Rajeshri Aher

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7341 OF 2019

DMK Jaoli Sahakari Bank Ltd. and Anr. …Petitioners
Versus
The Registrar,
The Consumer Dispute Redressal Forum,
Mumbai Suburban District Bandra and Anr. …Respondents

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Mr.Pradeep Gole a/w. Mr.Suraj Shejwal, Advocate for Petitioners.
Mr.A.P. Vanarse, AGP for Respondent No.1–State.

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CORAM : K. R. SHRIRAM &
RAJESH S. PATIL, JJ.

DATED : 1st MARCH 2023

P.C.:

1 Petitioners are seeking a writ of mandamus and/or a writ, order or direction in the nature of mandamus directing Respondent No.1 to execute and comply with the remittance order dated 21st November 2016, passed by the Special Recovery Officer who is Petitioner No.2.

2 Petitioner No.1 is a Co-operative Bank registered under the provisions of Maharashtra Co-operative Societies Act, 1960 (the said Act). Petitioner No.2 is Special Recovery Officer appointed under the said Act. Respondent No.2 had approached Petitioner No.1 for cash credit loan facility, which was granted. The facility amounting to

Rs.30,00,000/-, was renewed for the period 16th December 2002 to 15th December 2003. Respondent No.2 executed all necessary loan documents. Respondent No.2 also executed mortgaged deed dated 17th October 2002 in respect of Flat No.401, Laxmi Narayan Co-operative Housing Society Limited, Natwarnagar No.1, Jogeshwari (East), Mumbai–400 060, and an Industrial Gala No.102 Shakti Industrial Estate, Daman Road, Vapi, Daman, as security for repayment of the said loan. As per the loan agreement, Respondent No.2 also insured the mortgaged property with New India Assurance Company Limited, for the period 14th December 2001 to 13th December 2002. On 5th November 2002, a fire took place at the Industrial Gala. The claim of Respondent No.2 was rejected by the Insurance Company. Subsequently, Respondent No.2 stopped repaying the loan and Petitioners took steps to recover under the provisions of the said Act read with Maharashtra Co-operative Societies Rule, 1961.

3 The Special Officer passed necessary order of attachment.

4 In the meanwhile, Respondent No.2 had filed a complaint with the District Consumer Dispute Rederssal Forum, Mumbai and the Consumer Court by an order and judgment dated 29th January 2014, directed New India Assurance Company Limited and Petitioner No.1 to pay jointly a sum of Rs.14,00,000/- with 12% p.a. interest. It is not

clear why Petitioner No.1 was involved. Pursuant thereto, the New India Assurance Company deposited the sum of Rs.30,28,371/- with the Consumer Court.

5 Respondent No.2 never challenged the recovery certificate issued by Petitioner No.2, and as per the recovery certificate issued, Respondent No.2 is liable to pay a sum of Rs.85,76,000/- to Petitioner No.1 as on 31st December 2018.

6 Petitioners forwarded the recovery certificate and remittance order dated 21st November 2016 to Respondent No.1, the Consumer Dispute Redressal Forum, but the amount was not paid. Hence, this Petition.

7 Respondent No.1 has filed an affidavit–in–reply through one Vinayak Ankat Tayade affirmed on 26th March 2021. Paragraphs 6 and 7 are relevant. In the affidavit–in–reply, Respondent No.1 has admitted that Petitioner No.1 has filed an Application for recovery certificate under Section 101 of the said Act, on 24th February 2006 a recovery certificate has been issued against Respondent No.2 and others for a sum of Rs.33,97,394/- and further interest at the rate of 15.5% p.a. on the principal amount and that Petitioner No.2 by a letter dated 21st June 2016 has requested Respondent No.1 for remittance of the

amount in accordance with recovery certificate dated 21st June 2016. Respondent No.1, however, proceeded to state that Respondent No.2 in a pending Execution Application No.72 of 2014 under Section 27 of the Consumer Protection Act, 1986 has preferred an Application on 20th August 2018 for getting an amount of Rs.32,00,000/-, which was disposed on 29th November 2018, with directions to present an application in the office of Respondent No.1. On 30th November 2018 Respondent No.2 has preferred such an application for releasing the amount deposited in the account of Respondent No.1 and that application is still pending. We are not aware of the status of the said Application as on date because Mr.Vanarse states has no instructions from Respondent No.1.

8 We do not think it is necessary to go into the Application that Respondent No.2 has preferred before Respondent No.1, because the fact is there is a recovery certificate against Respondent No.2, and Petitioners have filed the recovery certificate together with remittance order with Respondent No.1. Respondent No.2 had appeared before this Court on 30th March 2021. It appears he appeared for the first time on that day because in the earlier orders, there is no appearance of Respondent No.2 mentioned. Respondent No.2 sought time to file reply and one week time was granted. Petitioners were to file a rejoinder

within a week thereafter and the Petition was directed to be listed on 20th April 2021. On 13th September 2021, a noting in the farad sheet shows that Respondent No.2 has not filed any reply. On 14th September 2021, Respondent No.2 did not remain present and Petitioners were directed to give notice. Mr. Gole states notice has been given.

9 Till date, no affidavit–in–reply has been filed by Respondent No.2. As noted earlier, there is a recovery certificate in favour of Petitioners against Respondent No.2. If the amount lying with Respondent No.1 is paid over to Respondent No.2, the chance of Petitioners recovering any amount from Respondent No.2 would be nil. Since Respondent No.2 also has not filed any affidavit opposing the Petition, in our view, the Petition has to be allowed. Petition allowed in terms of prayer Clause (a) and it reads as under:

> *"(a) This Hon'ble Court may be please to issue writ of mandamus and/or any appropriate writ or directions in the nature of mandamus thereby directing the Respondent No.1 to execute and comply with the remittance order dated 21-11-2016 passed by the Special Recovery Officer;"*

10 Respondent No.1 is directed to release the amount lying with Respondent No.1 together with accumulated interest, if any, within two weeks on receiving an Application from Petitioners.

11 All to act on authenticated copy of this order though we direct Registry to issue certified copy expeditiously.

12 Petition disposed accordingly.

(RAJESH S. PATIL, J.) **(K. R. SHRIRAM, J.)**