**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.8784 OF 2022

Vijayalaxmi Traders,
Through its Proprietor,
Sandeep Uttamrao Lagame
Age;44 years, Occu: Agril.
R/o. N-7,B-1, House No.11, Cidco,
Aurangabad Tq. & District-Aurangabad ..Petitioner

Versus

1. The Divisional Joint Registrar,
Co-operative Societies At Aurangabad
Kranti Chowk, Aurangabad

2. The Deputy Registrar Co-operative Societies
[Marathwada urban bank co. operative association ltd]
Padegaon, Aurangabad, Tq. & Dist. Aurangabad

3. Prerna Nagri Sahakari bank ltd.
Aurangabad, N-9, T. V. Centre chowk,
Hudco, Aurangabad,
Through its branch manager,

4. Special Recovery Officer,
Prerna Nagri Sahakari bank ltd.
Aurangabad, N-9, T. V. Centre chowk,
Hudco, Aurangabad.

5. Babasaheb s/o Khanderao Bargal
Age: 51, Occu. service
R/o. plot no.77, Gat no.76, Cidco, Aurangabad

6. Sanjaykumar s/o Jagannath Palaskar
Age: 38, Occu. nil
R/o. Balanagar, Tq. Paithan, District- Aurangabad

7. Vijayshri s/o Sandeep Lagame
Age: 39, Occu. nil
R/o. N-7,B-1, House No.11,
Cidco, Aurangabad ..Respondents

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Mr. V. B. Kale, Advocate for Petitioner.
Mr. A. S. Shinde, AGP for Respondent-State.
Mr. K. J. Suryawanshi, Advocate for Respondent Nos.3 and 4.
Mr. S. B. Ghatol Patil, Advocate for Respondent Nos.5, 6 and 7.

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CORAM : S. G. CHAPALGAONKAR, J.

DATED : 27th JUNE 2024.

JUDGMENT:-

1. Rule. Rule made returnable forthwith. With the consent of the parties, matter is taken up for final hearing at the stage of admission.

2. The petitioner impugns the order dated 17.02.2022 passed by the Divisional Joint Registrar, Co-operative Societies, Aurangabad-respondent no.1 in Miscellaneous Application No.68/2021, thereby confirming the order dated 05.03.2018 passed by the Deputy Registrar, Co-operative Societies, Aurangabad-respondent no.2 under Section 101 of the Maharashtra Co-operative Societies Act, 1960 (for short 'MCS Act, 1960').

3. Mr. Kale, learned Advocate appearing for the petitioner submits that on 05.03.2018 respondent no.2-Deputy Registrar, Co-operative Societies, Aurangabad issued certificate under Section 101 of the MCS Act, 1960 against the petitioner showing recovery of outstanding amount of Rs.8,85,982/-. Such an order is passed behind the back of the petitioner. He invites attention of this Court to the paper publication of the notice in 'Daily Punya Nagari' dated 02.03.2018 published by the office of the Deputy Registrar, Co-operative Societies, Aurangabad as regards to the proceedings under Section 101 of the MCS Act, 1960. The notice called upon the petitioner to appear on 07.03.2018 before the Court. However, before the date of appearance given in the notice, respondent no.2

passed order dated 05.03.2018 under Section 101 of the MCS Act, 1960 r/w Rule 86(F) thereby issuing certificate of recovery for an amount of Rs.8,85,982/- w.e.f. 01.11.2017 alongwith interest @ 16% pa. Accordingly, Mr. Kale would submit that respondent no.2 hastily passed ex-prate order. He would further point out that the petitioner had approached the Divisional Joint Registrar, Co-operative Societies, Aurangabad by filing Revision Application No.68/2021 impugning the order dated 05.03.2018. However, the Revision Application came to be rejected owing to the non-compliance of the condition regarding deposit of 50% recoverable amount in terms of Section 154(2) (a) of the MCS Act, 1960. Therefore, he submits that the impugned orders may be quashed and set aside and the matter be remitted back for fresh consideration, after granting due opportunity to the petitioner to defend the proceeding under Section 101 of the MCS Act, 1960 initiated by respondent no.3-Society.

4. Per contra, Mr. Suryawanshi, learned Advocate appearing for respondent nos.3 and 4 submits that during the pendency of this petition, the petitioner approached the Bank for settlement of the account. Consequently, the Bank waived substantial amount of Rs.3,43,257/- from recoverable dues and settled the loan account of the petitioner. The documents and shares have been returned to the petitioner. The loan clearance certificate is also issued to him. Therefore, the present Writ Petition became infructuous and no relief can be granted. He submits that in view of subsequent developments petitioner is estopped from seeking any relief as prayed in the Writ Petition.

5. In response to the submissions of Mr. Suryawanshi, Mr. Kale, learned Advocate appearing for the petitioner submits that since there was no interim protection in favour of the petitioner,

respondent-Bank put his assets for sell and pressurized him to deposit the excessive amount. The petitioner in his endeavour to save assets, succumbed to the pressure and made deposit of the amount. However, such deposit is without prejudice to his claim in Writ Petition.

6. Having considered the submissions advanced and on perusal of the documents tendered into service, it can be noticed that a proceeding was initiated by respondent No. 3 under Section 101 of the MCS Act, 1960 for issuance of the recovery certificate against the petitioner, he was never served with notice of proceeding or heard. The notice of proceeding initiated by respondent No.3 under Section 101 of the MCS Act, 1960 was published in newspaper 'Daily Punya Nagari' dated 02.03.2018. The notice contains the name of the present petitioner in the list of borrowers. The contents of the notice called upon the borrowers to appear before the Deputy Registrar, Co-operative Societies, Aurangabad on 07.03.2018 to address the proceedings initiated by respondent no.3-Bank under Section 101 of the MCS Act, 1960. Perusal of the impugned order passed by the Deputy Registrar, Co-operative Societies, Aurangabad shows that the order is passed on 05.03.2018. Even the outward number and date of outward clearly bears date as 05.03.2018. The recovery certificate issued in pursuance of the said order also indicates that it is issued in pursuance of order dated 05.03.2018. It is, therefore, apparent that the proceeding under Section 101 of the MCS Act, 1960 was concluded before the date of appearance given to petitioner under the notice issued by way of paper publication. Consequently, the ex-parte order has been passed and recovery certificate has been issued, which is in gross violation of principles of natural justice as well as procedure prescribed under MCS Act, 1960 and Rules

framed thereunder. Although the petitioner attempted to ventilate his grievance and sought redressal by filing Revision Application before the Divisional Joint Registrar, Co-operative Societies, Aurangabad, his Revision Application has been rejected for want of pre-deposit of 50% recoverable amount.

7. This Court dealt with the similar issue in the matter of ***Vithal S/o Laxman Fatangade and Another Vs. State of Maharashtra and Others***[1] and observed that the Deputy Registrar, Co-operative Societies performs quasi-judicial function and expected to follow the procedure contemplated under Rule 86-A to 86-F of the Act. Non-observance of such procedure has been deprecated. Consequently, ex-parte recovery certificate was quashed and set aside. Similar view is reiterated by the Division Bench of this Court in case of ***Sundeep Polymers Pvt. Ltd. And Others Vs. State of Maharashtra and Others***[2] and observed in paragraph no.10 as under:

> *"It is mandatory for the Authorities to follow the Rules provided in Chapter VILLA of the Maharashtra Co-operative Societies Rules 1961 while issuing Recovery Certificates, Lt is amply clear that in this case the Recovery Certificate has been issued without following due procedure and also without proper service of notice on the appellants and the Rules of natural justice are violated. Hence the Recovery Certificate issued must be held to be invalid and bad in law and needs to be struck down. This has resulted into unnecessary waste of time and money by the appellants as well as the bank."*

8. Looking to the observations of this Court in the catena of judgments in subject matter, the impugned order cannot be sustained in law.

1 **2011 (2) Mh.L.J. 194.**
2 **2010 (7) Mh.L.J. 538.**

9. Although Mr. Suryawanshi, learned Advocate contend that account is settled, as the petitioner has deposited the amount after availing concession from the Bank, it would be difficult to accept such contentions. In case of bonafide settlement, the compromise terms could have been placed on record of this Court and acted upon by the parties. Apparently, the documents tendered before this Court indicate that the petitioner's assets were attempted to be sold and under such duress he deposited the amount. Consequently, the loan clearance certificate has been issued. The deposit of amount under duress would not estop the petitioner from prosecuting his legal remedy against the illegal ex-prate orders.

10. In this background, this is a fit case for exercise of jurisdiction of this Court under Article 227 of the Constitution of India, thereby quashing and setting aside the impugned order. Hence, the following order:

ORDER

a. Writ Petition is partly allowed.

b. The impugned judgment and order dated 17.02.2022 passed by the Divisional Joint Registrar, Co-operative Societies, Aurangabad-respondent no.1 and judgment and order dated 05.03.2018 passed by the Deputy Registrar, Co-operative Societies, Aurangabad-respondent no.2 are hereby quashed and set aside.

c. The matter is remitted back to Deputy Registrar, Co-operative Societies, Aurangabad-respondent no.2 for fresh consideration.

d. The petitioner shall appear before respondent no.2 on 08.07.2024 alongwith his reply, if any.

e. Thereupon, respondent no.2 shall proceed to decide the proceeding initiated by respondent no.3-Bank under Section 101 of the MCS Act, 1960 in accordance with law without impeded by settlement of account, as claimed by respondent No.3 and 4.

f. Rule is made absolute in above terms.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/June-2024