

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2299 OF 2022

Shrikant Paranna Pujari

...Petitioner

Versus

Shri. Virshaiv Nagari Bigarsheti Sahakari

Patasanstha Marya. & Ors.

...Respondents

...

Mr. P. B. Shah a/w Mr. Amit A. Kanade, for Petitioner.

Mr. Suhas S. Inamdar, for Respondents.

...

CORAM : SANDEEP V. MARNE, J.

DATE : OCTOBER 12, 2023.

P.C.:

1. The challenge in this Petition is to the Judgment and order dated 2 December 2021 passed by the Maharashtra State Co-operative Appellate Court dismissing Petitioner's Appeal No.134 of 2019. The Appeal was filed by the Petitioner challenging the Judgment and order dated 27 August 2019 passed by the Cooperative Court, Solapur in Dispute No.373 of 2017 passed by the Respondent.

2. I have heard Mr. Shah, the learned counsel appearing for Petitioner and Mr. Inamdar, the learned counsel appearing for Respondent No.1-Society.

3. Mr. Shah would submit that the order passed by the Cooperative Appellate Court suffers from error in the light of non grant of any protection to the Petitioner under Section 44A of the Maharashtra Cooperative Societies Act, 1960. Inviting my attention to the provisions of Section 44A, Mr. Shah would contend that any loan obtained for agricultural purpose, the limit of Rs.3,000/- or the extended limit of Rs.10,000/- would not be applicable. That the Cooperative Appellate Court has erroneously held that the provisions of Section 44A are not applicable as the loan disbursed to the Petitioner was of Rs.41,000/-. I do agree with the submission canvassed by Mr. Shah that for loan obtained for agricultural purpose, the limit laid down under provisions of Section 44A may not be applicable. However, in the present case, there appears to be serious dispute as to whether the loan was indeed availed for agricultural purposes. Mr. Inamdar has drawn my attention to the loan application form under which the loan was sought to be obtained for 'purchase of machinery'. Mr. Shah has submitted that the Petitioner has purchased the machinery "New Pushpak Rotavator" which can be used only for agricultural purposes. Admittedly, there was no averment in the written statement that the loan was availed for agricultural purposes or that the said machine "New Pushpak Rotavator" is used exclusively for agricultural purposes. In fact, the

defence of application of Section 44A has been raised for the first time before the Cooperative Appellate Court. Petitioner ought to have led evidence that the loan was utilised for purchase of machinery which can be used for agricultural purpose and that he deployed such purchased machinery for agricultural purpose. In absence of there being any evidence to the effect that the exact nature of machinery purchased and its use for agricultural purpose, it is difficult to hold that the loan has been availed strictly for agricultural purpose. In that view of the matter, Petitioner cannot be extended the benefit of provisions of Section 44A of the Act of 1960.

4. The next contention of Mr. Shah is that the dispute filed by Respondent-Society was barred by law of limitation. He would submit that the loan was disbursed in the year 2001, whereas the recovery proceedings were initiated directly in the year 2017. Mr. Inamdar would however rely upon the provisions of Section 92(1)(a) of Act of 1960 under which the period of limitation in respect of a dispute for recovery of any sum instituted by the society is to be computed from the date on which the member dies or ceases to be the member of Society. Here again the issue of limitation was never raised before the trial Court and has been vaguely raised only in the Memo of Appeal by pleading that the issue of limitation was not properly considered by

the Cooperative Court. Where the issue was not raised at all before the Cooperative Court, there was no question of Cooperative Appellate Court considering or deciding the same. Even otherwise considering the provisions of Section 92(1)(a) of the Act, 1960, the dispute raised by Respondent-Society cannot be said to be barred by limitation. I am therefore of the view that Petitioner has failed to make out any case for interference by this Court in exercise of jurisdiction under Article 227 of the Constitution of India. Writ Petition, being devoid of merits, is rejected without any order as to costs.

(SANDEEP V. MARNE, J.)