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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12121 OF 2022

Subhash Balwant Hirve	… Petitioner
V/s.	
Pramita Venchures Through Partners & Ors	… Respondents

Mr. Rajaram V. Bansode, for Petitioner.

Mr. Ajit J. Kenjale a/w Mr. Sai R. Kadam & Mr. Azharuddin Khan & Ms. Prachi Deokar, Ms. Pratibha D. Shelke, for Respondent Nos.3 & 4.

Ms. Ujwala D. Sawant, for Respondent No.1 & 2.

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 8, 2023

P.C.:

1. The challenge in this writ petition is to the order passed by the Appellate Court confirming the order of rejection of the temporary injunction application filed by the petitioner (original plaintiff).

2. Initially, the petitioner filed a suit for specific performance based on an agreement to sell dated 24 November 2016. In the said suit, the petitioner applied for a temporary injunction. The Trial Court, by order dated 12 March 2019, rejected a temporary injunction application restraining defendants from creating third-party rights and restraining defendants from disturbing the plaintiff's possession of the suit property.

3. The Trial Court rejected the application mainly on the ground that the document of an agreement to sell, dated 10 November 2016, is unregistered as required under Section 53A of the Transfer of Property Act, 1882.

4. The petitioner, aggrieved by the said order, filed Miscellaneous Civil Appeal No.65 of 2019.

5. The Appellate Court, by order dated 16 April 2019, directed the petitioner to add the respondent/cooperative bank as a party defendant.

6. Accordingly, the petitioner amended the suit and incorporated a prayer that the certificate under Section 101 of the Maharashtra Cooperative Societies Act, 1960, issued in favour of the bank be declared null and void, and such certificate is not binding on the plaintiff. A consequential injunction against defendant No.1 restraining defendant No.1 from recovering the amount based on the certificate issued under Section 101 of the Maharashtra Cooperative Societies Act, 1960. Further, the injunction is also sought to restrain the bank from taking coercive steps against the plaintiff.

7. The Appellate Court, by the impugned order, dismissed the appeal on the ground that the suit property is already attached by the bank; in the absence of notice under Section 164 of the Maharashtra Cooperative Societies Act, 1960, a civil suit challenging the order passed by the authorities under the Maharashtra Cooperative Societies Act, 1960, is not maintainable as the jurisdiction of the Civil Court to entertain the challenge to any order passed by the authorities under the Maharashtra Cooperative Societies Act, 1960, is barred under Section 163(3) of the Maharashtra Cooperative Societies Act, 1960.

8. The petitioner, therefore, filed the present writ petition. According to him, the amendment to incorporate a cooperative bank as a party to the suit is in compliance with the direction of the Appellate Court, and therefore, the Appellate Court was not justified in dismissing the temporary injunction application for want of jurisdiction. According to him, the mortgage allowed by the bank executed in 2014 was only for a period of one year. The agreement in question is after the period of one year. According to him, unless the charge of the property is shown in the revenue record, the bank cannot claim any right over the property. According to him, the amount of consideration paid to the defendants was shown in the income tax returns, and, therefore, the lower Appellate Court was not justified in dismissing the appeal.

9. I have considered the submissions made on behalf of the petitioner. In my opinion, based on documents on record and the submissions made before the Court, the issue that arises for consideration is as follows:

> Whether a civil suit challenging the order passed by the Registrar under Section 101 of the Maharashtra Cooperative Societies Act, 1960, is maintainable ?

10. Before considering the issue involved, it is necessary to set out the relevant provisions of the Act, which are as follows:

"**101. Recovery of certain sums and arrears due to certain societies as arrears of land revenue**

(1) ……………………………..

(2) ……………………………..

(3) <u>A certificate granted by the Registrar under sub-section (1) or (2) shall be final and conclusive proof of the arrears stated to be due therein, and the same shall be recoverable according to the law for the time being in force as arrears of land revenue. A revision shall lie against such order or grant of certificate, in the manner laid down under section 154, and such certificate shall not be liable to be questioned in any Court.</u>

(4) ……………………………

163. Bar of jurisdiction of Courts

(1) Save as expressly provided in this Act, no Civil or Revenue Court shall have any Jurisdiction in respect of —

(a) …………………………..;

(b) …………………………..;

(c) ……………………………;

(2) …………………………………..

(3) <u>All orders, decisions or awards passed in accordance with this Act or the rules, shall, subject to the provisions of appeal or revision in this Act be final; and no such order, decision or award shall be liable to be challenged, set aside, modified, revised or declared void in any Court upon the merits, or upon any other ground whatsoever</u>.

164. Notice necessary in suits

No suit shall be instituted against a society, or any of officers, in respect of any act touching the business of the society, until the expiration of two months next after notice in writing has been delivered to the Registrar or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims, and the plaint shall contain a statement that such notice has been so delivered or left"

107. Procedure for attachment and sale of property under Section 156.

11) In the attachment and sale or sale without attachment of immovable property, the following rules shall be observed :-

(a) ……………………………..

(b) ……………………………………….…

(c) If the defaulter fails to pay the amount specified in the demand notice within the time allowed, the Sale Officer shall proceed to attach and sell, or sell without attachment, as the case may be, the immovable property noted in the application for execution in the following manner.

(d) ………………....

(e) ……………………

(f) …………………..,

(g) ……………………

(h) ……………………

(i) …………………..

(j) ……………………..

(k) ……………………...

(19) (c) Where a claim or an objection is preferred to the party against whom an order is made may institute a suit to establish the right which he claims to the property in dispute, but, subject to the result of such suit, if any, the order shall be final.

11. On consideration of the scheme of the Maharashtra Cooperative Societies Act, 1960, it is clear that the cooperative societies doing banking business in order to recover loans have two remedies available under the Act: (i) dispute under Section 91 of the Maharashtra Cooperative Societies Act, 1960 and (ii) Section 101 of the Maharashtra Cooperative Societies Act 1960. Normally, the remedy under Section 101 of the Maharashtra Cooperative Societies Act, 1960 is resorted to when it does not involve complicated questions of law and fact. Rule 77 of the Maharashtra Cooperative Societies Rules, 1961 prescribes the manner of adjudication of proceedings under Section 101 of the Cooperative Maharashtra Cooperative Societies Act, 1960. Sub-section 3 of Section 101 confers finality to the certificate granted by the Registrar under Sub-section (1) of Section 101. The only mode available in law to challenge a certificate under Section 101(1) is by way of revision under Section 154 of the MCS Act. Such certificate shall not be liable to be questioned in any other Court, including Cooperative Court.

12. The Apex Court, in the case of **Dhulabhai ETC Vs. State of Madhya Pradesh and Anr.** reported AIR 1969 SC 78, has laid down parameters for the entertainment of suit by the Civil Court in the circumstances mentioned in paragraph 35 of the said judgment, which are as follows:

> "35. Neither of the two cases of *Firm of Illuri Subayya or Kamla Mills* can be said to run counter to the series of cases earlier notices. The result of this inquiry into the diverse

views expressed in this Court may be stated as follows:

(1) Where the statute gives a finality to the orders of the special Tribunals, the civil court's jurisdiction must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory Tribunal has not acted in conformity with the fundamental principles of judicial procedure.

(2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court.

Where there is no express exclusion, the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary, and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the Tribunals so constituted, and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not.

(3) Challenge to the provisions of the particular Act as ultra vires cannot be brought before tribunals constituted under that Act. Even the High Court cannot go into that question on a revision or reference from the decision of the Tribunals.

(4) When a provision is already declared unconstitutional or the constitutionality of any provision is to be challenged, a suit is open. A writ of certiorari may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act, but it is not a compulsory remedy to

replace a suit.

(5) Where the particular Act contains no machinery for a refund of tax collected in excess of constitutional limits or illegality collected, a suit lies.

(6) Question of the correctness of the assessment apart from its constitutionality are for the decision of the authorities and a civil suit does not lie if the orders of the authorities are declared to be final or there is an express prohibition in the the particular Act. In either case, the scheme of the particular Act must be examined because it is a relevant enquiry.

(7) An exclusion of the jurisdiction of the civil court is not readily to be inferred unless the conditions above set down apply."

13. For the purpose of adjudication of the issue involved, parameters 1 and 2 are relevant. Clause 1 of the said parameter specifically holds that whenever a statute gives finality to the order of a special Tribunal, the Civil Court's jurisdiction to entertain a challenge to such order must be held to be excluded. However, it does not exclude the jurisdiction of the civil court where provisions of a particular Act have not been complied with by the statutory Tribunal, which has not acted in fundamental principles of judicial procedure.

14. On perusal of the scheme of MCS Act, the right created in favour of a creditor to get their dues adjudicated is conferred under Section 101 of the Cooperative Societies Act, 1960. There is express bar contained under section 163(3) of MCS Act which expressly excludes jurisdiction of civil court from entertaining challenge to the orders passed by authorities under the MCS Act. One more reason which impliedly takes away jurisdiction of civil court is section 101(3) which attaches finalilty to the order of registrar under sub section (1) of section 101. Moreover remedy in the form of revision under section 154 of MCS Act is also provided to raise challenge to the order passed under Section 101. Therefore, the Civil Court has no jurisdiction to entertain a challenge to the orders passed by the Registrar under 101 of the Co-operative Societies Act, 1960 or by Special Recovery Officer under Rule 107 of the Rules.

15. Petitioner has not disputed that the Special Recovery Officer attached the property in question in the exercise of power under Rule 107(11) of the Maharashtra Cooperative Societies Rules, 1961. The person aggrieved by such attachment is provided remedy under the Act by raising an objection subject to 14 of rule 107 of the Maharashtra Cooperative Societies Rules, 1961. Moreover, after the auction, within 30 days, the aggrieved person can deposit the certificate amount along with the cost and interest with the Special Recovery Officer. If a special recovery officer decides the objection raised by an aggrieved person, the remedy available to such person is provided either by way of revision application under Section 154 or under Rule 107(19)(c) of the Maharashtra Cooperative Societies Rule, 1961 by way of a civil suit. However, in the absence of objection being raised before the Special Recovery Officer, a person claiming right over the mortgaged property cannot raise such dispute before the Civil Court.

16. Furthermore, considering the nature of rights claimed by the bank which is made subject matter of suit, the dispute involved in the suit touches the business of the respondent/co-operative bank. Therefore, under Section 164 of Maharashtra Cooperatives Act,1960, issuance of notice was mandatory; however, in the facts of the case, since the Appellate Court directed the petitioner to amend the plaint to make cooperative society party to the suit, hence issuance of such notice is not necessary.

17. In so far as the claim of the petitioner based on the unregistered, unstamped document is concerned, in my opinion, considering the following factors, the document is highly suspicious: (i) the defendants no. 1 and 2 executed a registered mortgage deed in favour of petitioner in 2014; (ii)In the light of the fact that defendant executed mortgage deed, the plaintiff alleges execution of unregistered, unstamped agreement in his favour where entire consideration of Rs.22,10,000/- is paid by cash. No corresponding material indicates the existence of such an agreement executed in 2016. Therefore, in my opinion, such an agreement is highly suspicious in the circumstances referred to above.

18. In my opinion, once the property was mortgaged to the cooperative bank towards the security of the loan, unless the aggrieved person adopts the remedies provided under Cooperative Societies Act,1960 and Rules, a civil suit is not maintainable seeking relief against the cooperative bank in relation to recovery certificate and consequential auction under rule 107 of the rules. Therefore, in my opinion, the lower Appellate Court was justified in dismissing the appeal.

19. The writ petition is, therefore, dismissed. No costs.

20. At this stage, the learned Advocate for the petitioner seeks extension of the status quo granted by this Court. Considering the reasons assigned, no case for an extension has been made. Therefore, the oral request is rejected.

(AMIT BORKAR, J.)