attract the provisions of DICGC it is necessary that the bank should be insured under Section 10 of the said Act. He further submits that in view of section 13(c) of the DICGC Act that registration of the banking company as insured bank would stand cancelled on the occurrence of any of the event mentioned in section 13.

10. Learned advocate for the respondent No.2 submits

that the dispute was presented on 26-09-2009. The banking license of the petitioner bank was cancelled on 10-06-2008 and on 16-08-2008 the Liquidator was appointed. Thus, on the date of presentation of the dispute administrator was already appointed and was holding the charge. This fundamental aspect was not stated in the plaint. The plaint itself ought to have been rejected under the order 7 Rule 11-A and Order 7 Rule 11-D. No dispute could have been filed without impleding respondent No.2 as party to the dispute. He submits that when in written statement of the petitioner bank it was specifically mentioned that the bank is under liquidation and that was under the DICGC it was obligatory on the part of the court not to proceed with the dispute/suit till this respondent is made a party. In spite of this pleading learned Member of the Cooperative Court did not frame any issue about the DICGC Act. When such pleading is made before the court, the court need not wait for application under order 7 Rule 11. The court has to frame this issue as preliminary issue as there is sufficient pleadings before the court. He further submits that when the grounds were specifically taken by the petitioner bank in the appeal, it was necessary for the appellate court to frame the points on this aspect. Respondent No.1 was expected to file proceeding under section 110 (a) of the MCS Act which starts with non-obstant clause of Section 20 of the DICGC Act. He submits that this court also can direct the petitioner to pay the amount to respondent No.2 as it is only respondent No. 2 who is entitled to receive the amount from the petitioner bank. In any case he submits that it is for the Liquidator to repay the amount in order of priority to the persons entitled to receive the amount. He relies upon the judgment reported in *2015(9) SCC 629 in the case of Deposit Insurance and Credit Guarantee Corporation Vs Raghupati Raghwan and others*. He submits that Section 21 of the DICGC Act makes it obligatory on the part of the official Liquidator to repay the amount to the Corporation and any other preferential creditor would get an amount only after the amount payable under Section 21 of the Act is paid to the Corporation. To counter the submission of Mr. Dhorde in view of Section 13 the learned Advocate Adwant submits that in view of Sections 17 and section 19 once the bank was under Liquidation it is under obligation to inform the DICGC. He submits that in view of section 21 till the liability is paid nobody has right to get an amount.

11. In rebuttal, the petitioner argues that as the properties were attached the Liquidator could not take proper steps. He further submits that moment Liquidator is appointed. Respondent No.2 Corporation comes into picture by virtue of the mandatory provisions of the Act.

12. Learned advocate shows from the letter granting permission of the District Deputy Registrar that permission was granted only to sue with certain prayers. In the permission, it was specifically mentioned of Liquidation. Respondent- Bank however without adding Liquidator as party has proceeded with the dispute.

13. Copy of permission is produced on record in which it

is specifically put as a condition that the permission is granted only to the extent of adding Liquidator as party. It is further made clear that by filing the dispute no obstruction would be made in the liquidation proceedings, if conditions are not obeyed the permission to file dispute would stand cancelled. In this case, respondent bank has not added Liquidator as party and subsequently by attaching the property of the bank has created obstacles in the work of the liquidation and for this reason also dispute permission is deemed to have been cancelled.

14. Looking to the submission of all the parties and legal position this court finds that the learned Lower appellate court has failed to appreciate the legal position and relevant facts and has arrived at a conclusion and dismissed the appeal with costs. The court failed to consider the specific grounds taken in the appeal in respect of the liquidation proceeding. There is no dispute that on the date of filing of the suit, Official Liquidator was already appointed, that fact is not properly considered by

both the courts. Even the authority had granted permission to file a suit only with limited prayer and with necessary conditnion if Liquidator is appointed , however, prayers were made which were beyond the permission granted by the authorities. Proceeding of attachment etc. by the recovery officer also was illegal. The learned appellate court ought to have passed the order on merits. This court also finds substance in the argument of the Mr. Adwant, learned advocate for respondent No.2 that the plaint was presented on 26-02-2009 whereas banking license was cancelled on 10-06-2008 and Liquidator was appointed on 16-06-2008 i.e. much prior of filing of the dispute. This material fact was suppressed by the plaintiff. The dispute was filed without making respondent No.2 as party and for that reason also the suit was not maintainable for want of joining of necessary party. Though in written statement the issue was raised the court did not frame any issue on this respect. The court also has not considered the provision of The Deposit Insurance Credit Guarantee Corporation Act. His further submission is that though in the appeal ground Nos.3, 7 & 9 taken no proper points were were formulated.

15. In fact in view of of order 41 Rule 17 C.P.C. the learned appellate court should have dismissed the appeal in default and should not have proceeded to consider and decide the appeal on merits. In para No.6 of the judgment the learned Appellate Court has specifically recorded that the appellant and his advocate were absent on various dates. In such case only course open to the appellate court was to dismiss the appeal for default.

16. The Hon'ble Apex Court has clearly held in judgment reported in (2012) 8 SCC 745 Ghanshyam Dass Gupta Vs Makhan Lal that only course open to the appellate court is to dismiss the appeal in case of absence of appellant in view orf order 41 Rule 71. The power of order 41 available to co-operative court in view of explanation to Section 149 of the Cooperative Societies Act, 1960. This court finds that since proper opportunity was not given to the appellant/petitioner, it

would be proper to remand back the appeal for fresh decision to the learned appellate court. The appellate court to offer an opportunity of hearing to all the parties to this petition and decide the appeal on merits by considering all the provisions as regards the appointment of liquidator and provisions of DICGC Act. Needless to mention that the appellate court shall decide the appeal without being influenced by the observations made in this judgment. Hence, the following order:-

ORDER

a] Writ petition stands partly allowed.

b] The appeal is remanded back to the learned appellate court for fresh consideration. The learned appellate court to decide the appeal as early as possible and preferably by 30-06-2024.

c] All the Parties to this petition to appear before the learned appellate court on 11-12-2023.

d] In view of disposal of the petition, pending civil applications if any stands disposed off.

[KISHORE C. SANT, J.]

17. At this moment, learned advocate for respondent No.1 prays for stay to the execution and operation of this order. This court finds that no order adverse to any of the party is passed requiring stay to the operation and execution of this order. Hence, request is rejected.

[KISHORE C. SANT, J.]

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