



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.2917 OF 2024

Rahul Siddhivinayak Bondre and others .Vs. Assistant Registrar, Cooperative Societies, Chikhali, Dist. Buldhana and others

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri A.M. Ghare, Adv. a/w Shri R.S. Kalangiwale, Adv. for petitioner.

Shri D.V. Chauhan, G.P. a/w Smt. Mayuri Deshmukh, A.G.P. for respondent No.1/State.

Shri A.A. Naik, Adv. a/w Shri Ashish Chaware, Advocate for respondent No.2.

CORAM : ANIL S. KILOR, J.

DATED : 02/05/2024

1. Since the relief claimed in the present petition is innocuous and since the Bank is represented by Shri Naik, learned counsel and the State by Shri D.V. Chauhan, Government pleader, no notice is issued to the respondent Nos.3 and 4.

2. Heard.

3. The preliminary objection raised by the petitioners to the proceeding under Section 101 of the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as "the Act of 1960"), on the ground that such proceeding is maintainable only against the society who is the member of the respondent No.2-Bank but not against the petitioners who are the Directors of the Society but not

the members of the respondent No.2, the Assistant Registrar Cooperative Societies thereupon, passed the impugned order observing that the objection will be taken into consideration and decided at the time of passing of final order under Section 101 of the Act of 1960.

4. Shri Ghare, learned counsel for the petitioners submits that, since they are not the members of the respondent No.2, the proceeding under Section 101 of the Act of 1960, is not maintainable against them. Even if, they are considered as sureties to the loan taken by the Sakhar Karkhana, considering the language of amended Section 101 of the Act of 1960, the proceeding under Section 101 of the Act of 1960, is not maintainable.

5. It is further pointed out that, unless the compliance is shown under Rule 86A of the Maharashtra Co-operative Societies Rules, 1961 (hereinafter referred to as “the Rules of 1961”), which is mandatory in nature, the Registrar cannot proceed with the matter.

6. It is submitted that, under sub-rule (3) of Rule 86A of the Rules of 1961, it is mandatory to mention in the application under Section 101 of the Act of 1960, that whether the non-applicants are members of the society. It is pointed out from the application under Section 101 of the

Act of 1960 that, except the statement that the society-Sakhar Karkhana is a member of respondent No.2, there is no statement that, the petitioners are the members of the respondent No.2-Bank.

7. Shri Chauhan, learned Government Pleader, on the other hand argues that, this Court may not entertain the present writ petition for the reason that, no error has been committed by the Registrar in saying that, he would decide the preliminary objection at the stage of final hearing. It is submitted that, the intention of the petitioners is to prolong the matter and to avoid the recovery. He, therefore, submits that, the petition may be dismissed.

8. Shri Naik, learned counsel for the respondent No.2-Bank argues that, under the Act of 1960, a period is stipulated for deciding the proceeding under Section 101 of the Act of 1960. It is submitted that, the intention of the petitioners is to prolong the matter in a way that if this Court directs the Registrar to decide the preliminary objection first and if the order goes against the petitioners, another writ petition will be filed. Then, the whole proceeding would be delayed and the purpose of provision of Section 101 of the Act of 1960 would be frustrated.

9. In reply, Shri Ghare, learned counsel for the petitioners submits that, if such objection is not decided and at the time of final decision, under Section 101 of the Act of

1960, it goes against the petitioners, the only remedy available is under Section 154 of the Act of 1960 and in that case, there is mandatory condition to deposit 50% amount. It is submitted that, it may cause prejudice to the petitioners.

10. In light of rival contentions of the parties and considering the issue involved, I have perused the record, impugned order and relevant provisions.

11. No doubt, under sub-rule (3) of Rule 86A of the Rules of 1961, it is the requirement that every application for grant of certificate for recovery under Section 101 of the Act of 1960 shall state whether the person against whom the amount claimed as due is a member of the society or not.

12. Similarly, Rule 86B of the Rules of 1961, which relates to Scrutiny of applications and notice to parties says that, on receipt of the application, the Registrar shall satisfy that the application is complete in all respects and thereafter proceed to register it. Sub-rule (2) says that, if the application is not complete the Registrar may, call upon the society to comply with, within a period of seven days, such requirements as he may deem fit.

13. The petitioners have pointed out from the application under Section 101 of the Act of 1960, that there is no statement in the application to the effect that, the petitioners who are the party to the said proceeding and against whom the amount is claimed, whether they are the members of the society or not.

14. It is pertinent to note that, the recovery in the present matter is to the tune of Rs.68,15,65,898/-. In the circumstances, if the findings on the preliminary objection go against the petitioners while deciding application under Section 101 of the Act of 1960, the only remedy is under Section 154 of the Act of 1960 and in that event, the petitioners would have to deposit 50% of the amount while raising a challenge to such order under Section 101 of the Act of 1960.

15. But at the same time, interest of the Bank also needs to be protected, considering the purpose of enacting under Section 101 of the Act of 1960.

16. Thus, for ends of justice, I am of the opinion that, it would be appropriate to direct the respondent No.1 to decide the preliminary objection before proceeding to decide finally the application under Section 101 of the Act of 1960 and in case, such order goes against the petitioners

and in that event, if petitioners file a writ petition before this Court, this Court may direct the petitioners to deposit a certain amount in this Court to protect the interest of the respondent No.2, which shall be subject to the decision of the such writ petition.

17. In that view of the matter, the writ petition is **disposed of** with direction to the respondent No.1 to decide the preliminary objection raised by the petitioners to the tenability of the proceeding under Section 101 of the Act of 1960 against the petitioners and pass the order expeditiously and in any case, within 15 days from today.

18. The respondent No.1 is directed to decide the application in accordance with law on its own merit.

JUDGE