



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8440 of 2022

Monica Sagar Kate & Anr	}	
Age-32 years Occ. House Wife	}	
 Sagar Mahadeo Kate	}	
Age-36 years Occ. Business	}	
Both R/o. Row House No.19, Green Park	}	
Baramati, Dist. Pune	}	..Petitioners

Versus

1.	The Joint Registrar	}	
	Co-operative Societies,	}	
	Pune Division, Pune	}	
2.	The Assistant Registrar	}	
	Co-operative Societies,	}	
	Pune Division, Pune	}	
3.	Chatrapati Sambhaji Maharaj	}	
	Sahkari Patsanstha Maryadit,	}	
	Sasaba, Baramati, Tal. Baramati	}	
	Dist. Pune.	}	
4.	Kantilal Pandurang Bhosale	}	
	Age-58 years Occ. N.A.	}	
	R/o Dorlewai, Tal. Baramati	}	
	Dist. Pune	}	
5.	Hemant Suresh Dudhal	}	
	Age-32 years Occ: N.A.	}	
	R/o. Kale pride, 2nd Floor,	}	
	Shriram Chowk, Kasaba,	}	
	Tal. Baramati Dist. Pune	}	
6.	State of Maharashtra	}	
	Served through Government Pleader	}	..Respondents

**WITH
WRIT PETITION NO.2755 OF 2022**

Sangita Abhijit Mahadik & Ors	..Petitioners
Versus	
The Joint Registrar & Others	..Respondents

**WITH
WRIT PETITION NO.8431 OF 2022**

Swati Sarjerao Phule Alias	
Swati Yogesh Dubhal & Anr	..Petitioners
Versus	
The Joint Registrar & Others	..Respondents

**WITH
WRIT PETITION NO.8432 of 2022**

Sagar Mahadeo Kate	..Petitioner
Versus	
The Joint Registrar & Others	..Respondents

**WITH
WRIT PETITION NO.8430 of 2022**

Anju Shamsundar Dhanwant & Anr	..Petitioners
Versus	
The Joint Registrar & Others	..Respondents

**WITH
WRIT PETITION NO. 8433 of 2022**

Dhiraj Dilip Takale & Anr	..Petitioners
Versus	
The Joint Registrar & Others	..Respondents

**WITH
WRIT PETITION NO.8434 of 2022**

Hemant Suresh Dudhal & Anr	..Petitioners
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Versus
The Joint Registrar & Others ..Respondents

**WITH
WRIT PETITION NO.8435 of 2022**

Shamsundar J Dhanwani & Anr ..Petitioners
Versus
The Joint Registrar & Others ..Respondents

**WITH
WRIT PETITION NO.2758 of 2022**

Sagar Mahadeo Kate ..Petitioner
Versus
The Joint Registrar & Others ..Respondents

**WITH
WRIT PETITION NO.8436 of 2022**

Abhijit Dayaram Mahadik & Anr ..Petitioners
Versus
The Joint Registrar & Others ..Respondents

**WITH
WRIT PETITION NO.8437 of 2022**

Priya Sawata Mohalikar @
Priya Hemant Dudhal & Anr ..Petitioners
Versus
The Joint Registrar & Others ..Respondents

**WITH
WRIT PETITION NO.8438 of 2022**

Kiran Shivdas Ghule & Anr ..Petitioners
Versus
The Joint Registrar & Others ..Respondents

**WITH
WRIT PETITION NO.8439 of 2022**

Ranjit Dayaram Mahadik & Anr ..Petitioners
Versus
The Joint Registrar & Others ..Respondents

**WITH
WRIT PETITION NO.2757 of 2022**

Yogesh Suresh Dudhal & Anr	..Petitioners
Versus	
The Joint Registrar & Others	..Respondents

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Mr. Tushar Sonawane a/w Ms. Pooja Satpute Advocates
for the Petitioners.

Mr. S.D. Rayrikar, AGP for Respondent Nos.1 & 2.

Ms. G.S. Godbole, Senior Advocate i/by Ms.Manjiri
Parasnis, Advocate for the Respondent No.3.

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CORAM : SANDEEP V. MARNE, J.

RESERVED ON : 19 OCTOBER 2023

PRONOUNCED ON : 25 OCTOBER 2023

JUDGMENT

1. These Petitions are filed challenging orders dated 31st December 2021 passed by the Divisional Joint Registrar allowing Revision Applications filed by Respondent Credit Society and remanding the proceedings before the Assistant Registrar for a fresh decision. The Assistant Registrar had rejected proceedings filed by Respondent-Credit Society for issuance of recovery certificate under Section 101 of the Maharashtra Co-operative Societies Act 1960 (**Act of 1960**).

2. Petitioners are borrowers who have availed credit facilities from Respondent No.3-Credit Society. They claim that the entire amount due under said Credit facilities have been repaid by them with interest, on account of which the Credit Society issued various 'No Dues Certificates' to Petitioners. It is further contended that after issuance of 'No Dues Certificates', the Respondent-Credit Society executed Release Deeds in their favour. Facts in all the Petitions are similar. For brevity, facts in Writ Petition No.8440/2022 are narrated as follows.

3. Chatrapati Sambhaji Maharaj Sahakari Patsanstha, Baramati (Respondent No.3) is a Credit Society registered under the provisions of the Act of 1960. Petitioners are members of the Respondent-Society which granted and disbursed loan of Rs. 14,000,00/- to them for business purposes. In pursuance of the loan transaction, Petitioners executed promissory note, acceptance letters, consent letter of sureties, loan agreement, etc. in favour of the Respondent-Society. Petitioners also offered agricultural property admeasuring 10 Acre out of Survey No.45/5/B at Baramati as well as residential Unit No.3 in the building 'Kate Pride' at Baramati, District Pune towards security for the loan.

Petitioners also executed Mortgage Deed in favour of the Respondent-Society on 28th August 2015, which came to be registered in the office of Sub-Registrar of Assurances, Baramati.

4. Petitioners claim that they have repaid the entire amount availed by them towards loan along with interest to the Respondent-Society. They contend that the Respondent-Society accordingly issued 'No Dues Certificate' on 24th October 2016 certifying that no amount was due or payable by the Petitioners in the loan account. Petitioners also claim that on account of repayment of the entire loan amount, Respondent-Society executed Release Deed dated 11th July 2016 in favour of the Petitioners releasing their charge over the two mortgaged properties.

5. The Respondent-Society later claimed that the Petitioners had neither repaid the loan amount, nor any 'No Dues Certificate' was issued by the Society. The Respondent-Society also denied having executed any Release Deed in favour of Petitioners. The Respondent-Society claims that its Branch Manager unauthorizedly issued 'No Dues Certificate' and executed Release Deed without any decision to that effect

being taken in the managing committee meeting of the Society.

6. The Respondent-Society has accordingly filed Special Civil Suit No.51/2019 seeking a declaration that various Release Deeds unauthorizedly executed by the Branch Manager are *ab initio* void and not binding on the Respondent-Society. It has also sought a declaration that it continues to have the charge over mortgaged properties in pursuance of various Mortgage Deeds executed in his favour. Some of the subsequent Sale Deeds executed by the borrowers/guarantors/mortgagor are also sought to be cancelled in the said suit. The Respondent-Society sought temporary injunction against the Defendants in Special Civil Suit No.51/2019 to restrain them from creating third party rights in the suit properties. By order dated 30th April 2019, the Trial Court proceeded to reject the Application at Exhibit-5 for grant of temporary injunction. The Respondent-Society instituted Appeal From Order No. 656 of 2019 challenging the order dated 30th April 2019. In that Appeal from Order, this Court passed Interim Order of *status-quo*. By order passed on 19th October 2023, this Court has disposed of Appeal from

Order No.653 of 2019 continuing the order of *status-quo* till decision of the suit.

7. Parallely, Respondent-Society initiated proceedings for issuance of recovery certificate under Section 101 of the Act of 1960 against borrowers and guarantors. So far as present petitions are concerned, Application No.101/95/537/2019 was filed before the Assistant Registrar, Co-operative Societies (Parseva), Baramati. The Application was resisted by Petitioners *inter alia* contending that the entire amount of loan has been repaid by them. They produced a receipt dated 7th July 2016 to demonstrate repayment of loan. They also relied upon Release Deed dated 11th July 2016 and contended that the bank never issued any notice for recovery of any outstanding amount towards loan since the year 2016.

8. The Assistant Registrar proceeded to pass order dated 22nd November 2019 holding that since the Respondent-bank had issued 'No Dues Certificate' on 11th July 2016 and executed Release Deed, no amount was due or payable from Petitioners. It was further held that the Assistant Registrar did not have jurisdiction to rule on genuineness of 'No Dues

Certificate', Release Deed, etc. It was held that evidence in the form of examination-in-chief and cross-examination cannot be recorded before the Assistant Registrar. By recording these reasons, the Assistant Registrar proceeded to reject the recovery application filed by the Respondent-Society.

9. Respondent-Society filed Revision Applications before the Divisional Joint Registrar, Co-operative Societies, Pune challenging the decisions of Assistant Registrar. The Revision Applications were opposed by Petitioners by filing their reply.

10. The Divisional Joint Registrar proceeded to partly allow the Revision Applications by order dated 31st December 2021 remanding the proceedings before Assistant Registrar for fresh decision. Petitioner are aggrieved by the orders passed by the Divisional Joint Registrar and have accordingly filed the present Petitioners.

11. Mr. Sonawane, the learned counsel appearing for the Petitioners would submit that the Divisional Joint Registrar has erred in setting aside the orders passed by the Assistant Registrar. That, disputed questions relating to genuineness of

'No Dues Certificate' and authority to execute Release Deed on behalf of the Respondent-bank, cannot be decided in recovery proceedings under Section 101 of the Act of 1960. That, Petitioners have valid defence to oppose the proceedings on account of which recovery certificate cannot be issued in a summary manner. That, execution of Release Deed would *prima facie* indicate repayment of the entire loan amount and once *prima facie* case is made out by the Petitioners, Registrar cannot exercise powers under Section 101 of the Act of 1960. That, Respondent-bank has alternate and equally efficacious remedy of filing a Dispute under Section 91 of the Act of 1960 wherein detailed enquiry can be conducted by adducing evidence by both the parties. In support of his contentions, he would rely upon Judgment of Division Bench of this Court in ***Top Ten Vs. State of Maharashtra*** 2012 (1) Mh.L.J. 347. He would submit that the bank has already filed Special Civil Suit No. 51/2019 with regard to the validity of Release Deed executed on behalf of the bank. That, Application for temporary injunction sought by Respondent-bank is already rejected in that suit, thereby demonstrating non-existence of any *prima facie* case in favour of Respondent-bank. That, the finding recorded by the Divisional Joint Registrar as are such that the Assistant Registrar would feel bound to issue to

recovery certificates, ignoring the lawful defences of Petitioners.

12. *Per Contra*, Mr. Godbole, the learned senior advocate appearing for the Respondent Credit-Society would oppose the petitions and support the orders passed by the Divisional Joint Registrar. He would submit that the orders under challenge are merely orders of remand and not orders granting recovery certificate. That, no prejudice is caused to the Petitioners since the proceedings are merely remanded with a view to examine whether the Respondent-Society has made out any case of issuance of recovery certificate. That, all defences can be raised by the Petitioners before the Assistant Registrar.

13. Mr. Godbole would further submit that the 'No dues Certificates' are fake and issued without any authority. That, there is no evidence of repayment of loan. The Release Deeds are also silent on the issue of the repayment. That, though 'No Dues Certificate' in the present case is issued on 24th October 2016, Petitioners have paid installments after issuance of such certificates, thereby demonstrating complete falsity in the same. That, the Bank did not authorise the Branch Manager to execute Release Deeds. That there is no

resolution adopted by the society for closure of loan accounts or for execution of Release Deeds. That, the bank has produced certified extracts of loan accounts demonstrating outstanding amounts from Petitioners. That, Respondent-Society has been defrauded by its Branch Manager in connivance with one Shri. Sagar Kate, who is the main culprit in the entire episode. That the Society has lodged criminal proceedings against the Branch Manager. He would pray for dismissal of the petitions.

14. Rival contentions of parties now fall for my consideration.

15. The issue that arises for consideration in the present petitions is whether proceedings under Section 101 of the Act of 1960 is the correct remedy for recovery of alleged dues of Respondent-Society from Petitioners. Section 101 envisages summary enquiry for issuance of recovery certificate. Petitioners contend that complicated questions and disputed facts are involved in the present case which cannot be determined by the Assistant Registrar while exercising jurisdiction under Section 101 of the Act of 1960. It would

therefore be apposite to reproduce provisions of Section 101, which reads thus:-

“101. Recovery of certain sums and arrears due to certain societies as arrears of land revenue]

(1) Notwithstanding anything contained in sections 91, 93 and 98, on an application made by a resource society undertaking the financing of crop and seasonal finance as defined under the Bombay Agricultural Debtors Relief Act, 1947, [or advancing loans for other agricultural purposes repayable during a period of not less than eighteen months and not more than five years] for the recovery of arrears of any sum advanced by it to any of its members on account of the financing of crop or seasonal finance [or for other agricultural purposes as aforesaid] or by a crop-protection society for the recovery of the arrears of the initial cost or of any contribution for obtaining services required for crop-protection society or for the recovery of the arrears of the initial cost or of any contribution for obtaining services required for crop protection which may be due from its members or other owners of lands included in the proposal (who may have refused to become members) or by a lift irrigation society for the recovery of arrears of any subscription due from its members for obtaining services required for providing water supply to them, [or by a Tulaka or Block level village artisans multipurpose society advancing loans and arranging for cash credit facilities for artisans for the recovery of arrears of its dues,] [or by a co-operative dairy society advancing loans for the recovery of arrears of any, sum advanced by it to any of its members or by an urban co-operative bank for the recovery of arrears of its dues, [or any sum advanced by the District Central Co-operative Bank to its (individual) members or by non-agricultural co-operative credit society for the recovery of the arrears of its dues) or by salary-earners co-operative society for the recovery of arrears of its dues, or by a fisheries co-operative society for the recovery of arrears of its dues,) [or by any such society or class of societies, as the state Government may from time to time, notify in the Official Gazette, for the recovery of any sum advanced to, or any subscription or any other amount due from, the members of the society or class of societies so not notified;] and [on the society concerned furnishing a statement of accounts and any other documents as may be prescribed) in respect of the arrears, the Registrar may, after making the inquiry in such manner as may be prescribed, grant a certificate for the recovery of the amount stated therein to be due as arrears. The application for grant of such certificate shall be made in such form and by following such procedure, accompanied by such fees and documents as may be prescribed.

[Explanation I.— For the purposes of this sub-section, the expression "other agricultural purposes" includes dairy, pisciculture and poultry.]

[Explanation. II— * * *]

(2) *Where the Registrar is satisfied that [the concerned society has failed to take action under the foregoing sub-section in respect of any amount due as arrears,] the Registrar may, of his motion, after making such inquiries as may be prescribed], grant a certificate for the recovery of the amount stated therein to be due as arrears and such a certificate shall be deemed to have been issued as if on an application made by the society concerned.*

(3) *A certificate granted by the Registrar under sub-section (1) or (2) shall be final and a 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].*

(4) *It shall be lawful for the Collector and the Registrar to take precautionary measures authorised by sections 140 to 144 of the Bombay Land Revenue Code, 1879 or any law or provision corresponding thereto for the time being in force, until the arrears due to [the concerned society), together with interest and any incidental charges incurred in the recovery of such arrears, are paid, or security for payment of such arrears is furnished to the satisfaction of the Registrar."*

16. Thus, under Section 101, the Registrar is empowered to make an enquiry and issue recovery certificate on furnishing a statement of accounts and other documents as may be prescribed. The remit of enquiry before the Registrar under Section 101 is thus limited, who is not supposed to determine disputed questions by directing parties to adduce evidence. He has to merely record a satisfaction that the amount demanded is due from a member. Such satisfaction is required to be recorded by the Registrar after taking into consideration the statement of accounts submitted by the Society. Though the words 'any other documents' are also used in sub-Section (1) of Section 101, it does not mean that

the Registrar can act like a Court by appreciating evidence produced by parties in support of their respective claims.

17. Sub-Section (1) of Section 101 begins with a non-obstante clause providing that '*notwithstanding anything contain in Section 91, 93 and 98....*', it would therefore be necessary to reproduce the provisions of Section 91 of the Act of 1960 which reads thus:-

"91. Disputes

(1) Notwithstanding [anything contained] in any other law for the time being in force, any dispute touching the constitution, [elections of the committee or its officers [* *]], conduct of general meetings, management or business of a society shall be referred by any of the parties to the dispute, or by a federal society to which the society is affiliated or by a creditor of the society, [to the co-operative Court] if both the parties thereto are one or other of the following:—*

(a) a society, its committee, any past committee, any past or present officer, any past or present agent, any past or present servant or nominee, heir or legal representative of any deceased officer, deceased agent or deceased servant of the society, or the Liquidator of the society [or the official Assignee of a de-registered society].

(b) a member, past member of a person claiming through a member, past member of a deceased member of society, or a society which is a member of the society [or a person who claims to be a member of the society;]

(c) a person other than a member of the society, with whom the society, has any transactions in respect of which any restrictions or regulations have been imposed, made or prescribed under sections 43, 44 or 45, and any person claiming through such person;

(d) a surety of a member, past member or deceased member, or surety of a person other than a member with whom the society has any transactions in respect of which restrictions have been prescribed under section 45, whether such surety or person is or is not a member of the society;]

(e) any other society, or the Liquidator of such a society [or-de-registered society or the official Assignee of such a de-registered society].

Provided that, an industrial dispute as defined in clause (k) of section 2 of the Industrial Disputes Act, 1947, or rejection of nomination paper at the election to a committee of any society, or refusal of admission to membership by a society to any person

qualified therefor [or any proceeding for the recovery of the amount as arrear of land revenue on a certificate granted by the Registrar under sub-section (1) or (2) of section 101 or sub-section (1) of section 137 or the recovery proceeding of the Registrar or any officer subordinate to him or an officer of society notified by the State Government, who is empowered by the Registrar under sub-section (1) of section 156,] [or any orders, decisions, awards and actions of the Registrar against which an appeal under section 152 or 152A and revision under section 154 of the Act have been provided.] shall not be deemed to be a dispute for the purposes of this section.]

(3) Save as otherwise provided under [sub-section (2) to section 93], no Court shall have jurisdiction to entertain any suit or other proceedings in respect of any dispute referred to in sub-section (1).

Explanation 1.—*A dispute between the Liquidator of a society [or an official Assignee of a de-registered society] and [the members (including past members, or nominees, heirs or legal representative or deceased members)] of the same society shall not be referred [to the co-operative Court) under the provisions of sub-section (1).*

Explanation 2.—*For the purposes of this sub-section, a dispute shall include-*

(i) a claim by or against a society for any debt or demand due to it from a member or due from it to a member, past member or the nominee, heir or legal representative of a deceased member, or servant for employee whether such a debt or demand be admitted or not;

(ii) a claim by a surety for any sum or demand due to him from the principal borrower in respect of a loan by a society and recovered from the surety owing to the default of the principal borrower, whether such a sum or demand be admitted or not;

(iii) a claim by a society for any loss caused to it by a member, past member or deceased member, by any officer, past officer or deceased officer, by any agent, past agent or deceased agent, or by any servant, past servant, past servant or deceased servant, or by its committee, past or present, whether such loss be admitted or not;

(iv) a refusal or failure by a member, past member or a nominee, heir or legal representative of a deceased member, to deliver possession to a society of land or any other asset resumed by it for breach of condition as the assignment.

18. As opposed to the proceedings under Section 101, a Cooperative Court under Section 91 is empowered to decide 'any dispute' between a society and member so long as in touches the constitution, elections of the committee or its officers conduct of general meeting and management or

business of the society. The jurisdiction conferred on the Cooperative Court is thus wide enough to virtually decide every dispute between a member and the society. Since sub-Section 1 of Section 101 begins with a *non-obstante clause*, the said provision under Section 101 is in addition to the remedy provided to the society under Section 91.

19. The issue with regard to the difference in jurisdictions vested in Registrar under Section 101 and Cooperative Court under Section 91 has been discussed by Division Bench Judgment of this Court in **Top Ten** (*supra*).

This Court held in para 13, 14, 15, 16, 17, 18, 19 as under :-

13. *Perusal of section 101 reveals that it is the last section in Chapter IX of 1960 Act. It's heading is "Recovery of arrears due to certain societies as arrears of land revenue". Important words to be noted are "arrears due to certain societies". Sub-section (1) then contains a long list of various types of societies and it is not in dispute that the respondent credit co-operative society before this Court are covered thereunder. After this list of societies, again the important words appear and those words are "and on the society concerned furnishing a statement of accounts in respect of the arrears." Thus the society which invokes this remedy has to file statement of accounts showing how it is entitle to recover those arrears. Thereafter the Registrar has been given authority to make enquiry in such manner as may be prescribed. Depending upon outcome of that enquiry, he can issue a certificate for recovery of amount stated in the certificate as due towards arrears. The procedure prescribed for undertaking such enquiry is envisaged in Chapter VIIIA of 1961 Rules. The petitioners as also respondents accept that this is a speedy remedy of summary nature envisaged by the legislature. We find sub-section (2) of section 101 important. It enables the Registrar to issue such certificate on his own motion, after undertaking enquiry, if he is satisfied that concerned society has failed to take action under the foregoing sub-section in respect of any amount due as arrears. This power given to the Registrar to recover amount of arrears due to a society itself shows the desire with which this*

provision has been inserted in the statute book. The language itself shows that the recovery contemplated is of arrears due to society. The recovery is again by a speedy remedy by treating it as arrears of land revenue.

14. Section 91 noted above enables the Co-operative Court to decide disputes about the amounts claimed by the society as arrears. Recovery of loan is also possible under section 91. Section 94 deals with procedure for settlement of disputes and power of Co-operative Court. Section 94(4) states that save as otherwise directed by the State Government in any case or class of cases, every dispute shall be decided in such summary manner as may be prescribed and as expeditiously as possible. Sub-section (1A) obliges the Co-operative Court to decide dispute within 6 months. Sub-section (1) confers upon Co-operative Court a power to summon and enforce attendance of witness, to compel them to give evidence on oath, affirmation or affidavit and to compel production of documents.

15. Division Bench of this Court in 1998 (2) LJ 628, *Madhav Karmarkar vs. State of Maharashtra and others*, has held that the Co-operative Courts are established to decide civil disputes and are part and parcel of Civil Courts function. The procedure to be followed by the Co-operative Court is envisaged in Chapter VIII of 1961 Rules. Rule 77-E, prescribes procedure for hearing and decision of disputes. Rule 77F prescribes summary procedure for deciding disputes. Any dispute for recovery of a debt upon promissory note, Hundi, Bill of exchange or bond with interest accrued in such instrument, or under byelaw and certain other types of recovery disputes, can be tried as summary disputes. It is not necessary for this Court to go into details of the procedure prescribed, but then briefly stating, the procedure is not different than one prescribed under Order XXXVII of the Code of Civil Procedure. Section 98 of 1960 Act provides the mode and manner in which money can be recovered. Section 93(1) of 1960 Act enables the President of the Co-operative Appellate Court to withdraw and transfer any dispute from one Co-operative Court to any Co-operative Court.

Sub-section (2) enables a party to a dispute to apply to the Co-operative Court, pointing out that a complicated question of law and fact is required to be adjudicated. The Co-operative Court in that situation

can suspend the proceedings before it to enable such party to move the Civil Court for getting it adjudicated. However, if such civil suit is not filed within 2 months, the Co-operative Court has to continue with adjudication before it.

16. Section 101 which opens with non obstante clause reads "101(1). Notwithstanding anything contained in sections 91, 93 and 98. on an application made by" Thus this section gives an additional remedy to particular types of societies as enumerated therein. Normal remedy envisaged is under section filed by such society can be tried as a regular dispute as per Rule 77-E or then as a summary dispute under Rule 77F. Rule 77F contemplates and identifies a particular type of disputes for summary disposal. Thus from otherwise, large types of

disputes which may be filed before the Co-operative Court and disposed of under Rule 77-E, a category is carved out for expeditious disposal where the debtor like the present petitioner has to seek a leave to defend, as per Rule 77F(3). Section 101 carves out a still narrower type of dispute or controversy. It speaks of arrears due to certain societies and its recovery as land revenue. Therefore, it proceeds on "arrears due" and only for that purpose the concerned society has to furnish a statement of account in respect of the arrears. The Registrar has to make an enquiry only in relation to those arrears. It is, therefore, obvious that the legislature which thought it proper to extend to a debtor/borrower an opportunity of claiming leave to defend under section 94(4) of the 1960 Act, read with Rule 77F, has itself provided this remedy where very narrow enquiry is required. The legislature obviously has given importance to cooperative movement and public interest which is evident from sub-section (2) of section 101. The enquiry contemplated by the registrar is, therefore, extremely narrow. The learned Additional Government Pleader appearing on behalf of the respondent State has pointed out that wherever necessary legislature has expressly conferred power upon the authority to record evidence. Section 94(1) and section 144D are pointed out to be instances of such use of power by the legislature. It is an admitted position here that Chapter VIIIA of 1961 Rules or then section 101 of 1960 Act, do not confer such power upon the Registrar while conducting enquiry as necessary under section 101.

17. Chapter VIIIA of 1961 Rules vide its Rule 86A shows procedure for filing application for grant of certificate for recovery. The form in which it is to be filed is also prescribed and documents which must accompany are also stipulated. Form "U" in which application under section 101 is required to be filed shows the requirement of disclosure of relevant facts by the concerned society: all necessary facts which make the respondents before that authority either borrower or guarantor the procedure followed for sanctioning loan, securities furnished,; documents executed. The applicant then has to point out failure to repay principal amount and interest upon it and demand/demands made by the concerned society. A resolution of the Board of Directors to file an application under section 101 transaction is also required to be pleaded. Details of loan transaction are also required to be pointed out as part and parcel of this application. The application is required to be supported by affidavit of responsible officer of a co-operative society. Rule 86B contemplates scrutiny of such application by the Registrar. Registrar cannot issue notice to other side, if such application is incomplete in material respect. The other side is expected to file written statement. Rule 86C contemplates appearance of party, either personally or through an Advocate and consequence of failure to appear. Rule 86D enables both the parties to file documents. It also enables the Registrar to call for such other documents from opposite party by order in writing, if production of such document is found

essential. Request for such production from opponent cannot be entertained before he files his written statement.

Adverse inference can be drawn if the document is not produced, after such direction. The applicant Society has to prove contents of its application and also show how the contentions raised in defence by other side are not correct. After this exercise is undertaken by the applicant Society, the opponent has been given opportunity to file reply in support of his defence, and after such reply, Registrar has to hear oral arguments. Then he has to deliver a reasoned judgment under Rule 86F. If he issues certificate, it has to be in Form "V". Rule 86-E specifically stipulates that no cross-examination of any of the parties is permitted.

18. Use of both words i.e., "arrear" and "due" together in section 101 is itself manifestation of very limited inquiry felt necessary under section 101 before issuing the certificate. In plain English, both words may be synonymous. New Oxford Advanced Learner's Dictionary gives following meaning of these words. "Arrear" means a money which has not been paid at right time. "Due" is stated to mean it must be paid immediately, owed to somebody as it is their right or they have done something to deserve it. In Chambers 20th Century Dictionary; word "Arrear" means that which remains unpaid or undone. Word "Due" means - owed, that ought to be paid to another. Blacks Law Dictionary (9th Ed.) states "Arrear" means the state of being behind in payment of a debt or the discharge of an obligation, an unpaid or overdue debt, Word "Due" means immediately enforceable, owing or payable, constituting a debt. Advanced Law Lexicon by P. Ramanatha Aiyar 3rd. Ed. also shows same meaning of word "Due". It also points out that said word has different meanings and that meaning has to be put on it which fits in with the context. Meaning of Arrear shows that which remains unpaid though due. T.P. Mukherjee's Law Lexicon states "Arrear" means payment remaining unpaid at the due time. It also explains "due" to mean amount which has matured and is in arrears.

1975 Mh.L.J. (SC) 22 = AIR 1974 SC 1613, Dhan Singh Ramkrishna Chaudhuri vs. Laxminarayan Ramkrishan shows that arrears means money unpaid at due time. Here, it is beyond doubt that both these words do not signify same state of affairs i.e., non-payment. Word "Due" therefore is not duplication of what is conveyed by word "arrear". It indicates that amount which is found or determined to be outstanding and hence, recoverable. Thus statement of accounts and other facts essential under Rules to be disclosed by the concerned Society and to be looked into by the Registrar reveal that said amount of arrears has to be "due" i.e., payable. This quasi-judicial exercise is made final by legislature and not kept open under section 91 only because of possibility of determination of the limited aspect about arrears due without adjudication on any disputed questions of facts. Such factual disputes cannot and have not been subjected to and fall outside the procedure under section 101. Thus, either the Arrears are already declared due by some authority or then can be ascertained on

the basis of statement of accounts and other material on record by Registrar. Moment it is demonstrated to Registrar that a bona fide and genuine defense about said arrears is raised which calls for a finding on disputed facts, need for cross-examination surfaces and section 101 ceases to apply. Procedure laid down for enquiry under section 101 itself manifests said legislative intention. It cannot be even urged that legislature made that certificate final while denying the right to dispute the facts cardinal for its determination and intended to fasten the recovery as liability upon a person having bona fide and valid defence. Section 101(2) again indicates this as it expects the Registrar to be satisfied about the failure of concerned society to take steps under its sub-section (1) in respect of any amount "due as arrears".

19. Thus very small types of disputes in which only limited question is of quantification of arrears due, is to be looked into by such Registrar while undertaking enquiry under section 101. Importance therefore, is to statement of accounts. The enquiry undertaken is only aimed at ascertaining whether amount disclosed in statement of accounts as arrears, is correct and due. **The limited opportunity of defence is, therefore, extended to the borrower like petitioners. The correctness of amount shown as arrears can be verified from the accounts and from accounts of the society and from receipts produced by other side. Denial of cross-examination in this situation only shows legislative intent that if a genuine and disputed question of facts is found arising by the Registrar, he cannot proceed to resolve that question. The concerned society, in such circumstances, has to take recourse to filing of a dispute under section 91, where such disputed questions can be gone into. Hence, a bona fide defence being raised by a borrower or other person against whom such certificate is sought, cannot be resolved by the Registrar under this jurisdiction.** If he finds such dispute arising, he has to deny the recovery certificate by passing appropriate judgment under Rule 86F.

In *Ramchandra and another vs. Collector, Nagpur and others* (supra), the Division Bench of this Court has looked into the provisions of section 137. Section 137 (1) was earlier a provision pari materia with provisions of section 101. Section 137(1) enables the Registrar to make such enquiry 'as he deems fit.' Section 101 was also containing same phrase till 10-5-2006. On that date, the said words have been replaced and Registrar, is obliged to conduct enquiry in such manner as may be prescribed. Thereafter, Chapter VIIIA has been added to 1961 Rules, prescribing the mode of enquiry. Thus, said Division Bench judgment is no longer relevant for interpreting the scheme of section 101. Paragraph 26 of this Division Bench judgment on which the petitioners have placed reliance, however, does not show any express finding about need of extending an opportunity of cross-examination. Moreover, there is no provision either in 1960 Act or in 1961 Rules, prohibiting

such cross-examination in section 137 enquiry. This judgment, therefore, is of no assistance in present situation.

(emphasis & underlining supplied)

20. Thus, as held by Division Bench of this Court in **Top Ten** (supra), the Registrar can decide only small types of disputes relating to quantification of arrears, etc., where only limited opportunity of defence can be extended to the opponents. The Registrar can undertake enquiry into correctness of amounts demanded from a member. However, if a genuine defence is raised and disputed question of facts arise before the Registrar, he cannot decide such questions and the society is required to file dispute under Section 91. The Division Bench has held the Registrar does not have jurisdiction to permit parties to lead evidence or to conduct cross-examination. Thus, in every case where adducing of evidence and grant of opportunity of cross-examination becomes necessary, the Registrar will have to stay away from such proceedings and relegate the parties to jurisdiction under Section 91.

21. Having discussed the remit of enquiry which a Registrar can undertake under Section 101 as opposed to the wider jurisdiction of Cooperative Court under Section 91, it

would be necessary to examine as to whether the Registrar can decide the proceedings instituted by Respondent-Society for issuance of recovery certificates in the present cases. Though, the Respondent-Society has sought issuance of recovery certificates by producing certified extracts of accounts showing various amounts due from Petitioners, the Petitioners have raised a defence that the entire amount has been repaid by them and that no amount is due or payable in the loan accounts. The defence is backed, essentially by two documents viz. 'No Dues Certificates' and Release Deeds. It appears that the Petitioners in Writ Petition No.8440 of 2023 have also relied upon receipt dated 7th July 2016 issued in the name of Monika Sagar Kate to demonstrate repayment of the loan. In the light of this defence taken and the documents in the form of 'No Dues Certificate', Release Deeds and receipts of repayment being produced, the Registrar will have to record his findings *qua* those defences and documents. The Respondent-Society has taken a plea that the 'No Dues Certificate' are either fake or have been issued without authority by its Bank Manager. The Society will have to prove this assertion by leading evidence. In respect of Release Deed, stand is taken by the Society that the Branch Manager did not have any authority to execute Release Deeds on behalf of the

Society. These contentions raised by the Respondent-Society will have to be proved by adducing evidence. The Registrar, whose ambit of enquiry is restricted to perusal of statement of account for deciding proceedings under Section 101, will not be in a position to decide the complicated question as to whether the Release Deeds are validly executed or whether the 'No Dues Certificates' are genuine. Neither Respondent-Society will be in a position to adduce evidence by examining any witnesses nor Petitioners can cross examine them. Similar is the position if Petitioners desire to lead evidence to prove authority in favour of the Branch Manager who executed the Release Deeds. In my view therefore, nature of the dispute is such that the same cannot be adjudicated in proceedings under Section 101.

22. It must also be borne in mind that the question of enforceability of Release Deeds is raised in Special Civil Suit No. 51 of 2019 filed by the Society. It is Civil Court who would decide whether the Release Deeds were executed with proper authority and whether they would bind the parties. Before such Suit could be decided, the Society desires that the Registrar should proceed on a presumption that the Release Deeds are invalid. Mr. Godbole has canvassed that the issue of

dues recoverable from Petitioners is distinct from the validity of release deeds and that during pendency of Society's Suit for declaration of invalidity of release deeds, the Society can attempt recovery on an assumption that there is no mortgage on its favour. While Mr. Godbole may not be entirely wrong in contending so, the question whether the issue of correctness of 'No Dues Certificates' could be decided in recovery proceedings still begs an answer. Therefore, even if the Society decides to wait for decision of Civil Suit for enforceability of mortgages, it will have to ultimately prove that the 'No Dues Certificates' are either fraudulent or issued without any authority. Opportunity also needs to be given to Petitioners to prove their defence about deposit of amounts and non-reflection of those deposits in the accounts statements.

23. Perusal of the Order passed by the Divisional Joint Registrar would indicate that he has proceeded to virtually discard the 'No Dues Certificates' and Release Deeds by recording a finding that the Petitioners have deposited some amount in the loan account after issuance of 'No Dues Certificates' and after execution of Release Deeds. The nature of findings recorded by the Divisional Joint Registrar are such

that the Assistant Registrar will not be left with much choice but to ignore the 'No Dues Certificates' and Release Deeds while deciding proceedings under Section 101. Thus, without adducing evidence by any parties and without an opportunity of cross-examination to the Petitioners, the Divisional Joint Registrar has proceeded to hold that the 'No Dues Certificates' and Release Deeds will have no impact on the loan accounts, which show outstanding amounts in the names against Petitioners. In my view the Divisional Joint Registrar has committed a serious error in recording such findings, without being equipped with any material on record to support its findings.

24. In my view therefore, the impugned orders passed by the Divisional Joint Registrar are clearly unsustainable. Respondent-Society has contended that no prejudice would be caused to Petitioners on account of remand of the proceedings to the Assistant Registrar. In my view in fact no prejudice would be caused to the Respondent-Society on account of rejection of its recovery proceedings filed under Section 101 by the Assistant Registrar. Petitioners have alternate and equally efficacious remedy filing disputes under Section 91 of the Act. Therefore passing of order by the Assistant Registrar

would not render Respondent-society remediless. The society has already filed a Civil Suit seeking declaration that the Release Deed is void and not binding on it. It can file Disputes before Cooperative Court seeking recovery of alleged outstanding loan amounts from Petitioners. On the contrary, if the Assistant Registrar is allowed to decide proceedings under Section 101, he will not be in a position to decide the issue as to whether the No Dues Certificates and Release Deeds would bind the Respondent-Society. However, while relegating the Society to remedy under Section 91, this Court is conscious of the nature of allegations levelled by the Society against the person at whose behest the moneys were borrowed as well against the Branch Manager. Therefore, mere relegation to alternate remedy under Section 91 would not be treated as a reflection on the Society's right to recover its dues, if indeed the same are found to be due from Petitioners. At the same time, filing of Disputes by the Society against Petitioners shall not be used as an opportunity by the Petitioners to delay the recovery proceedings. Therefore, the proceedings filed before the Cooperative Court, if and when filed by the Society, need to be expedited. The Cooperative Court where such Disputes are filed shall proceed to decide the same in an expeditious

manner without letting the Petitioners seek unnecessary adjournments.

25. Writ Petitions accordingly succeed. Orders passed by the Divisional Joint Registrar remanding the proceedings to Assistant Registrar are set aside. The Respondent-Society shall however be at liberty to file Disputes under Section 91 of the Act of 1960 for recovery of alleged amounts due from Petitioners. If such disputes are filed, the Co-operative Court shall proceed to decide the same, in an expeditious manner, without being influenced by any of the observations made in this judgment. The Writ Petitions are accordingly allowed. Rule is made absolute in above terms.

SANDEEP V. MARNE, J