



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1271 OF 2022

Satish Vasantrao Dhengle,
Age 42 yrs., Occ. Business,
R/o At Post Nimgaon, Tq. Rahata,
Dist. Ahmednagar.

... Petitioner

... **Versus** ...

- 1 The Special Recovery Officer,
The Shirdi Merchant Nagri
Co-operative Society Limited,
Shirdi Branch, Shirdi,
Tq. Rahata, Dist. Ahmednagar.
- 2 The Assistant Registrar,
Co-operative Societies,
Near Onion Market,
Tq. Rahata, Dist. Ahmednagar.
- 3 Sanjay Patil,
Liquidator,
R/o Office of Assistant Registrar,
Kanda Market, Sakuri,
Tq. Rahata, Dist. Ahmednagar.

... Respondents

...

Mr. S.S. Kulkarni, Advocate for petitioner
Mr. V.H. Dighe, Advocate for respondent Nos.1 and 3
Mr. S.B. Jadhav, AGP for respondent No.2

...

WITH

WRIT PETITION NO.14860 OF 2021

Sandeep Vijaykumar Kapre,
Age 34 yrs., Occ. Business,
R/o Govind Nagar, Ganeshwadi,
Shirdi, Tq. Rahata,
Dist. Ahmednagar.

... **Petitioner**

... **Versus** ...

- 1 The Special Recovery Officer,
The Shirdi Merchant Nagri
Co-operative Society Limited,
Shirdi Branch, Shirdi,
Tq. Rahata, Dist. Ahmednagar.
- 2 The Assistant Registrar,
Co-operative Societies,
Near Onion Market,
Tq. Rahata, Dist. Ahmednagar.

... **Respondents**

...

Mr. S.S. Kulkarni, Advocate for petitioner
Mr. V.H. Dighe, Advocate for respondent No.1
Mr. S.B. Jadhav, AGP for respondent No.2

...

WITH

WRIT PETITION NO.14858 OF 2021

Shripad Vijaykumar Kapre,
Age 40 yrs., Occ. Business,
R/o Govind Nagar, Ganeshwadi,
Shirdi, Tq. Rahata,

Dist. Ahmednagar.

... **Petitioner**

... **Versus** ...

- 1 The Special Recovery Officer,
The Shirdi Merchant Nagri
Co-operative Society Limited,
Shirdi Branch, Shirdi,
Tq. Rahata, Dist. Ahmednagar.
- 2 The Assistant Registrar,
Co-operative Societies,
Near Onion Market,
Tq. Rahata, Dist. Ahmednagar.

... **Respondents**

...

Mr. S.S. Kulkarni, Advocate for petitioner
Mr. V.H. Dighe, Advocate for respondent No.1
Mr. S.B. Jadhav, AGP for respondent No.2

...

WITH

CIVIL APPLICATION NO.5494 OF 2022 IN WP/1271/2022

WITH

CIVIL APPLICATION NO.12876 OF 2023 IN WP/1271/2022

...

CORAM : S.G. CHAPALGAONKAR, J.

RESERVED ON : 26th JUNE, 2024

PRONOUNCED ON : 15th JULY, 2024

JUDGMENT :

1 Rule. Rule made returnable forthwith. Heard learned Advocates for the parties finally, by consent.

2 Petitioners impugn the order dated 26.10.2021 passed by respondent No.1 under Section 101 of the Maharashtra Co-operative Societies Act, 1960 (for the sake of brevity hereinafter referred to as “**the M.C.S. Act**”) and consequential recovery certificate dated 26.10.2021.

3 Mr. Suvidh S. Kulkarni, learned Advocate appearing for petitioners assails order on the ground that it has been issued without following procedure contemplated under Section 86 of the Maharashtra Co-operative Societies Act and Rules, 1961. He would further submit that petitioners have already filed a dispute under Section 91 of the Maharashtra Co-operative Societies Act, which is pending before Co-operative Court. In that view of the matter respondent No.1 could not have proceeded further to pass order under Section 101 of the Maharashtra Co-operative Societies Act. To buttress his contentions, he relies upon the decisions of this Court in case of **Uttam Pandurang Sabde and others vs. Osmanabad Janta Sahakari Bank Limited and another** [2010(1) Mh.L.J. 641], **Barindra Overseas Private Limited and another vs. Shilpa Shares and Securities and others** [2019(3)

Mh.L.J. 651].

4 Per contra, Mr. V.H. Dighe, learned Advocate appearing for respondent Nos.1 and 3 submits that petitions are not maintainable since alternate efficacious remedy is available under Section 154 of the M.C.S. Act to assail the order passed by Assistant Registrar under Section 101 of the M.C.S. Act. He would further submit that proceedings under Section 91 and 101 of the M.C.S. Act, operates in independent spheres and deals with different situation. Merely because dispute is instituted under Section 91, the proceedings already initiated under Section 101 of the M.C.S. Act cannot be impeded. To buttress his submissions he relies upon Division Bench Judgment of this Court in **Shewalkar Developers Limited, Nagpur vs. Rupee Co-operative Bank Limited, Pune and others** [2016(1) Mh.L.J. 382].

5 Mr. Suvidh Kulkarni, learned Advocate appearing for petitioners while refuting objection regarding maintainability of writ petitions submits that alternate remedy is not bar to entertain writ petitions when there is jurisdictional error in conduct of proceedings by subordinate authority. He would further submit that in present cases there is flagrant violation of rule 86A to 86C which governs proceedings before Assistant Registrar under Section 101 of the M.C.S. Act. Further, there is flagrant violation of principles of natural justice. To buttress his submissions he relies upon

Division Bench Judgment of this Court in case of **Sundeep Polymers Private Limited and others vs. The State of Maharashtra and others** [2010(6) All M.R. 550], the Judgment in case of **Khushal Narayanrao Mundhe vs. The State of Maharashtra and others** [2007(4) Mh.L.J. 333] and Judgment in case of **Kadir Ilahi Bagwan vs. Usha Anandrao Yadav** [2019 (1) Mh.L.J. 705].

6 Having considered submissions advanced, it would be appropriate to delve into the grievance of petitioners while assailing order passed under Section 101 of the M.C.S. Act of 1960. Petitioners have placed on record copy of roznama i.e. proceedings before Assistant Registrar. Petitioners were duly served with notice of proceeding and they caused appearance through Advocate. On 02.08.2021 as per demand of learned Advocate appearing for petitioners the relevant documents were supplied by the society. Thereafter, on 07.08.2021 reply was filed to application of Bank. Thereafter, proceedings was adjourned to 23.08.2021. On that day request was made on behalf of respondents for filing arguments. On 06.09.2021 again time was granted to petitioners for filing written notes of arguments. The same request was repeated on 09.09.2021. On 16.09.2021 when request of petitioners for adjournment was rejected and matter was posted for further hearing on 28.09.2021, even on that day no written argument was filed. Finally, proceeding was closed for orders.

7 Perusal of roznama would clearly reveal that sufficient opportunity was granted. After extending every opportunity for filing written notes of arguments, matter was closed. Assistant Registrar in his order observed that oral arguments were heard and finally impugned order has been passed. There is nothing to indicate that impugned order is passed violating Rule 86-A to 86-F. Once petitioner was served with notice and filed his reply, if he fails to take the opportunity to tender written notes of arguments, he cannot allege non compliance of the mandate under the rules. As observed above, at least on three consecutive dates petitioners sought adjournment for filing written notes of arguments. Rule 86-E (3) of the M.C.S. Act mandates that on receipt of reply, the Registrar shall proceed to hear oral arguments of parties and shall close proceedings for orders. In present case, there is no dispute that petitioners filed reply before Registrar and thereafter sought time to file written notes of arguments on multiple occasions. Lastly, request for adjournment was refused in presence of learned Advocate appearing for petitioners. Thereafter, matter was posted for further hearing and closed for orders. It is, therefore, clear that petitioners were granted ample opportunity in compliance with procedure prescribed under Rule 86.

8 So far as contention of petitioners that once dispute under

Section 91 is filed, Assistant Registrar could not have proceeded further under Section 101 of the M.C.S. Act, it can be observed that respondent – bank had instituted proceeding under Section 101 on 21.06.2021. Petitioners appeared through Advocate on 19.07.2021 and filed dispute under Section 91 before Co-operative Court on or about 14.09.2021. It is, therefore, evident that petitioners instituted proceedings under Section 91 after putting appearance before Assistant Registrar in the proceedings under Section 101 of the M.C.S. Act. Learned Advocate appearing for petitioners relies upon Judgment of this Court in case of **Uttam Sabde** (supra) to contend that Registrar could not have proceeded further. However, minute reading of law laid down of this Court in case of **Uttam Sabde** (supra) would show that Court ruled, proceedings under Sections 101 and 91 are distinct and different jurisdictions, operating in different fields and can be independently proceeded. Conversely, Mr. V.H. Dighe, learned Advocate appearing for respondent – bank relies upon Division Bench Judgment of this Court in case of **Shewalkar Developers** (supra), wherein this Court observed as under -

“20. We are of the considered view that the blanket order which had the effect of preventing the Bank from exercising the statutory right available to it under Section 101 of the said Act was totally untenable in law. Not only that, but if the learned Cooperative Court desired to grant some relief in favour of the disputant, the least that was expected was to pass some order which at least partly protects the interest of the Bank. The effect of the order passed by the learned Cooperative Court was

preventing the Bank to exercise the statutory right available to it under Section 101 of the said Act, for recovery of the huge amount which was more than rupees five crores. In that view of the matter, we find that this is a fit case wherein this Court should exercise its extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India to set aside the order of the inferior Court, which is not passed in accordance with law.”

If aforesaid observations are considered, there is no impediment for bank to avail remedy under Section 101 of the Act, even when borrower resorts to file a dispute. In fact, the Division Bench of this Court observed that – Co-operative Court in exercise of jurisdiction under Section 91 cannot prevent the bank from exercising statutory rights available under Section 101 of the Act for recovery of the dues. The corollary of the aforesaid principles of law espoused by this Court indicate that the filing of dispute under Section 91 before Co-operative Court would not be impediment to bank to proceed with the application under Section 101 before Registrar.

9 In that view of the matter, even without going into the aspect of availability of alternate remedy of consideration of matters on merits this Court finds that writ petitions sans merits. Hence, following order.

ORDER

1 Writ petitions stand dismissed.

2 Pending civil applications also stand disposed of.

3 Rule is discharged.

4 Amount deposited by petitioners in this Court be refunded along
with interest accrued thereon, if any, to petitioners.

(S.G. CHAPALGAONKAR)
JUDGE

agd