2025:BHC-AUG:23609

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3747 OF 2013

1. Vasant s/o Madhavrao Karhale,
Age: 62 years, Occ: Agriculture,
R/o: Near Government Hospital,
Parbhani, Dist. Parbhani. ....**Petitioner**

VERSUS

1. The Divisional Joint Registrar,
Co-operative Societies, Aurangabad.

2. The Assistant Registrar,
Co-operative Societies,
Parbhani, Tq. and Dist. Parbhani.

3. The Parbhani Peoples,
Co-operative Bank Ltd. Parbhani,
Through its Liquidator,
Tq. and Dist. Parbhani.

4. Madhukar Taterao Kale,
Age: 52, Occ: Nil,
R/o: Vakil Coloney, Parbhani,
Dist. Parbhani.

5. Vishwanath Nemaji Karhale,
Age: 56, Occ: Nil,
R/o: Vaibhav Nagar, Parbhani,
Dist. Parbhani. .....**Respondents**

Appearance :

Mr. V. D. Salunke, Advocate for the Petitioner.
Mr. Subhash V. Mundhe, Advocate for Respondent No.3.
Mr. Mahesh P. Kale, Advocate for Respondent No.4.
Ms. P. J. Bharad, AGP for Respondent Nos.1 and 2.

CORAM : NEERAJ P. DHOTE, J.
Reserved On : 13th August, 2025
Pronounced On : 4th September, 2025

JUDGMENT :

1. The challenge in this Writ Petition under Article 226 of the Constitution of India is to the order dated 04/03/2013, passed by Respondent No.1 - Divisional Joint Registrar, allowing Revision Application No.24/2012, preferred by Respondent No.3 – Co-operative Bank against the order dated 21/07/2012, passed by Respondent No.2 – Assistant Registrar, dismissing the Application filed by Respondent No.3 – Co-operative Bank under Section 101 of the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as 'the said Act').

2. The facts in brief, giving rise to the present Writ Petition, are as follows :

(I) The Petitioner was sanctioned and disbursed a loan of Rs.3,00,000/- (Rupees Three Lakhs) by and from Respondent No.3 – Co-operative Bank on 20/02/2001. The Respondent Nos.4 and 5 were the Guarantors for the said loan. The loan was to be repaid by 19/03/2006. As the loan amount was not repaid, the Respondent No.3 – Co-operative Bank calculated the interest and filed Application No.10/2012 before Respondent No.2 – Assistant Registrar for recovery under Section 101 of the said Act. Pursuant to the notice issued by Respondent No.2 – Assistant Registrar, the Petitioner appeared in the proceedings and filed his *Say* and resisted the claim of Respondent No.3 – Co-operative Bank. The Respondent No.2 – Assistant Registrar, after hearing both the sides, dismissed the Application preferred by

Respondent No.3 – Co-operative Bank by holding that, there was a remedy available under Section 91 of the said Act. Against the dismissal of the said Application, Respondent No.3 – Co-operative Bank filed the above-referred Revision Application before Respondent No.1 - Divisional Joint Registrar, who, after hearing both the sides, set aside the order of dismissal of the Application passed by Respondent No.2 – Assistant Registrar and remanded the matter to Respondent No.2 – Assistant Registrar for reconsideration. Being aggrieved by the same, this Writ Petition is filed.

3. Heard the learned Advocate for the Petitioner, learned AGP for Respondent Nos.1 and 2, learned Advocate for Respondent No.3 and the learned Advocate for Respondent No.4. Perused the papers on record.

4. It is submitted by the learned Advocate for the Petitioner that, there are disputed aspects in the matter in respect of the interest charged by Respondent No.3 – Co-operative Bank. The agreement between the Petitioner and Respondent No.3 – Co-operative Bank was silent in respect of the rate of interest. Therefore, Respondent No.3 – Co-operative Bank should have approached the Co-operative Court by filing a Dispute under Section 91 of the said Act, instead of preferring an Application under Section 101 of the said Act for recovery. The said remedy under Section 101 of the said Act could be resorted to only when there is no dispute in respect of the amount to be recovered.

The Respondent No.2 – Assistant Registrar rightly considered and appreciated the factual and legal aspects of the matter and dismissed the Application under Section 101 of the said Act. The Respondent No.1 - Divisional Joint Registrar exceeded his powers in allowing the Revision Application. In support of his contentions, he relied on the Judgments in **(i) Top Ten and Anr. Vs. State of Maharashtra and Ors. ; 2012 (2) Bom.C.R. 647; (ii) Writ Petition No.6084/2014 (Indira Mahila Nagari Sahakari Vs. The State of Maharashtra and Ors.) decided on 09/05/2025**. He submitted that, the Writ Petition be allowed by setting aside the impugned order passed by Respondent No.1 – Divisional Joint Registrar.

5. It is submitted by the learned AGP appearing for Respondent Nos.1 and 2 that, the loan amount was not disputed. The only dispute was in respect of the interest rate. Therefore, Respondent No.1 - Divisional Joint Registrar rightly remanded the matter to Respondent No.2 – Assistant Registrar for deciding the matter afresh and no interference was called for in the Writ jurisdiction.

6. It is submitted by the learned Advocate for Respondent No.3 that, the Petitioner did not contend before Respondent No.1 - Divisional Joint Registrar and Respondent No.2 – Assistant Registrar as to what was the disputed aspects. The Replies filed by the Petitioner to the proceedings before Respondent No.1 - Divisional Joint Registrar

and Respondent No.2 – Assistant Registrar were vague and not specific. The Application for loan signed and submitted by the Petitioner provides the terms and conditions, which were agreed by the Petitioner. There was no dispute on any aspect and every aspect was clear and, therefore, Respondent No.1 - Divisional Joint Registrar was justified in remanding the matter to Respondent No.2 – Assistant Registrar for fresh consideration. The Judgments relied by the learned Advocate for the Petitioner are not applicable to the facts of this case and there is no merit in the Writ Petition and the same may be dismissed.

7. There is no dispute on the aspect that, the Petitioner availed the loan from Respondent No.3 – Co-operative Bank by executing the necessary documents, the copies of which are enclosed to the Writ Petition. The proceedings filed by Respondent No.3 – Co-operative Bank before Respondent No.2 – Assistant Registrar were pursuant to the provisions of Section 101 of the said Act, which provides for recovery of certain sums and arrears due to certain societies as arrears of land revenue.

8. The Petitioner contested the said proceedings by filing his Say. The Respondent No.2 – Assistant Registrar, after considering the documents on record, the provisions of Sections 92 and 101 of the said Act and written arguments of both the sides, observed that, the liquidator has submitted the Resolution No.2 dated 11/04/2011 to file

the said proceedings and appointed eight recovery officers. He further noted that, in no document, the interest rate was mentioned and also observed that, the amount of installment towards repayment was also missing. He further noted that, it was not shown at what rate the Bank had charged interest on the loan amount. By nothing that, the principal amount and the amount towards interest were mentioned as Rs.301,150/- and Rs.301,060/- respectively, totaling Rs.602,210/- and recovery certificate was requested for recovery with effect from 01/01/2009. He further observed that, it was not clear as to what was the outstanding amount on the date of filing the proceedings and, therefore, it was necessary to lead the evidence, which was not within his jurisdiction. He considered the decision of this Court in Top Ten and Anr. (*Supra*) and observed that, there were complicated issues involved in the proceedings initiated for recovery and the Bank was having a remedy to file the Dispute under Section 91 of the said Act and noted that, it was proper to dismiss the Application and dismissed the same.

9. In Revision, preferred by Respondent No.3 – Co-operative Bank, Respondent No.1 - Divisional Joint Registrar in the impugned order observed that, the rate of interest was not mentioned in the proceedings and only aspect in the proceeding was that, the interest rate was not clear. The Respondent No.1 – Divisional Joint Registrar directed that, Respondent No.3 – Co-operative Bank should make available the information in respect of the interest rate or Respondent

No.2 – Assistant Registrar shall consider the interest rate of the Reserve Bank of India prevailing at the time of sanctioning the loan by Respondent No.3 – Co-operative Bank to the Petitioner. It is further observed that, the Petitioner (Respondent No.2 in the Revision) has not disputed / denied the loan amount. It is further noted that, the liquidator had the powers to issue the Award under Section 105 of the said Act and, therefore, the observation of Respondent No.2 – Assistant Registrar that, no proceedings can be undertaken pursuant to the provisions of Section 101 of the said Act, was unacceptable and Respondent No.3 – Co-operative Bank can resort to both the provisions as required and set aside the order passed by Respondent No.2 – Assistant Registrar and remanded the matter to Respondent No.2 – Assistant Registrar for reconsideration.

10. In the above-referred Judgment in Top Ten and Anr. (*Supra*) relied by the learned Advocate for the Petitioner, the challenge was to the provisions of Rule 86 – E of the Maharashtra Co-operative Societies Rules, 1961 (hereinafter referred to as 'the Rules 1961') and it was prayed to declare the same as ultra vires to Article 14 of the Constitution of India. The Petitioners in the said matters were the creditors and the Co-operative Society from whom they had borrowed the loan, had instituted the proceedings under Section 101 of the said Act and it was the objection that, there was availability of alternate remedy under Section 154 of the said Act. The Division Bench of this

Court considered the said rule and provisions of Sections 91 and 101 of the said Act. The relevant observations are quoted below :

"12. Section 91 appears in Chapter IX of 1960 Act and it deals with settlement of disputes. None of the parties before us have urged that a creditor cooperative society cannot file a dispute under Section 91 of the 1960 Act in the present matter. Section 91 dealing with disputes opens with non obstante clause and its opening words which are relevant for present purposes read "(1) Notwithstanding anything contained in any other law for the time being in force, any dispute touching." Thus a exclusive jurisdiction has been conferred to take cognizance of such disputes upon Cooperative Court. The words "any other law" highlighted by us above, clearly show legislative intent to override the provisions of Section 9 of the Code of Civil Procedure in-relation to such disputes. But as this position is not in dispute before us, it is not necessary for us to go into more details. Attention can however, be invited to proviso which appears after Section 91[1][e]. It enumerates certain types of disputes and lays down that same cannot be treated as "dispute" for the purpose of Section 91. Any proceeding for recovery of amount as arrears of land revenue on a certificate granted by the Registrar under sub-section [1] or [2] of Section 101 finds place therein and is, therefore, not a "dispute" for the purpose of Section 91. It is therefore, obvious that adjudication under Section 101 cannot be subjected to scrutiny of Cooperative Court under Section 91.

13. Perusal of Section 101 reveals that it is the last Section in Chapter IX of 1960 Act. It's heading is "Recovery of arrears due to certain societies as arrears of land revenue". Important words to be noted are "arrears due to certain societies". Sub-section [1] then contains a long list of various types of societies and it is not in dispute that the respondent credit cooperative society before this Court are covered thereunder. After this list of societies, again the important words appear and those words are "and on the society concerned furnishing a statement of accounts in respect of the arrears." Thus the society which invokes this remedy has to file statement of accounts showing how it is entitle to recover those arrears. Thereafter the Registrar has been given authority to make enquiry in such manner as may be prescribed. Depending upon outcome of that enquiry, he can issue a certificate for recovery of amount stated in the certificate as due towards arrears. The procedure prescribed for undertaking such enquiry is envisaged in Chapter VIII-A of 1961 Rules. The petitioners as also respondents accept that this is a speedy remedy of summary nature envisaged by the legislature. We find sub-section [2] of Section 101 important. It enables the Registrar to issue such certificate on his own motion, after undertaking enquiry, if he is satisfied that concerned society has failed to take action under the foregoing sub-section in respect of any amount due as arrears. This power given to the Registrar to recover amount of arrears due to a society itself shows the desire with which this provision has been inserted in the statute book. The language itself shows that the recovery contemplated is of arrears due to society. The recovery is again by a speedy remedy by treating it as arrears of land revenue.

14. Section 91 noted above enables the Cooperative Court to decide disputes about the amounts claimed by the society as arrears. Recovery of loan is also possible under Section 91. Section 94 deals with procedure for settlement of disputes and power of Cooperative Court. Section 94 [4] states that save as otherwise directed by the State Government in any case or class of cases, every dispute shall be decided in such summary manner as may be prescribed and as expeditiously as possible. Sub-section [1-A] obliges the Cooperative Court to decide dispute within 6 months. Sub-section [1] confers upon Cooperative Court a power to summon and enforce attendance of witness, to compel them to give evidence on oath, affirmation or affidavit and to compel production of documents.

16. Section 101 which opens with non obstante clause reads "101[1]. Notwithstanding anything contained in Section 91, 93, and 98, on an application made by". Thus this Section gives an additional remedy to particular types of societies as enumerated therein. Normal remedy envisaged is under Section 91. Dispute filed by such society can be tried as a regular dispute as per Rule 77E or then as a summary dispute under Rule 77F. Rule 77F contemplates and identifies a particular type of disputes for summary disposal. Thus from otherwise, large types of disputes which may be filed before the Cooperative Court and disposed of under Rule 77E, a category is carved out for expeditious disposal where the debtor like the present petitioner has to seek a leave to defend, as per Rule 77F[3]. Section 101 carves out a still narrower type of dispute or controversy. It speaks of arrears due to certain societies and its recovery as land revenue. Therefore, it proceeds on "arrears due" and only for that purpose the concerned society has to furnish a statement of account in respect of the arrears. The Registrar has to make an enquiry only in relation to those arrears. It is, therefore, obvious that the legislature which thought it proper to extend to a debtor/borrower an opportunity of claiming leave to defend under Section 94 [4] of the 1960 Act, read with Rule 77F, has itself provided this remedy whee very narrow enquiry is required. The legislature obviously has given importance to cooperative movement and pubic interest which is evident from sub-section [2] of Section 101. The enquiry contemplated by the registrar is, therefore, extremely narrow. The learned Additional Government Pleader appearing on behalf of the respondent State has pointed out that wherever necessary legislature has expressly conferred power upon the authority to record evidence. Section 94[1] and Section 144D are pointed out to be instances of such use of power by the legislature. It is an admitted position here that Chapter VIIIA of 1961 Rules or then Section 101 of 1960 Act, do not confer such power upon the Registrar while conducting enquiry as necessary under Section 101.

17. Chapter VIIIA of 1961 Rules vide its Rule 86A shows procedure for filing application for grant of certificate for recovery. The form in which it is to be filed is also prescribed and documents which must accompany are also stipulated. Form "U" in which application under Section 101 is required to be filed shows the requirement of disclosure of relevant facts by the concerned society; all necessary facts which make the respondents before that authority either borrower or guarantor; the procedure followed for sanctioning loan, securities furnished, documents executed. The applicant then has to point out failure to repay principal amount and interest upon it *and demand/demands made by the concerned society. A resolution of the Board of Directors to file an application under Section 101 is, also required to be pleaded. Details of loan transaction are also required to be pointed out as part and parcel of this application. The application is required to be supported by affidavit of responsible officer of a cooperative society. Rule 86B contemplates scrutiny of such application by the Registrar. Registrar cannot issue notice to other side, if such application is incomplete in material respect. The other side is expected to file written statement. Rule 86-C contemplates appearance of party, either personally or through an Advocate and consequence of failure to appear. Rule 86D enables both the parties to file documents. It also enables the Registrar to call for such other documents from opposite party by order in writing, if production of such document is found essential. Request for such production from opponent cannot be entertained before he files his written statement. Adverse inference can be drawn if the document is not produced, after such direction. The applicant Society has to prove contents of its application and also show how the contentions raised in defence by other side are not correct. After this exercise is undertaken by the applicant Society, the opponent has been given opportunity to file reply in support of his defence, and after such reply, Registrar has to hear oral arguments. Then he has to deliver a reasoned judgment under Rule 86F. If he issues certificate, it has to be in Form "V". Rule 86E specifically stipulates that no cross examination of any of the parties is permitted.*

18. Use of both words i.e., "arrears and due" together in Section 101 is itself manifestation of very limited enquiry felt necessary under Section 101 before issuing the certificate. In plain English, both words may be synonymous. New Oxford Advanced Learner's Dictionary gives following meaning of these words. "Arrears" means a money which has not been paid at right time. "Due" is stated to mean it must be paid immediately, owed to somebody as it is their right or they have done something to deserve it. In Chambers 20th Century Dictionary, word "Arrear" means that which remains unpaid or undone. Word - Due - means - owed, that ought to be paid to another. Blacks Law Dictionary (9th Ed.) states - Arrears- means the state of being behind in payment of a debt or the discharge of an obligation, an unpaid or overdue debt, Word – Due - means immediately enforceable, owing or payable, constituting a debt. Advanced Law Lexicon by P. Ramanatha Aiyyar 3rd. Ed. also shows same meaning of word "Due". It also points out that said word has different meanings and that meaning has to be put on it which fits in with the context. Meaning of arrears shows that which remains unpaid though due. T. P. Mukherjee's Law Lexicon states "Arrears" means payment remaining unpaid at the due time. It also explains "due" to mean amount which has matured and is in arrears. AIR 1974 S.C. 1613 (Dhan Singh Ramkrishna Chaudhuri v. Laxminarayan Ramkrishan)10 shows that arrears means money unpaid at due time. Here, it is beyond doubt that both these words do not signify same state of affairs i.e., non-payment. Word "Due" therefore is not duplication of what is conveyed by word "arrears". It indicates that amount which is found or determined to be outstanding and hence, recoverable. Thus statement of accounts and other facts essential under Rules to be disclosed by the concerned Society and to be looked into by the Registrar reveal that said amount of arrears has to be "due" i.e., payable. This quasi-judicial exercise is made final by legislature *and not kept open under Section 91 only because of possibility of determination of the limited aspect about arrears due without adjudication on any disputed questions of facts. Such factual disputes can not and have not been subjected to and fall out side the procedure under Section 101. Thus, either the arrears are already declared due by some authority or then can be ascertained on the basis of statement of accounts and other material on record by Registrar. Moment it is demonstrated to Registrar that a bonafide and genuine defense about said arrears is raised which calls for a finding on disputed facts, need for cross examination surfaces and Section 101 ceases to apply. Procedure laid down for enquiry under Section 101 itself manifests said legislative intention. It can not be even urged that legislature made that certificate final while denying the right to dispute the facts cardinal for its determination and intended to fasten the recovery as liability upon a person having bonafide and valid defence. Section 101(2) again indicates this as it expects the Registrar to be satisfied about the failure of concerned society to take steps under its Sub-section (1) in respect of any amount - due as arrears".*

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 86-F.

In Ramchandra and another .vrs. Collection, 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. "

11. The order of Respondent No.2 – Assistant Registrar, discussed above, shows that, as no interest rate was mentioned, it was not clear as to what was the amount due on the date of presentation of the proceedings, and he came to the conclusion that, it was necessary to lead the evidence, which was beyond his jurisdiction and determining the amount due was a complex issue and, therefore, dismissed the proceedings preferred by Respondent No.3 – Co-operative Bank by holding that, an alternate remedy under Section 91 of the said Act was available. The said order of Respondent No.2 – Assistant Registrar, nowhere shows that, the powers vested in it for limited enquiry was exercised before passing the order. As rightly observed by Respondent No.1 – Divisional Joint Registrar in the order passed in the Revision, the loan amount was not disputed by the Petitioner (Borrower). The said finding is based on the documents, which were available before Respondent No.1 – Divisional Joint Registrar. It is more than clear that, the necessary documents, such as, copy of letter (करार पत्र), copy of agreement and loan application etc. were before Respondent No.2 – Assistant Registrar. The terms and conditions of loan were incorporated in those documents, particularly, in the copy of agreement letter and parties were bound by it. As, in the letter of agreement, the Petitioner (Borrower) and the guarantors agreed that, the change in the loan policy and change in the interest rate from time to time would be binding on them, the Respondent

No.1 – Divisional Joint Registrar was justified in observing that, the Respondent No.3 – Co-operative Bank should make available the information about the interest or the interest rate of the Reserve Bank of India prevailing at the time of sanctioning the loan and Respondent No.2 – Assistant Registrar should consider the same and take decision in the proceedings. This exercise, as directed by Respondent No.1 – Divisional Joint Registrar, would be within the competence / jurisdiction of Respondent No.2 – Assistant Registrar, being empowered to undertake the narrow / limited enquiry while considering the Application filed under Section 101 of the said Act.

12. In the backdrop of the above factual aspects of the proceedings, the decision relied by the learned Advocate for the Petitioner, would not be of any assistance for the Petitioner. In Indira Mahila Nagari Sahakari (*Supra*), the Assistant Registrar therein had concluded that, the advancement of loan was not established on the basis of the documents filed before it. Had it been that, after resorting to the limited / narrow enquiry as contemplated in law, the Respondent No.2 – Assistant Registrar had come to the conclusion that, the disputed facts were complex in nature, which necessitated leading of evidence and dismissed the Application, it would have been different situation. The only limited question was of quantification of amount / arrears due. Examining the above-referred factual aspects of the proceedings filed by Respondent No.3 – Co-operative Bank under

Section 101 of the said Act, in light of the above principles laid down in the said decision of Top Ten and Anr. (*Supra*), the impugned order of remand passed by Respondent No.1 – Divisional Joint Registrar cannot be faulted. Therefore, the Writ Petition is liable to be dismissed and hence, the following order :

ORDER

. Writ Petition is dismissed.

[NEERAJ P. DHOTE, J.]

Sameer...

Signed by: Md. Sameer Q.
Designation: PA To Honourable Judge
Date: 04/09/2025 12:44:04