

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 461 OF 2018
WITH
WRIT PETITION NO. 462 OF 2018
WITH
WRIT PETITION NO. 463 OF 2018

The Official Liquidator, High Court, Bombay
of Sundeep Polymers Pvt. Ltd. & Ors. ... Petitioners

Versus

The State of Maharashtra through its Secretary,
Co-operation Department & Ors. ... Respondents

WITH
INTERIM APPLICATION NO. 3335 OF 2021
IN
WRIT PETITION NO. 461 OF 2018
WITH
INTERIM APPLICATION NO. 3334 OF 2021
IN
WRIT PETITION NO. 462 OF 2018
WITH
INTERIM APPLICATION NO. 3330 OF 2021
IN
WRIT PETITION NO. 463 OF 2018

Dileep Balkrishna Nevatia ... Applicant/
Petitioner No.2

In the matter between :

The Official Liquidator, High Court, Bombay
of Sundeep Polymers Pvt. Ltd. & Ors. ... Petitioners

Versus

The State of Maharashtra through its Secretary,
Co-operation Department & Ors. ... Respondents

WITH
WRIT PETITION NO. 464 OF 2018
WITH
IN PERSON APPLICATION NO. 95 OF 2018
IN
NOTICE OF MOTION (L) NO. 395 OF 2018
IN
WRIT PETITION NO. 464 OF 2018
WITH
WRIT PETITION NO. 465 OF 2018
WITH
IN PERSON APPLICATION NO. 94 OF 2018
IN
NOTICE OF MOTION (L) NO. 394 OF 2018
IN
WRIT PETITION NO. 465 OF 2018
WITH
WRIT PETITION NO. 467 OF 2018
WITH
IN PERSON APPLICATION NO. 133 OF 2018
IN
NOTICE OF MOTION (L) NO. 393 OF 2018
IN
WRIT PETITION NO. 467 OF 2018

Deogiri Nagari Sahakari Bank Limited

... Petitioner/
Applicant

Versus

The Official Liquidator, High Court, Bombay
of Sundeep Polymers Pvt. Ltd. & Ors.

... Respondents

Mr. Shanay Shah for Official Liquidator-Petitioner No.1 in WP/461/2018, WP/462/2018 and WP/463/2018; Respondent No.1 in WP/464/2018, WP/465/2018 and WP/467/2018.

Mr. Dileep Nevatia, Petitioner No.2 in-person and for Petitioner No.3 in WP/461/2018, WP/462/2018 and WP/463/2018, and for Respondent Nos.2 and 3 in WP/461/2018, WP/462/2018 and WP/463/2018.

Mr. Nigel Quraishy a/w Ms. Varsha Sawant, Mr. Dushyant Krishnan and Mr. Advait Vajaratkar, i/by Abhijeet Joshi for Petitioners in WP/464/2018, WP/465/2018 and WP/467/2018 and Respondent Nos.4 & 5 in WP/461/2018, WP/462/2018 and WP/463/2018.

Mr. Manish Upadhye, AGP for State in WP/461/2018, WP/462/2018 and WP/463/2018.

Mr. Himanshu Takke, AGP for State in WP/464/2018, WP/465/2018 and WP/467/2018.

CORAM: MANISH PITALE, J.

RESERVED ON : 29th JANUARY 2024
PRONOUNCED ON : 14th MARCH 2024

JUDGMENT :

. By this judgment and order, six writ petitions shall be disposed of. Three writ petitions were filed by Deogiri Nagari Sahakari Bank Limited, while the other three writ petitions were filed by the company - Sundeeep Polymers Private Limited along with its two Directors. Since, the company went into liquidation, the official liquidator is now representing the said company before this Court. For the sake of convenience, the contesting parties are referred to as the co-operative bank and the company in liquidation. Both parties are aggrieved by orders passed by the Divisional Joint Registrar of Co-operative Societies (hereinafter referred to as 'Joint Registrar'). The co-operative bank is aggrieved by orders dated 15th May 2009 and 20th May 2009, passed by the Joint Registrar. The company in liquidation is aggrieved by orders dated 11th November 2008, passed by the Joint Registrar.

2. Before referring to the chronological sequence of events leading to filing of the six writ petitions, it would be appropriate to refer to the order dated 15th November 2017, passed by this Court (Coram: Dr. Manjula Chellur, Chief Justice), in a Miscellaneous Civil Application. By the said order, this Court allowed the application, as a consequence of which all the writ petitions stood transferred from the Aurangabad Bench of this Court, where they were originally filed, to the principal seat of this Court. In the said order, this Court directed that since the company had gone into liquidation, the writ petitions would be heard by the company Court. It is for this reason that the six writ petitions have come up for consideration before this Court.

3. The co-operative bank filed three writ petitions before the Aurangabad Bench of this Court to challenge the said orders dated 15th May 2009 and 20th May 2009, whereby the Joint Registrar dismissed the Revision Applications filed by the co-operative bank, thereby confirming orders dated 20th June 2008, passed by the Assistant Registrar of the Co-operative Societies (hereinafter referred to as 'Assistant Registrar'). By the said orders, the Assistant Registrar had cancelled the recovery certificates issued in favour of the co-operative bank and against the company in liquidation under Section 101 of the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as 'MCS Act').

4. It is the case of the co-operative bank that it had advanced

loans to the company in liquidation. According to the co-operative bank, the company in liquidation and its directors as guarantors committed default in repayment of the loans, due to which the co-operative bank was constrained to initiate proceedings under the provisions of the MCS Act. According to the co-operative bank, all necessary material required for issuance of recovery certificates under Section 101 of the MCS Act was placed before the Assistant Registrar. On 8th May 2002, the Assistant Registrar issued recovery certificates, relying upon such material placed on record by the co-operative bank.

5. Aggrieved by the same, the company in liquidation filed revision applications before the Joint Registrar under Section 154 of the MCS Act. The revision applications were rejected as being untenable due to non-compliance of Section 154(2A) of the MCS Act. The said provision requires the revision applicant to deposit 50% of the total amount due under the recovery certificate with the co-operative bank in whose favour the recovery certificate has been issued. The company in liquidation and its directors challenged the said orders of the Joint Registrar by filing writ petitions before the Aurangabad Bench of this Court. The writ petitions were dismissed, against which the company in liquidation and its directors filed Latest Patent Appeals before the Division Bench of this Court. The Latest Patent Appeals were also dismissed, whereupon the company in liquidation and its directors approached the Supreme Court.

6. The Special Leave Petitions filed before the Supreme Court were withdrawn with leave to approach the Joint Registrar for extension of time to deposit the amount. Therefore, the company in liquidation and its directors filed applications for condonation of delay in depositing the amounts as per Section 154(2A) of the MCS Act. The Joint Registrar allowed the applications, as the company in liquidation and its director showed their readiness to deposit 50% of the amounts with the co-operative bank, in terms of the said provision.

7. On 27th February 2008, the Joint Registrar considered the contentions raised on behalf of the rival parties and concluded that there were contradictions in the orders passed by the Assistant Registrar while issuing recovery certificates under Section 101 of the MCS Act. It was recorded that, in such circumstances, the Revision Applications deserved to be allowed. Accordingly, the Revision Applications were allowed and the orders passed by the Assistant Registrar issuing recovery certificates were set aside and the proceedings were remanded to the Assistant Registrar, to be disposed of within three months.

8. Thereafter, the Assistant Registrar considered the contentions of the rival parties and passed orders on 20th June 2008, holding that the recovery certificates were liable to be cancelled. Accordingly, the recovery certificates were cancelled on

the ground that the issues arising out of the contentions raised by the company in liquidation and its directors required detailed enquiry and evidence, which could not be countenanced in the summary proceedings for grant of recovery certificates under Section 101 of the MCS Act. The Assistant Registrar referred to the loan application forms and other such documents to proceed on the basis of that even disbursement of loans was an issue requiring evidence, thereby holding in favour of the company in liquidation and its directors.

9. The co-operative bank as well as the company in liquidation and its directors filed revision applications to challenge the said order passed by the Assistant Registrar. While the co-operative bank was aggrieved by cancellation of the recovery certificates, the company in liquidation and its directors were aggrieved by the failure on the part of the Assistant Registrar to direct refund of the amount deposited by the company in liquidation and its directors.

10. By orders dated 15th May 2009 and 20th May 2009, the Joint Registrar dismissed the revision applications filed by the co-operative bank, concurring with the finding rendered by the Assistant Registrar. It was held that the summary enquiry, as contemplated under Section 101 of the MCS Act, was not sufficient for deciding the serious issues on facts raised on behalf of the company in liquidation and its directors.

11. By orders dated 11th November 2008, the Joint Registrar dismissed the Revision Applications of the company in liquidation and its directors also. It was held that, as there was no provision for refunding the amount deposited by the company in liquidation and its directors, no reliefs could be granted in the revision applications.

12. As noted herein above, three writ petitions have been filed by the co-operative bank, aggrieved by the dismissal of its revision applications by the Joint Registrar. Three writ petitions have been filed by the company in liquidation along with its directors, aggrieved by the order rejecting their revision applications, thereby refusing to refund the amount deposited with the co-operative bank. Upon transfer of the writ petitions from Aurangabad Bench to the principal seat of this Court, the same have come up for consideration.

13. Since the company went into liquidation, the official liquidator is representing the company in liquidation in all six writ petitions, while one of the directors of the said company has appeared in-person for himself and the other director.

14. Mr. Nigel Quraishy, learned counsel appearing for the co-operative bank, submitted that the three writ petitions filed by the co-operative bank pertain to loans advanced to the company in liquidation to the tune of Rs.75,00,000/-, Rs.45,00,000/- and

Rs.20,00,000/-. While making submissions on behalf of the co-operative bank, he submitted that reference was being made to Writ Petition No. 464 of 2018 as the lead petition, because the contentions being raised on behalf of the co-operative bank are identical in all the petitions.

15. The learned counsel for the co-operative bank referred to the documents placed on record along with the writ petition to impress upon this Court that the loan amounts were indeed disbursed to the company in liquidation. Reference was made to various documents, including loan application, signature of guarantors on the same, promissory note issued in the process of disbursement of the loan, loan agreement, deed of hypothecation and continuing security letter. It was submitted that the loan amounts were disbursed and the company in liquidation was supposed to repay the same in installments. Reference was then made to an accounts statement to demonstrate disbursement of the loan amount and the default on the part of the company in liquidation in paying the installments.

16. The learned counsel for the co-operative bank further relied upon a directors' report dated 8th September 2000, of the company in liquidation, signed by the petitioner No.2 as director, wherein reference was specifically made to finance and credit facility made available by the co-operative bank. Specific reference was made to an entry regarding aforesaid further loan of

Rs.20,00,000/- granted by the co-operative bank in April 2000. On this basis, it was asserted that the loan amounts were disbursed and that the documents concerning the other two writ petitions filed by the co-operative bank i.e. Writ Petition Nos.465 2018 and 467 of 2018, also demonstrated disbursal of the loan amounts to the company in liquidation.

17. It was emphasized that, considering the scope of jurisdiction of the competent authority under the provisions of the MCS Act, in this case, the Assistant Registrar, as per Section 101 of the MCS Act, the summary enquiry required the Assistant Registrar to verify the accounts statement and then to call upon the company in liquidation to furnish its version, as regards the allegations of default, thereby ultimately rendering a finding as to whether recovery certificates could be issued. It was specifically submitted that in the present case, in the first instance, the original authority i.e. the Assistant Registrar had issued recovery certificates. But, they were set aside by the Joint Registrar exercising revisional powers and the cases were remanded back to the Assistant Registrar. Thereupon, the Assistant Registrar cancelled the recovery certificates issued under Section 101 of the MCS Act, on a complete misunderstanding of the scope of the jurisdiction under the said provision.

18. It was submitted that the Assistant Registrar misdirected itself and went into questions and documents that were wholly

irrelevant to exercise of jurisdiction by the authorities under Section 101 of the MCS Act. The only relevant document i.e. the accounts statement was completely ignored and by referring to irrelevant documents, the recovery certificates were cancelled. The Assistant Registrar erroneously held that the nature of dispute arising between the parties required evidence, and that therefore, recovery certificates issued under Section 101 of the MCS Act, were liable to be cancelled. The challenge raised by the co-operative bank before the Joint Registrar by filing revision applications met with failure, because the Joint Registrar also committed the error in misunderstanding the jurisdiction under Section 101 of the MCS Act, same as the error committed by the Assistant Registrar. As a consequence, the order of the Assistant Registrar stood confirmed leading to filing of the writ petitions.

19. It was submitted that if the approach adopted by the Assistant Registrar and the Joint Registrar in the impugned orders was to be accepted, every entity or person who takes loan from a co-operative bank, would simply take a stand that the loan amount was never disbursed, allegedly giving a rise to a dispute requiring evidence and in no case would the authorities under the MCS Act be able to issue recovery certificates. This would render the said provision completely redundant. The learned counsel for the co-operative bank specifically placed reliance on judgment of the Division Bench of this Court in the case of *M/s. Top Ten & Anr. v/s. State of Maharashtra & Ors., 2012 (2) BOM C.R. 647*. It was

emphasized that as per the said judgment, the statement of accounts placed before the authorities under the provisions of the MCS Act is of immense importance, which the Assistant Registrar and Joint Registrar completely ignored, while passing the impugned orders. On this basis, it was submitted that this Court can exercise the powers under Article 227 of the Constitution of India, for interfering with the impugned orders as the Assistant Registrar as well as the Joint Registrar manifestly erred in exercising jurisdiction under the provisions of the MCS Act.

20. It was further submitted that the three writ petitions filed by the company in liquidation and its directors as guarantors ought to be dismissed as the relief of refund of amount cannot be granted in the facts and circumstances of the present case. It was submitted that the company in liquidation cannot claim that it is entitled to refund of the said amount, simply for the reason that it would amount to giving primacy to a dishonest borrower, who turns around and claims that loan amounts were never disbursed. By placing reliance on the judgment of the Supreme Court in the case of *Shalini Shyam Shetty & Anr. v/s. Rajendra Shankar Patil, (2010) 8 SCC 329*, it was submitted that while exercising jurisdiction under Article 227 of the Constitution of India, this Court has to exercise its discretion on an equitable principle. In such a situation, the company in liquidation and its directors cannot be permitted to enjoy refund of deposit despite the fact that the co-operative bank has made out a strong case before this Court for

interference with the impugned orders.

21. It was submitted that there was no question of unjust enrichment as claimed by the company in liquidation. In fact, it was brought to the notice of this Court that the co-operative bank, having pursued the matter for long and being tired of the litigation had passed a resolution on 24^h March 2014, writing off the outstanding amounts. Hence, the 50% amount deposited by the company in liquidation while pursuing its revision application as per Section 154(2A) of the MCS Act, cannot be refunded at this stage. On this basis, it was submitted that the writ petitions filed by the co-operative bank ought to be allowed, while the petitions filed by the company in liquidation and its directors ought to be dismissed.

22. On the other hand, Mr. Shanay Shah, learned counsel appearing for the official liquidator of the company in liquidation, submitted that the Assistant Registrar and the Joint Registrar had taken a possible view in the matter and this Court exercising jurisdiction under Article 227 of the Constitution of India ought not to interfere with the impugned orders. While referring to the aforementioned judgment in the case of *Shalini Shyam Shetty* (supra), it was submitted that this Court cannot interfere with the impugned orders to correct mere errors of law or fact or just because another view could be taken in the facts and circumstances of the case. The jurisdiction has to be exercised

fairly by this Court and the facts and circumstances of the present case do not warrant interference with the impugned orders. On this basis, it was submitted that the writ petitions filed by the co-operative bank deserve to be dismissed. On the question of refund of amount deposited with the co-operative bank, as per Section 154(2A) of the MCS Act, it was submitted that when the revision application filed by the company in liquidation was allowed in the first round itself, the amount ought to have been refunded. Reliance was placed on Section 154(2A) of the MCS Act to indicate that in such a situation, the revisional authority is mandated to refund the amount that was deposited by the revision applicant.

23. By placing reliance on the judgment of the Supreme Court in the case of *Axis Bank v/s. SBS Organics Pvt. Ltd. & Anr., (2016) 12 SCC 18*, the learned counsel for the official liquidator submitted that even when there was no such specific stipulation in the relevant statutory provision for refund of amount, the Supreme Court had directed such refund. In this context, reference was made to Section 18 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'Securitization Act'). It was submitted that when an appeal under the said provision was allowed, even in the absence of any stipulation in the relevant provision for refund of amount, the Supreme Court specifically directed that the amount, that was mandatorily required to be

deposited while filing the appeal, must be refunded. On this basis, it was submitted that the writ petitions filed by the company in liquidation and its directors ought to be allowed and the co-operative bank must refund the aforesaid amount with interest.

24. Petitioner No.2 in the writ petitions filed by the company in liquidation, appearing in-person, vehemently submitted that failure to refund the amount by the co-operative bank was clearly a case of unjust enrichment. It was submitted that the co-operative bank could not have retained the said amount as the revision application filed by the company in liquidation and its directors was allowed by the Joint Registrar, as far back as on 27th February 2008. It was submitted that the moment the Joint Registrar allowed the revision applications and the matters were remanded back to the Assistant Registrar, the amounts deposited by the company in liquidation and its directors ought to have been refunded forthwith.

25. The aforesaid petitioner in-person also placed reliance on judgment of Supreme Court in the case of ***Axis Bank*** (supra). In that regard, reliance was also placed on judgments of Supreme Court in the cases of ***Indian Oil Corporation v/s. Parekh Automobiles & Anr., (2007) 8 SCC 153***, ***Mrs. Kavita Trehan & Anr. v/s. Balsara Hygiene Products Ltd., AIR 1995 SC 441*** and ***Kerala State Electricity Board & Anr. v/s. M.R.F. Limited, (1996) 1 SCC 597***.

26. On the question of jurisdiction under Section 101 of the MCS Act, the aforesaid petitioner in-person also placed reliance on judgment of Division Bench of this Court in the case of ***M/s. Top Ten & Anr.*** (supra). It was submitted that the enquiry contemplated under the said provision was a summary and short enquiry. The moment disputed question of facts requiring evidence arose in a dispute, the competent authority under the MCS Act could not exercise jurisdiction under Section 101 thereof. Reliance was also placed on judgments of this Court in the case of ***City Co-op. Credit and Capital Ltd. & Anr. v/s. Official Liquidator of M/s. Satwik Electric Controls Pvt. Ltd., 2019 SCC OnLine Bom 888*** and ***Thane Bharat Sahakari Bank Ltd. & Anr. v/s. Amritlal Bava & Ors., 2019 SCC OnLine Bom 813.***

27. On this basis, it was submitted that when serious disputed questions were raised and the falsity of the documents relied upon by the co-operative bank became apparent before the Assistant Registrar, the recovery certificates issued under Section 101 of the MCS Act were correctly cancelled. Therefore, it was submitted that there was no basis for entertaining writ petitions of the co-operative bank, while the writ petitions filed by the company in liquidation and its directors ought to be allowed. It was submitted that the co-operative bank must refund the aforesaid amount along with interest as prayed in the writ petitions filed by the company in liquidation and its directors.

28. Having heard the learned counsel for the rival parties and the aforesaid petitioner in-person, this Court is called upon to examine the scope of interference with the impugned orders passed by the Assistant Registrar and the Joint Registrar, while exercising jurisdiction under Article 227 of the Constitution of India, and further, to determine as to whether the co-operative bank is liable to refund the aforesaid amounts with interest, if any.

29. Before advertng to the rival submissions and the material placed on record, it would appropriate to refer to the judgment of Division Bench of this Court in the case of *M/s. Top Ten & Anr.* (supra). In the said judgment, this Court considered in detail as to the scope of enquiry under Section 101 of the MCS Act and the extent of jurisdiction when the co-operative Court takes up determination of disputes under Section 91 of the MCS Act. After referring to the relevant provisions of the MCS Act and the Rules framed thereunder, this Court in the said judgment found that Section 101 of the MCS Act carved out a narrow category of disputes for determination, as compared to the remedy under Section 91 of the MCS Act, for resolution of disputes. It was held that the Registrar, while undertaking an enquiry under Section 101 of the MCS Act, is required to determine a limited question, as regards the quantification of arrears due, with specific information being placed on record in the form of statement of accounts. The Registrar is required to simply determine the correctness of the

amount claimed towards arrears from such accounts statement and relevant documents and that when a *bona fide* defence is raised by the borrower, the same cannot be resolved by the Registrar under such jurisdiction. The Division Bench of this Court laid down that Section 91 of the MCS Act, provides for a general remedy for resolution of disputes, while Section 101 of the MCS Act covered disputes of limited nature pertaining only to the quantum of arrears payable by the borrower. Thus, the enquiry under Section 101 of the MCS Act, is evidently a summary enquiry.

30. The said position of law has been followed in the subsequent judgments in the cases of *Thane Bharat Sahakari Bank Ltd. & Anr.* (supra) and *City Co-op. Credit and Capital Ltd. & Anr.* (supra).

31. The facts and circumstances of the present case need to be appreciated in order to examine as to whether the Assistant Registrar and the Joint Registrar committed any error while passing the impugned orders. This Court is aware of the nature of jurisdiction being exercised under Article 227 of the Constitution of India and the scope of interference with the impugned orders.

32. A perusal of the impugned orders passed by the Assistant Registrar in the present case, demonstrates that the said authority has placed much emphasis on the stand taken by the company in liquidation and its directors that the loan amounts were never disbursed. In that context, the Assistant Registrar referred to the

documents leading to the loan facility advanced to the company in liquidation. Much emphasis was placed on alleged discrepancies in the said documents and the statements made on behalf of the company in liquidation in that regard were accepted. The entire discussion in the impugned orders passed by the Assistant Registrar is found in one paragraph, wherein reference is made to such alleged discrepancies in the documents and a conclusion that disputed questions arose in the matters requiring evidence, which could not be gone into while exercising jurisdiction under Section 101 of the MCS Act. In the initial part of the order passed by the Assistant Registrar, it is specifically recorded that the co-operative bank had placed on record accounts statement with regard to disbursement of the loan amounts to the company in liquidation. Yet, there is no reference to the said statement of accounts and as to what was the explanation and stand taken by the company in liquidation i.e. the borrower, in respect of such statement of accounts. This Court finds that the approach adopted by the Assistant Registrar in the impugned order is in the teeth of the position of the law laid down by the Division Bench of this Court in the case of *M/s. Top Ten & Anr.* (supra). The relevant portion of the said judgment reads as follows:

“19. Thus very small types of disputes in which only limited question is of quantification of arrears due, is to be looked into by such Registrar while undertaking enquiry under section 101. Importance therefore, is to statement of accounts. The enquiry undertaken is only aimed at ascertaining whether amount disclosed in statement of

accounts as arrears, is correct and due. The limited opportunity of defence is, therefore, extended to the borrower like petitioners. The correctness of amount shown as arrears can be verified from the accounts and from accounts of the society and from receipts produced by other side. Denial of cross-examination in this situation only shows legislative intent that if a genuine and disputed question of facts is found arising by the Registrar, he cannot proceed to resolve that question. The concerned society, in such circumstances, has to take recourse to filing of a dispute under section 91, where such disputed questions can be gone into. Hence, a bona fide defence being raised by a borrower or other person against whom such certificate is sought, cannot be resolved by the Registrar under this jurisdiction. If he finds such dispute arising, he has to deny the recovery certificate by passing appropriate judgment under Rule 86-F.”

33. In the very same judgment, it was held that the claim of the co-operative bank regarding arrears has to be ascertained as per statement of accounts placed on record. But, in the present case, the Assistant Registrar ignored the most crucial document and erred in relying upon irrelevant material to conclude that disputed questions had arisen, requiring recording of evidence. If the approach adopted by the Assistant Registrar is to be accepted, then the only statement that a borrower could make in a proceeding under Section 101 of the MCS Act, would be to deny disbursal of the loan. Thereupon, the borrower would not be required to take any stand, leading to a situation where the competent authority under the MCS Act in no case would be able to issue recovery certificate. This would render Section 101 of the MCS Act itself redundant. This can never be countenanced. In the present case, the co-operative bank did place on record the most crucial

document in the form of statement of accounts, which was not even adverted to by the Assistant Registrar while cancelling the recovery certificates, granted earlier in favour of the co-operative bank.

34. A perusal of the initial orders passed in favour of the co-operative bank, while issuing recovery certificates, shows that the Assistant Registrar not only referred to the statement of accounts, but also rendered a finding that upon the verification, the same was found to be in order. It is a different matter that the said recovery certificates were found by the Joint Registrar to have been issued in violation of principles of natural justice. It was found that the company in liquidation i.e. the borrower was not given sufficient opportunity. Accordingly, the said recovery certificates were cancelled and the matter were remanded back to the Assistant Registrar. In such a situation, the Assistant Registrar, while passing the impugned orders, ought to have referred to the statement of accounts and considered the response of the company in liquidation. But, as noted herein above, not even a reference was made to the statement of accounts and findings were rendered against the co-operative bank. Thus, the Assistant Registrar committed a manifest error in exercising jurisdiction while holding against the co-operative bank.

35. A perusal of the impugned orders passed by the Joint Registrar shows that the said authority repeated the very same

error and rendered findings against the co-operative bank on the basis of reasons that were similar or identical to the reasons recorded by the Assistant Registrar. While exercising revisional jurisdiction, the Joint Registrar was expected to appreciate the scope of jurisdiction under Section 101 of the MCS Act. But, the approach adopted by the Joint Registrar compounded the errors committed by the Assistant Registrar.

36. Thus, this Court finds that even if the limited scope of jurisdiction under Article 227 of the Constitution as laid down by the Supreme Court in various judgments, including in the case of *Shalini Shyam Shetty* (supra) has to be applied, the impugned orders passed by the Assistant Registrar and Joint Registrar deserve to be interfered with. But, since this Court, while exercising jurisdiction under Article 227 of the Constitution of India, is not expected to conduct the enquiry itself, there is no alternative but to set aside the impugned orders and call upon the competent authority under the MCS Act to consider the matters afresh within the narrow scope of jurisdiction available under Section 101 of the MCS Act, after referring to relevant material, particularly the statement of accounts placed on record by the co-operative bank.

37. As regards the writ petitions filed by the company in liquidation and its directors for refund of the amounts deposited while filing the revision applications before the Joint Registrar, this Court is unable to accept contentions raised on behalf of the

company in liquidation and its directors that failure to refund amounts to unjust enrichment. This Court finds that the borrower in the present case i.e. the company in liquidation and its directors, simply stalled the recovery proceedings by denying every document and the signatures of the directors of the company in liquidation on each document and went to the extent of stating that the loan amounts were never disbursed. The documents on record indicate that the company in liquidation itself had stated in its internal documents, including the directors' report, as regards the loan facility availed from the co-operative bank and the factum of disbursement of the loans. The stand taken by the directors of the company in liquidation, is a dishonest stand showing scant regard to their obligation to return the amounts disbursed by the co-operative bank.

38. While exercising jurisdiction under Article 227 of the Constitution of India, this Court cannot be oblivious of such a dishonest and manifestly false approach adopted by the directors of the company in liquidation. In the said judgment of Supreme Court in the case of *Shalini Shyam Shetty* (supra), while laying down the contours of the jurisdiction to be exercised by this Court under Article 227 of the Constitution of India, it has been specifically laid down that such power being discretionary has to be exercised on an equitable principle. It is noted that in an appropriate case such power can be exercised *suo-motu*.

39. This Court is of the opinion that borrowers like the company in liquidation and its directors, who avail of loan facilities and show scant regard to their obligation to repay the same as per agreed schedules, cannot be permitted to invoke jurisdiction of this Court for seeking reliefs. Banks and Financial institutions are suffering massively due to such borrowers and the position of co-operative banks like the petitioner-co-operative bank in the present case, is even more precarious. In such a situation, when the company in liquidation deposited 50% of the amount due, as per the mandatory requirement of Section 154(2A) of the MCS Act, while filing revision applications, it cannot be said that the company in liquidation was made to suffer any adversity. The record shows that the company in liquidation and its directors took the matter up to the Supreme Court by filing Writ Petitions, Latest Patent Appeals and Special Leave Petitions, to avoid compliance with such mandatory requirement. In fact, the revision applications had not been entertained due to failure to make such mandatory deposits. But later, after making a statement before the Supreme Court to approach the revisional authority for extension of time to make deposits, the company in liquidation and its directors applied for condonation of delay in making such deposits. The delay was condoned by the Joint Registrar due to readiness eventually shown by the company in liquidation and its directors to deposit 50% of the amounts. These facts indicate the approach of the directors of the company in the liquidation and the manner in which they were refusing to pay a single rupee

towards repayment of the loan amounts.

40. This Court is of the opinion that, in such facts and circumstances, equitable principle ought to be invoked in favour of the co-operative bank and against the company in liquidation and its directors. Due to the mandatory deposit of amounts, the co-operative bank could at least see the colour of the money to that extent. In such a situation, where the company in liquidation and its directors, from the very inception, have demonstrated no sincerity or *bona fides* towards their obligation for repayment of the loan amounts, it cannot be said that the principle of unjust enrichment can be raised by them against the co-operative bank. Further, if it is held otherwise, the entire system of functioning of co-operative banks will collapse, which cannot be permitted.

41. There can be no quarrel with the position of law laid down by the Supreme Court in the case of *Axis Bank* (supra), *Indian Oil Corporation* (supra) and *Mrs. Kavita Trehan & Anr.* (supra) and *Kerala State Electricity Board* (supra). But, the facts of the present case need to be appreciated, while considering the contentions raised on behalf of the company in liquidation and its directors, while relying upon the said judgments.

42. At this stage, it would be necessary to refer to Section 154 (2A) of the MCS Act, which reads as follows:-

“Section 154 – Revisionary powers of State Government and Registrar --

(1) *****

(2) *****

(2A) No application for revision shall be entertained against the recovery certificate issued by the Registrar under section 101 or section 154B-29 unless the applicant deposits with the concerned society, fifty per cent. amount of the total amount of recoverable dues. If the revision application is allowed, the Revisional Authority may pass an order directing the society to refund the amount so deposited to the applicant.

Provided that, in case of such revision where revisional authority has granted a stay to the recovery of dues, the authority shall as far as may be practicable, dispose of such revision application as expeditiously as possible but not later than six months from the date of the first order.”

43. It is significant that the above quoted provision stipulates that if the revisional application is allowed, the revisional authority “may” pass an order directing the society to refund of the amount that was deposited by the applicant. This Court is of the opinion that refund of amount under the said provision cannot automatically follow upon the revision application being allowed. More so, when the revision application upon being allowed, results in the matter being remanded to the Assistant Registrar i.e. the original authority for reconsideration, as in the present case is.

44. It is relevant to note that the co-operative bank having pursued the litigation in the present case had to ultimately pass a resolution on 24th March 2014, to write off the loans. In such a situation, it will certainly not be equitable to direct refund of the

amounts deposited by the company in liquidation, as per section 154(2A) of the MCS Act. In any case, in view of the reasons stated herein above, the matters will have to be sent back to the original authority for consideration strictly in accordance with law and upon proper exercise of jurisdiction under Section 101 of the MCS Act. Thus, the company in liquidation has failed to make out a case for refund of the said amounts and the writ petitions filed by them, deserve to be dismissed.

45. During the course of arguments, the learned counsel appearing for the co-operative bank had indicated that he would have to take instructions as to the manner in which the co-operative bank would proceed, in the event its writ petitions are allowed by this Court. On instructions, the learned counsel appearing for the co-operative bank submitted that in the light of the company having gone into liquidation, the co-operative bank may also be permitted to approach the official liquidator to lodge its claim. In fact, it is brought to the notice of this Court that the co-operative bank had indeed lodged its claim on 18th March 2015, before the official liquidator, but, the same was not lodged in the proper format. In that light, leave was sought for lodging the claim afresh in the proper format.

46. As noted herein above, this Court is inclined to set aside the impugned orders passed by the Assistant Registrar and Joint Registrar. This court under Article 227 of the Constitution of

India, cannot go into the exercise of conducting the enquiry contemplated under Section 101 of the MCS Act, which the competent authority will have to undertake. Hence, this Court is inclined to allow the writ petitions filed by the co-operative bank and remand the matters to the Assistant Registrar for consideration afresh.

47. Accordingly, Writ Petition Nos.464 of 2018, 465 of 2018 and 467 of 2018, are allowed. The orders impugned in the said writ petitions, dated 20th June 2008 passed by the Assistant Registrar and the orders dated 15th May 2009 and 20th May 2009 of the Joint Registrar, are quashed and set aside. The matters are remanded to the Assistant Registrar for consideration afresh. The Assistant Registrar may take into consideration the aforesaid resolution dated 24th March 2014 passed by the cooperative bank writing off the loans, while calculating the amount for which the recovery certificates would have to be issued, in the event the Assistant Registrar holds in favour of the co-operative bank. Needless to say, in such an eventuality the Assistant Registrar shall adjust the amounts of 50% deposited by the company in liquidation. The Assistant Registrar shall dispose of the applications of the co-operative bank expeditiously and in any case within eight weeks of the copy of this order being placed before the Assistant Registrar.

48. In the light of the company going into liquidation, and in

the backdrop of the co-operative bank having earlier lodged its claim with the official liquidator, albeit in an improper format, the co-operative bank is at liberty to lodge its claim afresh before the official liquidator, in the proper format, within a period of four weeks from today. The official liquidator i.e. respondent No.1 in the said writ petitions, shall then proceed further in accordance with law.

49. For the reasons stated herein above, Writ Petition Nos. 461 of 2018, 462 of 2018 and 463 of 2018, are dismissed.

50. All pending Notices of Motion, Applications, if any, in the aforesaid six writ petitions, stand disposed of.

MANISH PITALE, J.

BIPIN DHARMENDER
PRITHIANI

Digitally signed by BIPIN
DHARMENDER PRITHIANI
Date: 2024.03.14 19:27:51 +0530