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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 14286 OF 2023

The Hindusthan Co-operative Bank Ltd. … Petitioner

Vs.

State of Maharashtra and Others … Respondents

Mr. Vishal C. Ghosalkar for the Petitioner.
Mr. Aadesh M. Patil for Respondents.
Mr. A. P. Vanarase, AGP for Respondent nos.1 and 2.

CORAM : GAURI GODSE, J.

DATE : 6th FEBRUARY 2024

P.C.

1. By order dated 10th November 2023 notice for final disposal of the petition was issued. Hence, petition is taken up for final disposal.

2. The petitioner challenges order dated 8th November 2023 passed by the District Deputy Registrar, Co-operative Societies in Revision Application filed by respondent nos. 3 to 6 who are the borrowers. By the impugned order the execution of the demand notice dated 27th

Note : This order is corrected vide speaking to minutes of the order dated 20th February 2024.

November 2023 is issued by the recovery officer pursuant to the recovery certificate under Section 101 of The Maharashtra Co-operative Societies Act, 1960 ("MCS Act"). This court while issuing notice had stayed the impugned order.

3. Learned counsel for the petitioner submitted that the recovery certificate issued under Section 101 was never challenged by the borrowers. Pursuant to the recovery certifcate attachment order was passed on 27th October 2023 by the recovery officer. He submitted that the borrowers preferred a revision application and served copy of the notice dated 6th November 2023 on the petitioner bank on 8th November 2023 at 2.15 pm intimating the petitioner bank that the Revision Application will be taken up on 8th November 2023 at 12 noon. Since the said notice was served belatedly the petitioner as soon as they learnt about the impugned order, filed the present petition and this court stayed the execution of the impugned order.

4. He submitted that though Revision Application does not challenge the recovery certificate under Section 101 borrowers are under an obligation to make compliance of the statutory deposit in terms of Section 154(2-A). He submits that the said requirement is a

well settled proposition of law. In support of his submission he relied upon the decision of this court in the case of ***The Greater Bombay C-operative Bank Ltd. and Another Vs. Dhillon P. Shah and Others***[1]*.* He therefore submits that the impugned order is illegal and the borrower is under obligation to comply with the said statutory provision.

5. Learned counsel for respondent nos. 3 to 6 i.e. borrowers does not dispute that the recovery certificate issued under section 101 was not challenged by them. However, he submits that respondent no. 3 has resigned from the partnership and his liability was only to the extent of 8% and, hence, he submits that the outstanding dues cannot be recovered from the said respondent.

6. So far as the liability of the borrowers inter-se is concerned, the same will not absolve them from the statutory requirements under Section 154(A-2) of the MCS Act. Since the Revision Application is filed challenging the demand notice for execution of the recovery certificate, the borrowers/revision applicants are under obligation to comply with the statutory provisions.

1 AIR 2004 BOMBAY 108

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7. Considering the facts and circumstances of the present case and the principle of law laid down in the case of ***Greater Bombay Co-operative Bank*** squarely apply to the present case.

8. In view of the aforesaid, the impugned order suffers from illegality and infirmity. Hence for the reasons stated above, Writ Petition is allowed and the impugned order dated 8th November 2023 passed by the District Deputy Registrar, Co-operative Socities, Mumbai on stay application in Revision Application No. **172 of 2023** is quashed and set aside, and the stay application is rejected.

[GAURI GODSE, J.]

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