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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9315 OF 2022

Vilas Bhimrao Phadtare & Ors. … Petitioners
V/s.
Deputy Registrar, Cooperative Society
Mumbai Ward & Ors. … Respondents

Mr. Akshay R. Kapadia for the petitioners.

Mr. Sandeep V. Bane with Mr. Shubham Bane & Ms. Pooja Bane for respondent No.3.

Ms. V. S. Nimbalkar, AGP for the State/respondent Nos.1 & 5.

CORAM : AMIT BORKAR, J.

DATED : JANUARY 15, 2024

P.C.:

1. The petitioners are borrowers who applied for loan before respondent No.2-cooperative credit society. The petitioner No.1 is the principal borrower and petitioner Nos.2 and 3 are the co-borrowers. Respondent Nos.3 and 4 were guarantors. On 26th February 2016, the petitioners applied to respondent No.2-cooperative credit society for loan of Rs.35,00,000/-. Based on Resolution No.7 dated 1st March 2016 of managing committee an amount of Rs.26,00,000/- was sanctioned as housing loan to be repaid in 180 monthly installments of Rs.34,625/- at 14% per annum. The signature on application for loan are admitted. The petitioners also executed promissory note and other necessary loan documents. The amount of loan was disbursed to petitioner No.1 by various cheques dated 8th March 2016, 12th March 2016 and 18th March 2016. Mortgage deed to secure loan was also executed.

2. On default in repayment of loan, the respondent No.2-cooperative credit society applied before the Assistant Registrar Cooperative Society under section 101 of the Maharashtra Cooperative Societies Act, 1960 (hereafter, "the Act", for short). The Assistant Registrar refused to grant certificate under section 101 of the Act on the ground that the disbursement of loan was contrary to the provisions of the act and rules. The credit society did not consider repaying capacity of the petitioners. The persons who signed on loan documents were not knowing each other. Therefore, the application involves complicated questions of law in fact and such questions are beyond purview of powers of the Registrar under section 101 of the Act.

3. The cooperative society challenged the order under section 154 of the Act. The revisional authority allowed the revision and issued certificate under section 101 of the Act directing the petitioners and respondent Nos.4 and 5 to pay Rs.28,90,912/- along with interest at 14% per annum from 1st May 2018.

4. Learned advocate for the petitioners submitted that after the amount was deposited in the petitioners' account, it was taken control off by the officials of the cooperative society and they disbursed the amount from petitioners' account to third parties. The petitioners submitted that petitioner No.2's pension account is attached for execution of certificate under section 101 of the Act. He submitted that the petitioner No.2 has already filed criminal complaint against officials of respondent No.2-cooperative credit society.

5. On perusal of the material on record, it appears that the finding recorded by the Assistant Registrar and the revisional authority is to the effect that while considering the repaying capacity of the petitioners, there is irregularity. The amount beyond capacity of petitioner No.2 was sanctioned. In my opinion, such irregularity in disbursing the amount would not take away jurisdiction of the Assistant Registrar under section 101 of the Act. The expression complicated questions of fact requires such issues which are beyond summary jurisdiction of the Assistant Registrar under section 101 of the Act and which requires oral evidence to be led by the society to prove the liability of borrower.

6. In the facts of the case, it is not in dispute that amount of loan was credited in the account of petitioner No.1 by various cheques. Once such amount is credited in petitioner No.1's account, petitioner No.1 becomes owner of that amount. Alleged illegality by the society about taking control of such amount is beyond purview of section 101 of the Act.

7. The contention regarding attachment of pension account is concerned, the petitioners have remedy to raise objection under Sub-rule (19) of Rule 107 of the Act to the attachment of pension and in that event Special Recovery Officer is obliged to adjudicate upon such point. The aggrieved person has remedy of revision under section 154 of the Act or Civil Suit against adjudication of such objection.

8. On perusal of the impugned order, the revisional authority has recorded a finding of fact that the cheques issued in furtherance of sanctioned loan amount were deposited in petitioner No.2's account. The petitioners and respondent Nos.4 and 5 have signed on loan application and promissory note. Petitioner Nos.1 and 2 have mortgaged their flat towards security of the loan. Therefore, in my opinion, no interference in extraordinary constitutional jurisdiction is called for.

9. The writ petition is dismissed. No costs.

(AMIT BORKAR, J.)