NILAM SANTOSH KAMBLE
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2802 OF 2024

Avinash Keshav Potnis }
Age-68, Occ : Retired }
R/at-Wadgaon, Taluka-Khandala, }
District-Satar. } … Petitioner

Versus

1. Pune Urban Co. Op. Bank Ltd. }
Plot No.BC-2, Gultekadi, Market Yard, }
Pune-411 037. }
Having one of the Branch at Gultekadi, }
Pune-37, Thr. Its Manager, }
Having Office at Plot No.BC-2, Gultekadi, }
Market Yard, Pune-411 037. }

2. Special Recovery Officer, }
Pune Urban Co-Operative Bank Ltd., }
24 Kasba Path, Phadke Houd, Pune-411 011. }

3. Ramchandra Dattatraya Virkar }
Age-68 years, Occ : Business }
R/at-Kamal Heights, Flat No.4, B-Complex, }
Thergaon, Pune. }

4. Kamlakar Dattatraya Virkar }
Age-58 years, Occ- Business, }
R/at-Chandrama, Flat No.403, DSK }
Vishwa, Dhayari, Pune. }

5. The Divisional Joint Registrar Co-Operative Societies, Pune Region, Pune Off/At-Sakharsankul, Shivaji Nagar, Pune-411 005.	} … Respondents

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Ms.A.S. Bhosale, for the Petitioner.
Ms.Manjiri Parasnis, for the Respondent No.
Mr.R.S.Pawar, AGP, for Respondent No.5-State.

CORAM : R.M. JOSHI, J.

DATE : 13th SEPTEMBER 2024

JUDGMENT :-

. By consent of both sides, heard finally at the stage of admission.

2. The Petitioner is aggrieved by orders dated 5th January 2024 passed by the Respondent No.5 arising out of order dated 28th November 2022 passed by Respondent No.2 and hence filed this Petition.

3. It is the case of the Petitioner that, Respondent No.1 is Co-operative Bank and Respondent No.2 is its Recovery Officer. Respondent No.3 is claimed to be the original borrower and Respondent No.4 is his brother and one of the sureties for the loan facility availed by the Respondent No.3.

4. It is the case of the Petitioner that, the loan facility was availed for the business purpose in the name of R.D. Virkar and Company in the year 1986. Since the loan was not been repaid, in the year 1998 Respondent-Bank initiated Recovery Proceedings under Section 101 of the Maharashtra Co-operative Societies Act, 1960 (for short 'Act') being Application No.43 of 1998 and 44 of 1998. These Applications were decided on 29th October 1998. It is claimed by the Petitioner that the notices of these proceedings were never served upon these Petitioner. However, Recovery Certificate came to be passed on 29th October 1998. It is claimed that, it is wrongly mentioned in the award that the Petitioner was present and has recorded no objection for issuance of the Recovery Certificate. According to the Petitioner that he has got the knowledge of the Recovery Certificate being passed against him for the first time when Rs.10,000/- was deducted from his salary and such deduction continued till his retirement. A total sum of Rs.1,80,000/- has been deducted from his salary for the period of 18 months. It is claimed that, in spite of the recovery of such amount, Respondent Nos.1 and 2 did not

initiate Recovery Proceedings against the original borrower. According to the Petitioner there is some understanding arrived at between Respondent Nos.1 to 4, because of which time was given to them for repayment of the outstanding amount. It is grievance of the Petitioner that, a dispute was filed bearing No.8 of 2013 by the Respondent No.1-Bank against Respondent Nos.3 and 4 before the Co-operative Court, Pune for the recovery of the amount of Rs.96,58,212.78/-. It is alleged that, these Respondents in collusion with each other, instead of initiating action against Respondent Nos.3 and 4, action is initiated for the recovery of money from the Petitioner, who is a retired person. It is claimed by the Petitioner that, after a lapse of period of 24 years and without informing the Petitioner about outstanding dues, the order of attachment has been passed in respect of the landed property of Petitioner held along with his brothers. It is claimed by the Petitioner that, the filing of the dispute against Respondent Nos.3 and 4, the Petitioner has stood discharged as surety. The Petition is filed on the grounds specifically set out in paragraph No.12A to 12P of the Petition.

5. The learned counsel for the Petitioner at the outset, has raised objection with regard to the maintainability of execution proceedings on the ground it being initiated after lapse of period of 24 years, which according to her is much beyond the period of limitation. In this regard reference is made to the provisions of the Section 156 of the Act, which contemplates the period of limitation as per Article 136 of Limitation Act which is 12 year. It is further submitted by her that, the order of attachment has been passed on the basis of the certificate of dues which does not indicate as to the amount which is already paid either by the Petitioner or by the borrower and other surety. It is argued that, the filing of the dispute against Respondent Nos.3 and 4 by Respondent No.1 amounts to discharge of Petitioner as surety. In this regard reference is made to Section 133 of the Contract Act. By referring to the order of attachment, it is contended that the concerned Authority has failed to take into consideration the fact that the Petitioner is not the sole owner of the properties attached which are jointly held by him along with others. On these amongst other contentions, the setting aside of

the impugned order is sought.

6. The learned counsel for the contesting Respondent No.1 has submitted that, the Petition itself is not maintainable for the reason of non deposit of 50% amount of the Recovery Certificate. To support her submission, she placed reliance on judgment of this Court in case of ***Barindra Overseas Pvt Ltd. V/s Shilpa Shares & Securities & Ors.***[1] Thus, according to her, the Petition deserves to be dismissed at threshold.

7. On merit it is her submission that, as per the admission of the Petitioner himself the certain amounts were recovered from his salary for the period from 2011-2013 for 18 months, and which indicate that the Execution Proceedings have already commenced. According to her, mere pendency of the proceedings for a long period does not become a ground to challenge it's maintainability. It is submitted that, unless the execution Court certifies the satisfaction of the decree fully, execution proceedings cannot be said to have been concluded. By referring to the certificate in question, it is contended that, if

1 2019(3) Mh.L.J. 651

the Petitioner was very well present before the Deputy Registrar of Co-operative Societies and in fact has recorded no objection for issuance of the certificate, it is her submission that, in any case since there is no challenge to the said certificate, it is not open for the Petitioner to raise any objection about the same at this stage. Attention of Court is drawn to Rule 107 of Rule 1961 to contend that, the procedure led therein has duly been complied with.

8. There is no dispute about fact that, by order dated 29th October 1998, two proceedings i.e. Application No.43 of 1998 and 44 of 1998 under Section 101 of the Act were allowed. A certificate of recovery was issued thereafter in both cases. This order has attended finality. The Petitioner himself has admitted in paragraph No.3 of the Petition that pursuant to the said orders a sum of Rs.10,000/- was deducted from his salary, for the period of 18 months and a total sum of Rs.1,80,000/- was recovered. This admission conclusively shows that the Execution Proceedings were initiated within limitation and the Execution Proceedings are still continued. There is absolutely no evidence on record to indicate that, the Execution Authority has recorded its

satisfaction that the entire amount due in the Execution Proceedings are recovered and the decree is fully satisfied. Till the time such finding is recorded and it is certified that the decree is fully satisfied, proceedings of Execution would not come to an end. This Court therefore finds no substance in the contentions of the Petitioner that the Execution Proceedings initiated after the period of limitation of 12 years and hence not maintainable.

9. Next submission of the Petitioner is with regard to the filing of dispute bearing No.8 of 2013 by Respondent No.1 against Respondent Nos.3 and 4 is concerned, filing of any further dispute would not affect the order passed by Deputy Assistant Registrar under Section 101 of the Act. Reference made to Section 133 of the Contract Act is wholly misplaced. A bare perusal of the said provision indicates that the same would apply in case there is change in the term of the contract between principal debtors and a creditor without surety's consent. This provision is based on general rule that all parties should be aware of contract and surety cannot be held responsible/liable for something he did not agree to. In the instant case, there is no

evidence to indicate any any change being effected in terms of contract behind back of the petitioner. Filing of any dispute before the Co-operative Court cannot be treated as change in the terms of the original contract of loan to which the Petitioner is a surety.

10. It is sought to be argued that, there is attachment caused of the properties which are jointly held by the Petitioner with others. If any one who could have a grievance is any other joint holder of properties and not the Petitioner himself. This therefore, cannot become a ground for causing interference in the order of the attachment issued by Respondent No.2.

11. In respect of grievance made by the Petitioner that, the bifurcation of the amounts dues and already payable is not given, this Court finds it relevant to note Rule 107(12) of the Rules 1961. Which is reproduced here in below :-

> *Rule 107(12) : Where prior to the date fixed for a sale, the defaulter or any person acting on his behalf or any person claiming an interest in the property sought to be sold tenders payment or the full amount due together with interest, batta and other expenses incurred in bringing the property to sale, including the expenses of attachment, if any, the (Recovery Officer) shall forthwith release the property after cancelling, where the property has been attached, the order of attachment.*

12. The aforesaid provision clearly indicates that, after the attachment of the immovable property under Rule 107(10) and (11), it is open for the defaulter or any other person acting on his behalf or any person claiming interest in the property sought to be sold can tender payment of full amount due together with interest. Thus, if the Petitioner had any issue with regard to the exact amount payable, it was open for him to approach the Execution Authority in this regard. This seems to have been not been done by the Petitioner.

13. The Petitioner has challenged the order passed by the Respondent No.2 of attachment of the property pursuant to the issuance of the Recovery Certificate under Section 101 of the act, and therefore it was necessary for the Petitioner to deposit the 50% amount for entertainment of a Revision under Section 154 of the Act, which has not been done in this case. Neither any deposit was made before Revisional Authority nor before this court. The Petition therefore deserved to be dismissed on this ground too. The said view gets support from the judgment of the Co-ordinate Bench of this Court in case of *Barindra Overseas Pvt.*

Ltd. (Supra).

14. Up shot of the above discussion is that there is no substance in the Petition. As such Petition stands dismissed.

15. All pending Civil/Interim Applications are disposed of.

(R.M. JOSHI, J.)