Nikita

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.441 OF 2023

The Seva Vikas Co-operative Bank Ltd.
Thr. Liquidator Mr. Dadabhau N. Kale … Applicant

V/s.

Girish Kishanchand Tejwani and Ors. … Respondents

Mr. Kishor Patil i/b Mr. Sidheshwar N. Biradar for the Applicant.

Mr. Sanjeev Gorwadkar Sr. Adv. a/w Mr. Sagar Kursija a/w Ms. Deepali Kedar for Respondent No.1.

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 4, 2023

P.C.:

1. The defendant No.1/Co-operative Society is challenging an order passed by the Civil Court rejecting the application under Order 7 Rule 11(b) of the Code of Civil Procedure, 1908.

2. Respondent No.1 filed Special Civil Suit No.582 of 2022 seeking a declaration that the loan account statement maintained by defendant No.1/Co-operative Bank be declared null and void and not binding on the plaintiff. He also prayed for a declaration that the recovery certificate issued under Section 101 of the Maharashtra Cooperative Societies Act, 1960, is null and void. 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.

3. The defendant No.1/bank appeared in the suit and filed an application under Order 7 Rule 11(b) of the Code of Civil Procedure, 1908—the defendant No.1/bank raised the following three objections.

a) 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.

b) 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.

c) There is no cause of action for filing the suit as there is no enforceable right available against defendant No.1.

4. The Trial Court, by impugned order, rejected the application. Hence, defendant No.1 has filed the present civil revision application.

5. The learned advocate for the applicant submitted that sub-section (3) of Section 101 of the Maharashtra Cooperative Societies Act, 1960, grants finality to the orders passed by the authorities under Section 101 of the Maharashtra Cooperative Societies Act, 1960. Such adjudication is subject to the revisional jurisdiction of authorities specified under Section 154 of the Maharashtra Cooperative Societies Act, 1960, and such remedy is available only on pre-deposit under Section 154(2)(a) of the Maharashtra Cooperative Societies Act, 1960. On meaningful reading of the plaint, it is clear that the challenge in the suit is to the order passed by the Registrar under Section 101 of the Maharashtra Cooperative Societies Act, 1960, which is made subject matter of challenge before the Civil Court. Therefore, the suit was not maintainable, and the Civil Court's jurisdiction is expressly barred. He submitted that the details of the fraud, as required under Order 6 Rule 4 of the Code of Civil Procedure, 1908, have not been pleaded. Hence, the plaintiff is not entitled to raise grounds of fraud. In support of his submissions, he relied on the judgments in the case of **Electrosteel Castings Limited Vs. UV ASSET Reconstruction Company Limited and Ors.** reported in (2022) 2 SCC 573, **Suprabhat Cooperative Housing Society Ltd. and Anr. Vs. Span Builders and Anr.** reported in (2022) (3) Mh.L.J. 837, **Vasundhara Ashokrao Patil Vs. Rajaram Bapu Sahakari Bank Ltd., Sangli and Ors.** reported in 2003 (4) Mh. LJ. 315, **Sanjay Sakharam Dongare Vs. Jyoti Sanjay Dongare and Ors.** reported in 2003 (4) Mh.L.J. 319, **Pukhraj S/o Mohanlal Vyas and Ors. Vs. Sanmitra Nagri Sahakari Patasanstha Ltd. and Anr.** reported in 2007 (3) Mh. L.J. 575, **Tirupati Ginning and Pressing Factory,**

Akola Vs. M/s Balaji Ginning and Pressing Industry Akola and Ors. reported 2008 (5) Mh.L.J. 393, **Sitabai Vishnu Shenvi Desai Vs. State** reported in 2008 (5) Mh.L.J. 395, **Jijamata Sahakari Sakhar Karkhana Ltd. Dusarbid Vs. Sukhadeo Rambhau Fulzade and Anr.** reported in 2010 (5) Mh.L.J., 431, and **Devgiri Nagari Sahakari Bank Ltd., Aurangabad and Anr. Vs. Zubidabegum w/o Asadulla Khan and Ors.** reported in 2012 (6) Mh.L.J. 457.

6. Per contra, the learned senior advocate for the original plaintiff submitted that whenever a plea of fraud is raised in the plaint under Order 7 Rule 11 of the Code of Civil Procedure, 1908, it cannot be rejected as a pleading of fraud requires oral evidence in support of such pleading and, therefore plaintiff needs to be granted the opportunity to lead oral evidence in support of the averments of fraud. He submitted that any order obtained by fraud is subject to the Civil Court's jurisdiction by way of suit as such an order is nullity in the eyes of the law. According to him, any order passed under diverse provisions of the Act confers jurisdiction of the Civil Court to entertain the suit. In support of his contentions, he relied on the judgment in the case of **Dhulabhai ETC Vs. State of Madhya Pradesh and Anr.** AIR 1969 SC 78, **Lalitabai W/o Ishwarprasad Choptra Vs. Pundlik Dayaram Rangari thr. His LRs Shantabai W/o Pundlik Rangari and ors.** reported in 2007 (1) Mh. L.J. 782, **A.V Papayya Sastry and Ors. Vs. Government of A.P. and Ors.** reported in (2007) 4 SCC 221, **Ramesh Kumar and Anr. Vs. Furu Ram And Anr.** reported in 2011) 8 SCC 613, **Sushilabai w/o Bomenshaw Byramji Vs. Kamlarukh W/o DPR CASSAD thr LRs. And Anr.** reported in (2014) (3) Mh.L.J. 404.

7. I have heard advocates for both sides. In my opinion, based on documents on record and the submissions made before the Court, the issues that arise for consideration are as follows:

> Is the civil suit challenging the order passed by the Registrar under Section 101 of the Maharashtra Cooperative Societies Act, 1960, maintainable on the grounds of fraud, and if yes, what are the parameters for entertaining such a suit?

8. 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) 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.

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"

9. 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.

10. The Apex Court, in the case of **Dhulabhai** (supra), 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."

11. 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 challenge to such order must be held to be excluded. However, it does not exclude jurisdiction of the civil court where provisions of particular Act have not been complied with by the statutory Tribunal has not acted in fundamental principles of judicial procedure.

12. According to the applicant, once the plaintiff raises a plea of fraud, it confers jurisdiction of the Civil Court without anything more.

13. It is well settled that the plea of fraud needs to be raised by a specific pleading as required under Order 6 Rule 4 of the Code of Civil Procedure, 1908. Without there being a specific plea of fraud, giving details as required under Order 6 Rule 4 of the Code of Civil Procedure, 1908, the court cannot consider a plea of fraud.

14. The Apex Court in **Electrosteel Casting Limited** (supra) has laid down the parameters of the pleading of fraud in paragraph 7.2. It is held as under:

> "7.2 However, it is required to be noted that except the words used "fraud"/ "fraudulent," there are no specific particulars pleaded with respect to the "fraud". It appears that by a clever drafting and using the words "fraud"/ "fraudulent" without any specific particulars with respect to the "fraud", the plaintiff-appellant herein intends to get out of the bar under Section 34 of the SARFAESI Act and wants the suit to be maintainable. As per the settled proposition of law mere mentioning and using the words "fraud"/ "fraudulent" is not sufficient to satisfy the test of "fraud". As

per the settled proposition of law such a pleading/using the word"fraud"/ "fraudulent" without any material particulars would not tantamount to pleading of "fraud"."

15. In paragraphs 8 to 8.3, the Apex Court has taken stock of its earlier decisions, emphasising details of fraud. Ultimately, it is held that the allegations of fraud, if made without any particulars, only to get out of the bar contained under a statute, such a course is not permissible. Paragraphs 8 and 8.1 are quoted below:

> **"8.** In *Bishundeo Narain* [*Bishundeo Narain* v. *Seogeni Rai*, 1951 SCC 447 : 1951 SCR 548] in para 22, it is observed and held as under : (SCC p. 454)
>
> "*22.* … Now if there is one rule which is better established than any other, it is that in cases of fraud, undue influence and coercion, the parties pleading it must set forth full particulars and the case can only be decided on the particulars as laid. There can be no departure from them in evidence. General allegations are insufficient even to amount to an averment of fraud of which any court ought to take notice however strong the language in which they are couched may be, and the same applies to undue influence and coercion. See Order 6 Rule 4, Civil Procedure Code."
>
> **8.1.** Similar view has been expressed in *Ladli Parshad Jaiswal* [*Ladli Parshad Jaiswal* v. *Karnal Distillery Co. Ltd.*, (1964) 1 SCR 270 : AIR 1963 SC 1279] and after considering the decision of the Privy Council in *Bharat Dharma Syndicate Ltd.* v. *Harish Chandra* [*Bharat Dharma Syndicate Ltd.* v. *Harish Chandra,* 1937 SCC OnLine PC 24 : (1936-37) 64 IA 143] , it is held that a litigant who prefers allegation of fraud or other improper conduct must place on record precise and specific details of these charges. Even as per Order VI Rule 4 in all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, particulars shall be stated in the pleading. Similarly in *K.C. Sharma & Co.* [*Union of India* v. *K.C. Sharma & Co.*, (2020) 15 SCC 209] it is held that "fraud" has to be pleaded with necessary particulars. In *Ram Singh* [*Ram Singh* v. *Gram Panchayat Mehal Kalan,* (1986) 4 SCC 364] , it is observed and held by this Court that when the suit is barred by any law, the plaintiff cannot

> be allowed to circumvent that provision by means of clever drafting so as to avoid mention of those circumstances by which the suit is barred by law of limitation."

16. In the light of the aforesaid judgment, I have scrutinized the averments in the plaint. On meaningful reading of the plaint, it is evident that the plaintiff has not pleaded details of either misrepresentation or undue influence. None of the officers allegedly misrepresented or exercised undue influence on the plaintiff have been named, nor have the date and the month of such incident been pleaded. In the absence of details as to how defendant No.1, which is a legal entity, has misrepresented the plaintiff to sign documents of loan and as to how by playing fraud on the Registrar, a certificate is obtained, averments made in the plaint would not tantamount to plea of fraud under Order 6 Rule 4 of CPC. Therefore, I am of the considered opinion that the Civil Court's jurisdiction is barred in view of Section 101(3) and 163(3) of the Maharashtra Cooperative Societies Act, 1960.

17. Moreover, it is undisputed that before filing suit, the plaintiff failed to issue notice under Section 164 of the Maharashtra Cooperative Societies Act, 1960—the Division Bench of this Court in the case of **Mohan Meakin Ltd. Bombay Vs. The Pravara Sahakari Sakhar Karkhana Ltd.,** reported in 1987 Mh.L.J. 503 held that issuance of such notice is mandatory when the Act alleged in the suit touches the business of the society. The acts alleged against defendant No.1/society are in relation to giving documents of loan signed by the plaintiff. Defendant No.1 is a Cooperative Society doing banking business, and, therefore, the

Act alleged against defendant No.1 clearly touches the business of the Society. Hence, the civil suit was not maintainable for issuance of mandatory notice under Section 164 of the Cooperative Societies Act, 1960.

18. In the facts of the case, the registrar, under the provisions of the Maharashtra Cooperative Societies Act, 1960, after granting the opportunity of hearing to defendant No.1, has issued a certificate under sub-section 101 of the Maharashtra Cooperative Societies Act, 1960. Section 154 [2(a)] mandatorily requires a person challenging a certificate issued under Section 101 of the Cooperative Societies Act, 1960, to deposit 50% of the dues reflected in the certificate. To get over a mandatory deposit of 50% of the amount, a person is not entitled to file a civil suit alleging a plea of fraud.

19. There is no enforceable right conferred on the plaintiff to get relief of declaration that the certificate issued under Section 101 of the Maharashtra Cooperative Societies Act, 1960, is not binding on the plaintiff. Moreover, once a certificate is issued under Section 101 of the Maharashtra Cooperative Societies Act, 1960, it attains finality and is conclusive proof of contents. There is no enforceable right for the plaintiff to seek a declaration that the entries in the loan account are not binding on the plaintiff.

20. Once the main relief in the suit is held to be not available to the plaintiff, consequential relief of injunction would resultantly be not available to the plaintiff. Hence, in my opinion, the Trial Court was not justified in rejecting the application under Order 7 Rule 11 of the Code of Civil Procedure, 1908. Hence, the following order:

1. The impugned order dated 19 April 2022 passed by the 9th Joint Civil Judge Senior Division, Pune, in Special Civil Suit No.582 of 2022, is quashed and set aside.

2. The application below Exhibit-14 in Special Civil Suit No.582 of 2022 is allowed.

3. Special Civil Suit No.582 of 2022 is dismissed under order 7 Rule 11 of the Code of Civil Procedure, 1908.

21. The civil revision application stands disposed of in the above terms. No costs.

(AMIT BORKAR, J.)