**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.6084 OF 2014

1. Indira Mahila Nagari Sahakari
Bank Ltd., Latur,
Through its Manager,
Manojkumar s/o Vijaykumar Sherkar,
Aged 38 years, Occu: Service,
R/o. Latur, Tq. and Dist. Latur. ….PETITIONER

VERSUS

1. The State of Maharashtra,
Through the Secretary,
In the Department of Co-operation,
Mantralaya, Mumbai-32.

2. The Divisional Joint Registrar,
Co-operative Societies, Latur,
Tq. and Dist. Latur.

3. The Assistant Registrar,
Co-operative Societies, Latur,
Tq. and Dist. Latur.

4. Sau. Sulochana Kashinath Jangave,
Aged 56 years, occu: Business,
R/o. Keshav nagar, Latur,
Tq. and Dist. Latur.

5. Kashinath s/o Trimbakappa Jangave,
Aged Major, occu: Business,
R/o. Keshav nagar, Latur,
Tq. and Dist. Latur.

6. Kashinath s/o Manikappa Halkkati,
Age Major, Occu: Business,
R/o. Keshavnagar, Latur,
Tq. and Dist. Latur.

7. Yashwant s/o Kashinath Jangave,
Age Major, Occu: Business,
R/o. C-9, S.t. Staff Colony,
In front of Sai-Baba Mandir,
Satara Road, Swargate, Pune-9. ….RESPONDENTS

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Mr A. N. Irpatgire, Advocate for petitioner
Ms A. S. Mantri, A.G.P. for respondent Nos.1 to 3/State
Mr V. D. Salunke, Advocate for respondent Nos.4, 5 & 7

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CORAM : PRAFULLA S. KHUBALKAR, J.

Reserved on : 2nd April, 2025

Pronounced on : 9th May, 2025

JUDGMENT :

1. Heard.

2. Rule. Rule made returnable forthwith. Heard finally by consent of the parties.

3. The instant petition challenges the order dated 15/10/2013, passed by the Divisional Joint Registrar, Cooperative Societies, Latur in Revision No.77/2011, upholding the order dated 29/09/2011, passed by the Assistant Registrar, Cooperative Societies, Latur, by which the authorities have refused to grant recovery

certificate under Section 101 of the Maharashtra Cooperative Societies Act, 1960 (for short ‘the MCS Act’) to the petitioner/Bank.

4. The impugned orders concurrently records that, in absence of cogent and reliable documents depicting account entries about advancement of loan to the respondent Nos.4 to 7 and their respective liabilities and in view of the genuine dispute about liability of the borrowers, the certificate under Section 101 of the MCS Act cannot be issued.

5. Heard Advocate Mr A. N. Irpatgire, learned counsel for the petitioner; Advocate Ms. A. S. Mantri, learned A.G.P. for respondent Nos.1 to 3 and Advocate Mr V. D. Salunke, learned counsel for respondent No.4, 5 and 7.

6. The controversy involved in this petition revolves around the entitlement of the petitioner/Bank for a certificate of recovery under Section 101 of MCS Act against respondent Nos.4 to 6. The petitioner’s primary contention is that respondent No.4 to 6 had initially availed cash credit of Rs.1,00,000/- from the petitioner/Bank, which was enhanced from time to time and the loan amount reached to Rs.4,00,000/- on 21/02/2002. On failure of the respondents to repay

the entire loan, their account was declared as Non-Performing Asset (N.P.A.) and pursuant thereto, a recovery certificate dated 22/11/2002 was issued under Section 101 of the MCS Act by the competent authority against respondent Nos.4 to 6. However, the said certificate and subsequent attachment notice was challenged by respondent No.4 by revision petition under Section 154 of the MCS Act before respondent No.2/Divisional Joint Registrar, Cooperative Societies, Latur, in which, the Revisional Authority directed respondent No.3/ Assistant Registrar, Cooperative Societies, Latur to conduct an enquiry after giving opportunity of hearing to the borrowers. On reconsideration of the issue, again certificate under Section 101 of the MCS Act came to be issued against the respondents/borrowers for recovery of Rs.7,66,746/- as on 30/01/2005. This certificate and subsequent notice of attachment was made the subject matter of challenge in Writ Petition No.302/2011 before this Court by the respondents. By the order dated 25/04/2011, the writ petition was decided by remanding the matter to respondent No.3/Assistant Registrar, Cooperative Societies with the specific direction to extend opportunity of hearing to the borrowers.

7. On this background, the petitioner/Bank again approached respondent No.3 seeking certificate under Section 101 of the MCS Act

against respondent Nos.4 to 7. While considering the application of the petitioner, respondent No.3 gave due consideration to the submissions advanced by the petitioner/Bank as well as the respondents/borrowers and pertinently, observed that the repayment made by the borrowers were not reflected in the account extracts and the repayments made by respondent No.4/Sau. Sulochana Kashinath Jangave were wrongly attributed as repayment against the account of respondent No.7/Yashwant Kashinath Jangave. On noticing these discrepancies and existence of a *bona fide* dispute, respondent No.3/Assistant Registrar rejected the application for issuance of recovery certificate under Section 101 of the MCS Act.

8. Although Advocate Mr Irpatgire, learned counsel for the petitioner/Bank attempted to point out that respondent Nos.4 to 7 had failed to repay the respective loan amounts, making the petitioner/Bank entitled for recovery certificate under Section 101 of the MCS Act, however, the pertinent observations of respondent No.3 with respect to disputed questions of fact and the *bona fide* dispute, cannot be ignored. It has to be noted that the impugned order passed by respondent No.3 specifically records that, although the petitioner/Bank has claimed that loan was advanced to respondent No.4/Sau. Sulochana Kashinath Jangave on 22/05/2001 of

Rs.1,50,000/- and on 21/02/2022 of Rs.4,00,000/-, however, the entries are not reflected in the account extracts. So also, the repayments made by respondent No.4/Sulochana are not reflected in the account extracts produced by the petitioner/Bank. On the basis of the documents submitted by the petitioner/Bank, respondent No.3/Assistant Registrar even concluded that the advancement of the loan to respondent No.4 is not established on the basis of documents filed before it. Further, the amount of repayments made by Sulochana are attributed to be the repayments made by respondent No.7/Yashwant and recording these discrepancies, respondent No.3/Assistant Registrar has finally concluded that the borrowers had raised a *bona fide* defence, which disentitles the petitioner/Bank for claiming certificate under Section 101 of the MCS Act. As such, the submissions advanced by learned counsel for the petitioner/Bank do not find force. Even the order passed by respondent No.2/Divisional Joint Registrar on revision application under Section 154 of the MCS Act elaborately deals with the crucial issues of disputed questions of fact and the *bona fide* defence being raised by the borrowers. The Revisional Authority has categorically observed that the petitioner/Bank failed to demonstrate any convincing documentary evidence, establishing its entitlement for recovery certificate under Section 101 of the MCS Act.

9. In view of the controversy involved and submissions advanced, it is profitable to take into consideration the position of law laid down in the matter of **Top Ten and another Vs. State of Maharashtra and others, 2012(1) Mh.L.J. 347.** Pertinent to note that the issue about entitlement of the petitioner/Bank to recovery certificate under Section 101 of the MCS Act in the wake of disputed questions of fact and *bona fide* defence is dealt with in this judgment and the position is clarified in paragraph Nos.19 and 21 of this judgment, which are reproduced below :-

> *"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 bonafide 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 86F.

In Ramchandra and another Vs. Collector, Nagpur and others (supra), the Division Bench of this Court has looked into the provisions of Section 137. Section 137 [1] was earlier a provision pari materia with provisions of Section 101. Section 137 [1] enables the Registrar to make such enquiry as he deems fit. Section 101 was also containing same phrase till 10.05.2006. On that date, the said words have been replaced and Registrar, is obliged to conduct enquiry in such manner as may be prescribed. Thereafter, Chapter VIII-A has been added to 1961 Rules, prescribing the mode of enquiry. Thus, said Division Bench judgment is no longer relevant for interpreting the scheme of Section 101. Paragraph 26 of this Division Bench judgment on which the petitioners have placed reliance, however, does not show any express finding about need of extending an opportunity of cross examination. Moreover, there is no provision either in 1960 Act or in 1961 Rules, prohibiting such cross examination in Section 137 enquiry. This judgment, therefore, is of no assistance in present situation.

21. We have not seen any repugnancy or inconsistency inter-se between Section 91 and Section 101 of 1960 Act. Section 91 is a general remedy and general law covering all disputes; while Section 101 governs extremely a small type or nature therefrom, where only possible dispute is about the quantum of arrears demonstrated to be due. If any other type of dispute requiring an adjudication arises, it is not possible for the Registrar or his delegate functioning under Chapter VIII-A to entertain such application and the application in that event needs rejection. The concerned society has then to move the Cooperative Court under Section 91 for said recovery. Language of both the provisions is plain and unambiguous and both the provisions can be construed harmoniously in this manner. Both the provisions begin with non obstante clause and do not militate

> *with each other, but proceed to advance the legislative intention of enabling a society to have a speedy remedy for recovery of arrears due as land revenue. Therefore, only the legislature has envisaged very limited verification, which even does not call for any cross examination of either of the parties. The express bar of such cross examination under Rule 86E is because of this very narrow scope of enquiry open to the Registrar under Section 101 read with Chapter VIII-A of 1961 Rules. As already held above, if the scope of enquiry is required to be enlarged, the legislative intent will itself get frustrated. If the Registrar or his delegate finds disputed questions of facts, genuinely arising in such proceedings, and the same cannot be resolved without cross examination, it is apparent that the application under Section 101 itself cannot be entertained. In that event it has to be held that claim made by the concerned applicant-society is not in respect of arrears due to it as envisaged under Section 101 of the 1960 Act."*

10. In the instant matter, there are disputed questions of fact as discussed earlier and I am of the opinion that in view of the *bona fide* dispute, the issue of certificate under Section 101 of the MCS Act was not warranted. The orders passed by respondents refusing to grant certificate are well reasoned and need no interference on any count.

11. Considering the factual and legal aspects of the entire controversy, I find that there is no force in the submissions advanced by the petitioner/Bank and the instant petition deserves to be dismissed. Accordingly, the writ petition stands dismissed.

12. Rule is discharged.

(PRAFULLA S. KHUBALKAR, J.)

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