IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 14166 OF 2019

Narayan s/o Sitaram Landge,
Age; 65 years, Occ; Agril,
R/o; Salegaon, Tq Kaij,
District; Beed. **...PETITIONER**

V E R S U S

1. The State of Maharashtra,
Through its Registrar,
Money Lender Registrar and
Special Registrar Co-Operatives
Society, Maharashtra State, Pune.

2. The Divisional Joint Registrar,
Co-Operative Society, (Money Lender)
Latur, Division : Latur.

3. The District Registrar,
(Money Lender), District
Deputy Registrar, Co-Operative
Society, Beed.

4. Limbaji s/o Vitthal Gayake,
Age; 65 years, Occ; Jewelry Business,
R/o; Dharur, Tq. Dharur, Dist. Beed,
At present; Asra, Jewelars Kaij,
Tq. Kaij, Dist. Beed. **...RESPONDENTS**

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Advocate for the Petitioner : Mr. R.P. Bhumkar
A.G.P. for the Respondent Nos. 1 to 3/State : Mr. K.B. Jadhavar
Advocate for Respondent No. 4 : Mr. A.A. Khande

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CORAM : KISHORE C. SANT, J.

DATE OF RESERVATION : 13.07.2023
DATE OF PRONOUNCEMENT : 11.09.2023

JUDGMENT [PER : KISHORE C. SANT, J.] :

1. Rule. Rule made returnable forthwith, by consent of the parties.

2. This Writ Petition is by the Original Complainant, who had filed a complaint under the Bombay Money Lending (Regulation) Act, (hereinafter referred to as "the Act") against respondent No. 4 alleging that the lands sold by the owner to respondent No. 4 were sold as security for money lending transaction dated 23.09.1986 before the Assistant Registrar, Co-Operative Societies, Beed, under the Money Lender's Act. The first complaint was filed on 25.01.1995, however, no heed was paid to the said and thereafter he also filed another complaint on 20.06.2011. On 21.06.2011 he again filed an application to the Registrar, Co-Operative Societies. The Co-Operative Officer, Kaij has hold an inquiry and submitted report on 20.08.2016 to the Additional Registrar, Co-Operatives. It was reported that the said

transactions of the lands from Survey No. 286 ad-measuring 2A 12 G and in Survey No. 284 ad-measuring 2A 88 G are towards the money lending transactions. The learned Registrar, Co-Operative on receipt of the report, rejected the application/complaint.

3. The petitioner thereafter, filed an appeal bearing Appeal No. 73 of 2016 before the Divisional Joint Registrar, Co-Operative Societies, Latur under Section 18 (4) of the Money Lending Act. An appeal came to be partly allowed. The District Deputy Registrar, Co-Operatives (hereinafter referred to as "DDR") was directed to take fresh decision by remanding the matter by order dated 27.12.2016. On remand the Joint District Registrar of Co-Operative Societies under Money Lending Act again rejected the application of the petitioner mainly on the ground that the application is made after more than 15 years of the transactions and the application is beyond limitation by his judgment and order dated 17.07.2017.

4. The petitioner thereafter again preferred an appeal against said decision bearing Appeal No. 138 of 2017. The learned Divisional Joint Registrar, Co-Operatives partly allowed an appeal and again remanded the matter to the DDR by his order dated 10.04.2018. On second remand, the learned DDR allowed an

appeal holding that the sale-deed bearing No. 2675 of 1986 dated 23.09.1986 in respect of land Survey No. 284 ad-measuring 2A 28G and another sale deed bearing No. 2665 of 1986, dated 23.09.1986, ad-measuring 12A 12G are sold towards money lending transactions as security and cancelled both the sale deeds. It was directed to put the petitioner in possession. This application came to be challenged before the Divisional Joint Registrar, Latur by respondent No. 4 by filing an appeal bearing No. 142 of 2018. The the Divisional Joint Registrar, Latur by his judgment and order 22.05.2019, confirmed the order dated 31.10.2018 passed by the D.D.R., by rejecting an appeal of respondent No. 4.

5. Respondent No. 4 thereafter, filed a Revision Petition under Section 9 of the Act before the Registrar General of the State of Maharashtra, Pune. The Registrar General allowed the Revision Petition and set aside the judgments passed by both the authorities mainly on the ground that an application was beyond the limitation and secondly that in Civil Court the document of sale deed is held to be valid in civil proceedings wherein a specific issue was framed as to whether these sale transactions were towards security. The petitioner is therefore, before this Court challenging the judgment

and order passed by the Revisional Authority.

6. The learned Advocate for the petitioner submits that there is sufficient evidence and material on record to show that the alleged sale transactions are money lending transactions and are executed towards security for an amount of loan given by respondent No. 4. The finding of the first authority is based upon a report submitted by the Co-Operative Officer. The report clearly shows that respondent No. 4 is involved in total seven transactions, wherein, he has purchased the lands either in his own name or in the name of his son, wife or near relatives. As the respondent No. 4 has entered into total 7 transactions from time to time, he cannot be said to be an agriculturists. The transaction certainly shows that Respondent No. 4 is doing business of money lending. Though, initially the DDR had held that the complaint is beyond the limitation and that the said transactions have been held to be valid. However, subsequently on second remand has rightly held that the transactions are money lending transactions and rightly passed an order and the same was confirmed by the Divisional Joint Registrar. He submits that the learned Revisional Authority has committed illegality by allowing the Revision Petition.

7. The learned Advocate for the Petitioner relied upon the following judgments :

> (a) **2006 (5) Mh.L.J. 15** – Ramesh Dhulatrao Gawhale and Ors. Vs. State of Maharashtra and Others.
>
> (b) **2019 (6) Mh.L.J. 500** - Nagnath Baburao Kokate Vs. State of Maharashtra and Others.

8. The learned Advocate for respondent No. 4 submits that the sale deeds were subject matter of challenge before the Civil Court in RCS No. 06 of 2011. The Civil Court on recording evidence and after full-flagged trial has held that the sale transactions are not towards the money lending transactions, but are of the sale transactions. He submits that the Revisional Authority has rightly held that the complaint was filed after more than 5 years. Though he submits on both these counts that the Revisional Authority has rightly held in favour of the petitioner and prays for rejection of the petition.

9. In the case of **Ramesh** (supra) this Court finds that the ratio of this case is not applicable in the present facts of the case. In the case of **Nagnath** (supra) it is held that there was clear finding

recorded that the alleged transaction was for the security of the loan advanced. In that case the possession was directed to be handed over, in that view of the matter the petition filed by the money lender was dismissed. This Court finds that even this case law is also not applicable to the case in hand.

10. The learned Advocate for respondent No 4 has relied upon the judgment reported in **2023 (2) Mh.L.J. 555** – Bhanudas @ Suryabhan s/o Ramchandra Shinde vs. State of Maharashtra and others, wherein, this Court has held that an authority exercising the powers under the provisions of the Money Lending Act cannot pass an order contrary to the decree passed by the Civil Court. He then submits that in this case also the finding recorded by the Civil Court has rightly been considered by the Revisional Authority. The Civil Court has already held that the said transactions in the present petition are of not money lending transactions and has rightly set aside the orders passed by the DDR and the Divisional Joint Registrar, Co-Operative. He submits that no interference is, therefore, required to the findings of the Court.

11. This Court finds that the DDR while passing an order has considered that the sale deed is of the year 1986. The First

complaint was filed in 1995. The notices were issued, however, no action was taken in furtherance of notices and that the complaint was filed within 15 years. Though the complaint is filed under the Act, 2014, the Act is repealed the Act namely the Bombay Money Lending Act, 1946, but on the date of the first complaint the same was in existence. The action taken under the repealed Act is null and therefore, applications filed under the earlier Act and on considering that the application was filed in 1995 though under the Bombay Money Lending Act a complaint can be said to be within the limitation. So far as the Civil litigation is concerned, the said authority did not consider the judgment delivered by the Civil Court.

12. In an appeal the Divisional Joint Registrar has confirmed the findings of the DDR, on considering the evidence that was brought before the authority and refused to interfere with the judgment passed by the DDR. In Revision Petition the Revisional Authority has considered all the facts and concluded that the lands were sold in 1986. It is considered that the complaint dated 11.01.1995 was filed when the earlier Act was in forced. It is held that the said application cannot be considered under the Act of

2014 by relying upon the judgment in Writ Petition Nos. 4176 of 2015 and 5178 of 2015 of this Court, at Nagpur Bench. The judgment of the authorities are against the findings recorded by the Civil Court. The findings of the Civil Court are binding on other authorities. On the date of sale deed itself the respondents are put in possession and the respondents are in possession of the land since then. There is no mention in the sale deed that the sale deed is towards security for the transaction of money lending.

13. This Court has carefully gone through the submissions and the orders passed by both the authorities. This Court finds that admittedly the alleged sale deeds are of the year 1986. Though this Court is not much impressed by the reasoning given by the Revisional authority that since earlier applications were filed under the both the Acts, same cannot be considered for the purpose of looking to the aspect of the limitation. However, it is also clear that though the applications were filed, no action was taken on the basis of these applications and thus there is no need to consider as to whether the said can be considered for the purpose of counting the limitation. As it is an actions which are taken under the repealed Act, which are protected on coming into force of the new Act.

However, this Court finds that in the present case this question would be academic one, in view of the fact that this Court on merits has already held that no interference is required in the findings recorded by the Revisional Authority.

14. This Court finds the facts which are clearly established or are admitted are that in the year 1986 the alleged sale deeds were executed. The possession is also handed over in favour of the respondents at the time of the sale deeds itself. The parties have approached the Civil Court in RCS No.06 of 2011. The Civil Court has clearly recorded the findings that the alleged transaction does not appear to be the transactions of money lending transactions and it is an out and out sale transactions. It is also recorded that there is no condition of re-conveyance in the sale deeds. The findings of the Civil Court has attained finality. In view of the judgment in the case of **Bhanudas** (supra) it is clear that the judgment of the Civil Court is binding on the parties and no contrary finding can be recorded by any authorities under the Money Lending Act. This Court in the case of Bhanudas (supra) considered the various judgments of the Hon'ble Apex Court. Articles 226 and 227 of the Constitution of India have also been

considered. In this case since the finding of fact is recorded on the basis of material on record, this Court finds that there is no perversity in the findings so as to invoke the jurisdiction under Article 226 and 227 of the Constitution of India is shown.

15. This Court finds that no case is made out to call for interference at the hands of this Court. The Writ Petition, stands dismissed. Rule is discharged.

16. At this stage, learned Advocate for the petitioner seeks continuation of interim relief for a period of four (04) weeks from today. The learned Advocate for the respondents opposes the same. Considering that the interim relief is running since 2019, the same is continued for a period of four (04) weeks from today.

(KISHORE C. SANT)
JUDGE

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