Kiran Kawre

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12566 OF 2022

Bhimrao Bajarang Chavare … Petitioner

Versus

1. State of Maharashtra
2. District Registrar
3. District Deputy Registrar
4. Senior Police Inspector
5. Sachin Parmeshwar Randive
6. Bramhadev @ Parmeshwar Pandurang Randive
7. Yogesh Parmeshwar Randive
8. Akil Mahamul Mujawar
9. Somnath Dinkar Rokade
10. Samadhan Gokul Thorat
11. Dy.Regional Transport Officer …Respondents

…..

Mr. Sachinkumar Rajepandhare, Advocate for the Petitioner.
Mr. S. H. Kankal, AGP for State/Respondent Nos.1 to 4 & 11.

CORAM: G. S. KULKARNI, J.
DATED: 17 February, 2023

ORAL JUDGMENT

1. Rule. Rule made returnable forthwith. Respondents waive service. Heard finally by consent of the parties, as appearing.

2. Respondent Nos. 5 to 10 are served, affidavit of service to that effect as directed by this Court by previous order dated 18th January, 2023, is placed on record. Despite service these Respondents are not represented.

Accordingly as observed in para 3 of the Order dated 18th January, 2023, the parties are required to be heard.

3. The order impugned in this Petition is an order dated 25th March, 2022 passed by the Competent Authority under Section 17(1) of the Maharashtra Money-Lending (Regulation) Act, 2014 (for short the "**Money Lending Act**"). This petition was earlier filed as a Criminal Writ Petition, however, subsequently by an order passed by the Co-ordinate Bench of this Court, it was permitted to be converted into a Civil Writ Petition.

4. **Facts:-** Respondent Nos. 7 to 10 approached the Competent Authority under the Money Lending Act, by their complaints which are similarly worded (pages 58 to 61 of the proceeding), which were to the effect that the four vehicles subject matter of the complaints are standing in the name of such Respondents in the records of the Regional Transport Office (R.T.O.). It was contended that the registration certificate of the vehicles were handed over to the Petitioner as a security to avail borrowings/finance from the Petitioner, hence, the vehicles were in the custody of the Petitioner. It was prayed that the vehicles be returned to the respective Respondents. These were the complaints by Shri. Yogesh Parmeshwar Randive/Respondent No.7, Shri. Akil Mahamul Mujawar/Respondent No.8, Shri. Somnath Dinkar Rokade/Respondent No.9 & Shri. Samadhan Gokul Thorat/Respondent No.10.

5. It is seen that the vehicle, which Shri. Yogesh Parmeshwar Randive/Respondent No.7 was claiming was financed by Hinduja Finance Limited. The vehicle claimed by Shri. Somnath Dinkar Rokade/Respondent No.9 was financed by Mahindra & Mahindra financial company. The other two vehicles claimed by Shri. Akil Mahamul Mujawar/Respondent No.8 and Shri. Samadhan Gokul Thorat/Respondent No.10 were not hypotheticated to any private financer. The complaints of these respondents which are identically worded, contend that the said vehicles were seized by the Mohol Police Station, (Solapur Rural), in relation to the First Information Report as lodged by the said Respondent (FIR No.0047 dated 8 January 2022).

6. Learned counsel for the Petitioner has drawn the Courts attention to the complaints filed by the said respondents before the Competent Authority namely the District Deputy Registrar Co-operative Societies, who is also an authority under the provisions of Money Lending Act. The petitioner has contended that as clearly seen from the record, the case of such respondents (complainants) was *per se* defective in law, for the reason that the complaints as filed did not satisfy the basic requirements/ingredients necessary for invoking the provisions of Section 17(1) of the Money Lending Act. It is contended that the complaints were completely silent on any money being lent by the Petitioner to the said Respondents, as also there was no reference to any amounts being lent. It is submitted that in fact such vehicles were purchased by the Petitioner from the said respondents/complainants, as the Petitioner is a dealer in purchase and sale of old vehicles. He submits that one of the vehicles ‘Ford Endeavour’, as claimed by Shri. Akil Mahamul Mujawar/Respondent No.8, stood transferred in the name of petitioner’s wife in the record of the Regional Transport Office (R.T.O.).

7. Learned counsel for the Petitioner has drawn the Courts attention to the impugned order to submit that the impugned order has not taken into consideration the specific case of the Petitioner that the competent authority had no jurisdiction to pass the order as impugned. He submits that there are no reasons as set out in the impugned order, although the case of the Petitioner has been noticed that he had purchased the vehicles from the owners namely the respondents/complainants.

8. On the other hand, Mr. Kankal, learned AGP has supported the impugned orders. He submits that in fact two of the vehicles were already hypothecated to the respective finance companies as noted above and therefore said vehicles could not have been sold by the said Respondents to the Petitioner, and for such reasons there is a presumption, that the provisions of the Money Lending Act were attracted.

9. Having heard learned counsel for the parties and having perused the record and the impugned order, in my opinion there is much substance in the contention as urged on behalf of the Petitioner. At the outset it is required to be observed that the competent authority has exercised jurisdiction under Section 17 of the Money Lending Act. Section 17 provides for disposal of property pledged with Money-lender carrying on business of Money Lending without a valid license. The provisions are required to be noted which read thus:-

> ***"17. Disposal of property pledged with money- lender carrying on business of money-lending without valid licence.***
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> *(1) If upon the inspection of record and documents made under section 16, the inspecting officer is satisfied that the money-lender is in possession of property pledge to him by a debtor as security for the loan advanced by money-lender in the course of his business of money-lending without a valid licence, the inspecting officer shall require the money-lender to deliver forthwith the possession of such property to him.*
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> *(2) Upon the property being delivered to him, the inspecting officer, if he is not the District Registrar, shall entrust it to the District Registrar and the District Registrar (when he is also the inspecting officer) shall keep it in his custody for being disposed of as hereinafter provided.*
>
> *(3) On delivery of the property under sub-section (1) or sub-section (2), the District Registrar shall, after due verification and identity thereof, return it to the debtor who has pledged it or, where the debtor is dead, to his known heirs.*
>
> *(4) If the debtor or his known heirs cannot be traced, the District Registrar shall, within ninety days from the date of taking possession of the property, publish a notice in the prescribed manner inviting claims thereto. If, before the expiry of the said period, a claim is received, whether in answer to the notice or otherwise, he shall adjudicate upon and decide such claim. If the District Registrar is satisfied that any claim is valid, he shall deliver the possession of the property to the person claiming it on his giving a receipt therefor; and such delivery of the property to the person claiming it shall discharge the District Registrar of his liability in respect of such property against any other person. If the claim is refused, the property shall stand forfeited to the State Government.*
>
> *(5) Whether the possession of the property pledged by a debtor cannot, for any reason (including identity thereof) be delivered to him, then the money-lender to whom it was pledged shall be required to pay to the debtor or if he is dead, to his known heir, the value of such property if such debtor or, as the case may be, the heir claims the property. If the money-*

lender fails to pay the value, it may be recoverable from him as an arrear of land revenue; and on recovery of the value, it shall be delivered to the debtor by whom such property was pledged or, as the case may be, to the heir.

(6) If there is any difference of opinion between the money-lender and the debtor or, as the case may be, his heir on the question of value of the property or its identity, the question shall be referred to the Divisional Registrar for decision and his decision on the question shall be final.

(7) The value of the property may be determined with the assistance of the services of an expert appointed by the State Government in that behalf. The expert may be paid such honoraria as the State Government or any officer not below the rank of Tahsildar appointed by it may, by an order in writing, from time to time, in relation to any area or areas, determined."

10. It is also relevant to note that the term 'Money lender' as defined under Section 2(14) of the Money Lending Act which reads as under:-

"2. Definitions.
In this Act, unless the context otherwise requires,—

(14) " money-lender " means,—
(i) an individual ; or
(ii) an undivided Hindu family ; or
(iii) a company other than a non – banking financial company regulated under Chapter IIIB of the Reserve Bank of India Act, 1934 ;
(iv) an unincorporated body of individuals, who or which,—
(a) carries on the business of money-lending in the State ; or

(b) has his or its principal place of such business in the State; and includes a pawn-broker, but does not include,—
(i) Government ;
(ii) a local authority ;
(iii) a Bank ;
(iv) a Co-operative Bank ;
(v) a multi-state Co-operative Bank ;
(vi) a Non- Banking Financial Company ;
(vii) a primary credit society ;
(viii) a Regional Rural Bank ;
(ix) the Reserve Bank of India ;
(x) the Agricultural Refinance Corporation constituted under

the Agricultural Refinance Corporation Act, 1963 ; or
(xi) any other banking or financial institution which the State Government may, by notification in the Official Gazette specify in this behalf;"

11. It is thus seen that the primary ingredient for the jurisdiction to be exercised by the Competent Authority under Section 17, is in a case when there is an element of illegal money lending, undertaken by a party against whom proceedings are lodged under Section 17(1). This, in terms of what is understood by the term 'Money lender', as defined under Section 2(14) Act (supra) of the Money Lending Act.

12. In such context it is necessary to note the averments as made in the complaints in question filed by the respondents/complainants. Extract of one of the complaints (other complaints being identically worded), namely the complaint of Shri. Yogesh Parmeshwar Randive (respondent No.7) reads thus.

" Sir,

I make an application for the reasons as under:

I am a permanent resident of village Tungat and I had given in mortgage the vehicle bearing No. MH 13 CU 8222 of Ashok Layland make, standing in my name to the Money Lender Bhimrao Bajrang Chavare from village Penur. RTO Registration of the said vehicle stands in my name and the vehilce number is MH 13 CU 8222, Chasis No. is MB1AA22E8LRK97257 and Engine No. is LKH057800P. There is loan of Hinduja Finance Ltd. on the said vehicle. I am the Owner of this vehicle. The said vehicle has been seized in the search of the house of the Money Lender Bhimrao Bajarang Chavare from village Penur. Therefore, I request that as the said vehicle is of my ownership, the same may be returned to me.

May this be known.

Yours faithfully,

Yogesh Parmeshwar Randive"

13. It is thus clearly seen that the basic ingredient to allege any money lending and the details thereof, are totally absent in the complaints of the respondents/complainants, as made against the petitioner which in fact would attract the jurisdiction of the Competent Authority under Section 17 (1) of the Money Lending Act. To the petitioner's dismay, it is on such defective complaints the Competent Authority proceeded to adjudicate such complaints. By the impugned order the Competent Authority allowed such complaints thereby directing that the vehicles which are in the custody of the Mohol Police Station be handed over to the Respondents/owners.

14. A perusal of the impugned order clearly indicates that the Competent Authority has acted without jurisdiction and in complete breach of the procedure as provided for under Section 16 of the Money Lending Act which stipulates the power of authorized officers to require production of records or documents, the sequel to it, being an action under Section 17(1). In the present case the Competent Authority could have exercised jurisdiction only in the event necessary steps under Section 16 were to be taken and the inspecting officer was satisfied that the petitioner was a money lender and who was in possession of the property pledged to him by the respondents in the capacity of debtors, as a security for any loan advanced to them by the petitioner, in the course of business of money lending, being carried on without a valid license.

15. A bare perusal of complaint (supra) itself indicates that none of the requirements/ingredients which are essential for the competent authority to exercise jurisdiction, were present in the complaint. Moreover, the vehicles in question were already seized by the Mohol Police Station, in connection with the First Information Report as lodged by the Respondents/complainants and hence, there was no question of any procedure being undertaken under Section 16, or its satisfaction, to that effect being achieved by the Competent Authority to pass an order under Section 17(1) of the Money Lending Act. Moreover, it appears that the Competent Authority by directing return of property in the manner as suggested in the impugned order, has in fact, usurped the jurisdiction of the Learned Magistrate under the provision of as Section 457 of the Code of Criminal Procedure for return of property being subject matter of investigation in a criminal case.

16. In the light of the above discussion there is no manner of doubt that in passing the impugned orders the Competent Authority has acted without jurisdiction. Consequently the impugned order would be required to be quashed and set aside. It is accordingly set aside. The Petition is allowed in terms of prayer clause (b), which reads thus:-

> "B) This Hon'ble Court Hon'ble Court be pleased issue writ of certiorari or writ in nature of Certiorari or any other appropriate writ, order or direction calling the proceeding pertaining to the impugned Order Order dt. 25/03/2022 passed by Respondent No.3 and after examining legality, validity and correctness of the same this Hon'ble Court be pleased to Quash and Set it aside."

17. At this stage it is pointed out by learned counsel for the Petitioner that during pendency of this Petition by an order dated 27 April, 2022 ad-interim protection was granted to the Petitioner whereby Respondent Nos.7 to 10 were directed not to transfer, dispose of, or otherwise create any third party interest in the vehicles, which were ordered to be returned in terms of the impugned order. He submits that however, the impugned order was acted upon, and Respondent No.4-Senior Police Inspector, Mohol Police Station, handed over the vehicles, which are now in custody of Respondent Nos.7 to 10. In this view of the matter as No.4 has acted under the impugned orders which stands set aside, Respondent No.4 Senior Police Inspector, Mohol Police Station, is directed to re-possess/take over the custody of the said vehicles, so as to restore the '*status quo ante*' as on the day the complaints were filed by respondent Nos.7 to 10. This for the reason that Respondent No.4 has acted under an illegal order passed by the Competent Authority. Respondent Nos.7 to 10, also cannot be benefited under the impugned order which is set aside.

18. Once the custody of the vehicles is obtained by Respondent No.4 it would be open to the petitioner to file appropriate proceeding, before the Criminal Court praying for return of the said property as may be permissible in law. Ordered accordingly.

19. No costs.

(G. S. KULKARNI, J)

Corrected as per speaking to the minutes of the order dated 6 April 2023.