

VRJ

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.1157 OF 2020

Shankar Mahadeo Surve ... Petitioner

V/s.

Malaidevi Nagari Sahakari Pat Sanstha
Ltd. & Ors. ... Respondents

WITH

WRIT PETITION NO.11288 OF 2023

Malaidevi Nagari Sahakari Pathasanstha
Ltd. ... Petitioner

V/s.

Shankar Mahadeo Surve & Ors. ... Respondents

Mr. Prashant Chawan i/by Mr. Ramdas Hake Patil for
the petitioner in WP/1157/2020 and for respondent
No.1 in WP/11288/2023.

Mr. P. D. Dalvi i/by Mr. Kalpesh U. Patil for the
petitioner in WP/11288/2023 and for respondent in
WP/1157/2020.

CORAM : AMIT BORKAR, J.

DATED : JANUARY 9, 2024

PC.:

1. Both the petitions arise out of a dispute filed by the borrower seeking various reliefs against the bank in relation to three loans obtained by the borrower.
2. The details of earlier round of litigation and facts relating to

disbursement of amount are unnecessary for deciding the issue involved in the present petitions. The facts necessary for deciding issue involved in the writ petitions are as under:

3. The parties are referred by their title in Writ Petition No.1157 of 2020 for the purpose of convenience. The respondent No.1 granted three loans to the petitioner by Loan Account No.27, Loan Account No.11 and Loan Account No.06. According to the petitioner, he had repaid part of the amount of loan. However, on 2nd October 2009, the petitioner received notices from respondent No.1-bank demanding amount of Rs.5,17,261/-, Rs.12,35,959/- and Rs.11,06,326/-.

4. The petitioner, therefore, filed dispute No.844 of 2009 before the Cooperative Court, Satara, seeking various reliefs. During pendency of the dispute, respondent No.1-bank initiated recovery proceedings under section 101 of the Maharashtra Cooperative Societies Act, 1960.

5. On 8th February 2010, the Deputy Registrar Cooperative Societies, Karad issued recovery certificate for sum of Rs.28,78,150/- in respect of three applications.

6. On 26th March 2010, the Cooperative Court granted temporary injunction against respondent No. 1-bank from recovering the amount in furtherance of recovery certificate. On an appeal filed by the bank, the Appellate Authority had allowed the appeal. However, this Court in Writ Petition No.5454 of 2010 directed Cooperative Court to decide the dispute on merits. This Court further directed not to take coercive steps to enforce

recovery certificate subject to deposit of Rs.7,50,000/- which was deposited by the petitioner accordingly.

7. On 9th May 2016, the Cooperative Court partly allowed the dispute. The petitioner and respondent No.1 filed appeal challenging award. On 18th January 2017, the Cooperative Appellate Court dismissed the borrower's appeal and allowed the respondent No.1's appeal. The borrower challenged the Appellate Court's order before this Court in Writ Petition No.7080 of 2017.

8. This Court, on 26th March 2019, referred to argument on behalf of the respondent No.1-bank that once recovery certificate is issued under section 101 of the Maharashtra Cooperative Societies Act, 1960 dispute under section 91 of the said act can no longer be said to be maintainable. Learned Single Judge in paragraphs 8 and 9 of its order observed that the issue involved in the present case is squarely covered by judgment of the Single Judge of this Court in case of **Uttam Pandurang Sabde & Ors. vs. Osmanabad Janta Sahakari Bank Ltd & Anr.** reported in 2009 (6) All MR 769. This Court, in paragraphs 9 and 11, observed as under:

9. The learned Single Judge of this Court upon, examining the provisions of the said Act has held that where the dispute under section 91 of the said Act was raised prior to the issuance of the recovery certificate under section 101 of the said Act, such a dispute was maintainable and such dispute could not have been rejected on the ground that subsequently, the recovery certificate was issued under section 101 of the said Act."

11. Since, according to me, the issue raised in this petition

is covered by the decision of *Uttam Pandurang Sabde (supra)*, the impugned judgment and order made by the Appeal Court will have to be set aside and the matter will have to be remanded back to the Appeal Court to decide both the appeals on their own merits and in accordance with law.”

9. In my opinion, therefore, the issue of maintainability of dispute filed by the petitioner (borrower) came to an end on 26th March 2019 as the said order attained finality. It is, therefore, no longer open for the bank to contend that certificate issued by the Registrar attained finality and is in force. By the observations made in paragraphs 9 and 11 of this Court, the certificate is made subject to decision of the dispute and, therefore, unless the dispute is decided on merits, the petitioner is not entitled to enforce the certificate.

10. The Cooperative Appellate Court after decision of this Court, again held that the dispute is barred by the principle of res judicata and directed the auditor to adjudicate on various items referred in paragraph 96.

11. In my opinion, therefore, it is necessary to remand proceedings back to the Appellate Court to adjudicate afresh on the exact amount due by the petitioner (borrower) based on loan documents, pleadings of the parties including alleged admission in the cross-examination and other proved documents placed on record. The parties are at liberty to place on record their account extracts which can be considered by the Appellate Court. On overall consideration of the material on record, it is necessary for the Appellate Court to arrive at exact amount due and payable by

the petitioner (borrower) on the date of decision of appeals.

12. The impugned order dated 9th October 2019 passed by the Member, Maharashtra State Cooperative Appellate Court, Mumbai, Bench at Pune in Appeal No.52 of 2016 and Appeal No.76 of 2016 is quashed and set aside.

13. With this, both writ petitions stand disposed of. No costs.

14. It is directed that the borrower shall not alienate or create third party rights in relation to the property owned or co-owned by the petitioner till the disposal of the appeals.

15. The Appellate Court is directed to decide the appeal within six months from today.

(AMIT BORKAR, J.)