



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

WRIT PETITION NO. 8352 OF 2018

Janardhan Ambadas Gandhile
Age- 47 years, Occup. Agril,
R/o. Lanji, Post- Waluj, Tq- Gangapur
District- Aurangabad.

...PETITIONER

VERSUS

1. The State of Maharashtra
Through its Secretary,
Co-operative Societies Department,
Mantralaya, Mumbai-32.
2. The Divisional Registrar,
Aurangabad.
3. The District Deputy Registrar
District- Aurangabad.
4. Smt. Pushpabai Tarachand Sabale
Age- Major, Occup. Agril,
R/o. Shivrai, Tq. Gangapur,
District- Aurangabad.

...RESPONDENTS

Mr. V.D. Sapkal, Senior Advocate i/b. Mr. S.R. Sapkal, Advocate
for petitioner
Mr. Rahul Joshi, Advocate for respondent No. 4
Mrs. A.S. Mantri, AGP for respondent No. 1 to 3

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CORAM : MANJUSHA DESHPANDE, J.

DATE : 12th FEBRUARY, 2025

ORDER :

1. Order dated 30/05/2018 passed by Divisional Joint
Registrar, Aurangabad in Appeal Application No. 14 of 2016 is

challenged in the present writ petition.

2. It is the case of the petitioner that, the father of petitioner was in need of money and the respondent No. 4 is in the business of money lending, therefore he approached respondent No. 4 and obtained loan of Rs. 30,000/-. A nominal sale deed of the land of father of petitioner was executed on 31.10.2000 as a security towards the loan amount. Though the father of petitioner repaid the entire loan along with interest, and requested to re-execute the sale deed in his favour, the, respondent No. 4 has refused to accede to his request. In the meanwhile, father of petitioner has expired in the year 2012, hence in the capacity of legal heir of his father, the petitioner filed complaint to the District Deputy Registrar, Aurangabad seeking direction to conduct enquiry against respondent No. 4.

3. After the complaint was made, an enquiry was conducted about transaction between father of petitioner and respondent No. 4. Assistant Registrar, Co-operative Society, Gangapur, submitted an enquiry report on 23.09.2015. Petitioner filed Complaint bearing No. 2/2016 before District Deputy Registrar, Aurangabad requesting to cancel the sale deed dated 31.10.2000 and restore his land. The District Deputy Registrar,

Aurangabad issued notices to the concerned parties under Section 18 of the Maharashtra Money Lending (Regulation) Act, 2014 (for short 'said Act'). Respondent No. 4 appeared and filed her say. District Deputy Registrar, Aurangabad by order dated 07.04.2016 allowed the complaint of the petitioner by declaring that respondent No. 4, has indulged in illegal money lending business, therefore, sale deed dated 31.10.2000 was declared illegal and has been cancelled and the land was directed to be restored to the petitioner, who is the legal heir of Shri. Ambadas Mahadu Gandhile.

4. The order passed by District Deputy Registrar, Aurangabad dated 07.04.2016, was assailed by respondent No. 4 before the appellate authority i.e. Divisional Joint Registrar, Co-operative Societies, Aurangabad. Petitioner in response to the notice issued by Divisional Joint Registrar, Aurangabad appeared and filed 'say' along with relevant documents. After hearing the respective parties, Divisional Joint Registrar, Aurangabad by judgment and order dated 30.05.2018 allowed the appeal filed by respondent No. 4 and set aside the order passed by District Deputy Registrar, Aurangabad dated 07.04.2016.

5. While passing the impugned order it has been observed by Divisional Joint Registrar, Aurangabad that;

- (i) District Deputy Registrar has not considered the decision of Civil Court in Regular Civil Suit No. 8/2008.
- (ii) There is no evidence to support the allegation that respondent No. 4 has indulged in illegal money lending business.
- (iii) Application filed by petitioner is not within limitation.

6. Learned Senior Advocate Shri. V.D. Sapkal, appearing for the petitioner has drawn my attention to the enquiry report dated 23.09.2015, panchnama of house search of respondent No. 4 conducted on 09.09.2015, and the order passed by District Deputy Registrar, Aurangabad dated 07.04.2016. He submits that it has been specifically recorded by the District Deputy Registrar, Aurangabad that pursuant to the complaint filed by petitioner, Co-operative Officer, Class-I has conducted enquiry as provided under Section 16 of the said Act. While conducting enquiry certain material has been seized during the house search on 09.09.2015. In the house search, sale deeds, passbooks, cheque books and FD certificates have been seized. The statements of adjoining land holders of the suit land

were also recorded by visiting actual spot on 16.09.2015. According to them, they have not seen respondent No. 4 in the suit land. The witness to the sale deed namely Eknath Narwade has stated that transaction is that of loan. According to him, it was decided that when the loan amount of Rs. 30,000/- is repaid, land under the sale deed will be returned.

7. It was also observed in the report that as per the panchnama of spot conducted on 07.06.2011 and 16.09.2015, the possession of the land is with the petitioner. The report contains details about various documents seized during the house search of respondent No. 4, which establishes that respondent No. 4 has indulged in illegal money lending business.

8. After recording his satisfaction about enquiry report and the material collected in support of allegations, the District Deputy Registrar, has recorded a finding that though there was a loan transaction in respect of land Gut No. 55 to the extent of 80 R, between father of petitioner and respondent No. 4, inspite of return of loan amount, respondent No. 4 has refused to execute the sale deed and return the land to the petitioner, therefore, it is necessary to declare the sale deed invalid and he has restored the possession of the property to the petitioner by order dated

07.04.2016.

9. It is the contention of learned Senior Advocate Shri. Sapkal that, the order passed by Divisional Joint Registrar, Co-operative Societies, Aurangabad who is the Appellate Authority has reversed the order passed by District Deputy Registrar which is erroneous, since it is passed without going through record and without appreciating observations made by District Deputy Registrar on the merits of the matter. He submits that the Appellate Authority has relied on the order passed by Civil Judge, Junior Division, Gangapur in R.C.S. No. 8/2008, whereby application seeking injunction filed by respondent No. 4 has been allowed.

10. According to the Appellate Authority the decision in R.C.S. No. 8/2008 supports the case of respondent No. 4 who claims to be in possession of the suit land, on the basis of sale deed executed in her favour. Learned Senior Advocate takes exception to the observation recorded, wherein reliance is placed on the decision of the Civil Court. It is submitted that the said Act is a complete Code in itself, therefore, the Act itself provides procedure to ascertain possession. Upon following the prescribed procedure under the said Act, finding is required to be recorded

about possession on the basis of enquiry which is conducted under the Act and not by relying on the finding recorded by the Civil Court.

11. It is further held by the Appellate Authority that though it is claimed that the petitioner has filed an application on 02.09.2014, making complaint against respondent No. 4, however, affidavit has been filed by petitioner on 19.01.2016 on stamp paper of Rs. 100/-, therefore the application of the petitioner is beyond limitation.

In this regard my attention is drawn to Section 18 of the said Act, which provides that cognizance of complaint is required to taken within 15 years from the complaint or application made by debtor or from the date of verification or the inspection or the date of receipt of application from the debtor in the nature of property offered by the debtor to the money lender as security for loan advanced by money lender in the course of money lending.

12. The District Deputy Registrar, after inquiry, is to be satisfied that the immovable property came in possession of the money-lender as a security for loan advanced by the money-lender, during the course of money-lending. The District

Registrar may, notwithstanding anything contained in any other law for the time being in force, after recording the reasons, declare the instrument or conveyance as invalid and may order restoration of possession of the property to the debtor who has executed the instrument or conveyance as a security or to his heir or successor, as the case may be.

13. Learned Senior Advocate for the petitioner further disputed the part of the order, wherein it is recorded by the Appellate Authority that during the house search of respondent No. 4, nothing could be seized in support of illegal money lending business, against respondent No. 4. According to him the enquiry report dated 23.09.2015 contains the details of various documents like, cheque books, passbooks, fixed deposits which were seized from the custody of respondent No. 4 during the house search. Therefore, the finding recorded by the Appellate Authority about unavailability of record in support of allegations of illegal money lending business is contrary to the record and also against finding recorded by the District Deputy Registrar, Aurangabad.

14. He submits that there is no reasoning recorded by the Appellate Authority, for not relying on the documents which

were already forming part of record which clearly substantiates the allegations against respondent No. 4.

15. It is further submitted that, so far as possession is concerned the Appellate Authority should have recorded finding independently and not by relying on the decision of the Civil Court. On the contrary the Appellate Court has observed that while passing the order, the District Deputy Registrar, Aurangabad ought to have relied on the order passed by the Civil Court.

16. The Appellate Authority has also recorded a finding that the petitioner has not produced on record any proof that amount which has been obtained towards loan has been repaid by the petitioner. Therefore, the order passed by District Deputy Registrar, Aurangabad dated 07.04.2016 thereby declaring the sale deed dated 31.10.2000 invalid is against the provisions of the said Act. It is therefore prayed that in view of cryptic and unreasoned order, which is contrary to the record, writ petition deserves to be allowed by quashing and setting aside the order passed by Divisional Joint Registrar, Co-operative Societies, Aurangabad.

17. Learned advocate Shri. Rahul Joshi, appearing for respondent No. 4 has opposed the prayer made in the writ petition on the ground that there is already an order passed by Civil Court in R.C.S. No. 8/2008, which supports the case of respondent No. 4. The suit for temporary injunction filed by respondent No. 4 has been decreed and petitioner has been restrained from causing obstruction to the possession of respondent No. 4, which proves that respondent No. 4 is in possession of suit land, on the basis of sale deed executed by petitioner.

18. According to him, respondent No. 4 has not indulged in any illegal money lending business. Father of petitioner had executed registered sale deed in her favour, hence there is no question of re-transfer of land. Learned advocate for respondent No. 4 relies on the house search and seizure made during the house search of respondent No. 4. The documents which were seized during the house search, do not disclosed that there is any illegal money lending business. Amongst the sale deed which were seized during house search, first sale deed is dated 02.07.2001 and last is dated 28.03.2013, therefore, it can not be held against respondent No. 4, for alleging involvement in

illegal money lending business.

19. It is his contention that as contemplated under Section 16 of the said Act, petitioner has to first prove that the person against whom the allegations of indulging in illegal money lending business are made, has indulged in such activity only thereafter the authorized officer can take further steps of conducting enquiry under Section 17 of said Act. Unless and until any proof is produced, the competent authority cannot take further steps in accordance with provisions of said Act. According to him, in the present case, there is no proof produced by the petitioner in support of his allegations in the complaint.

20. It is his further contention that petitioner has no locus to file the complaint. According to him the Appellate Authority has rightly considered and appreciated the documentary evidence which is placed on record and has passed the appropriate order, which does not deserve any interference.

21. Learned advocate for respondent No. 4 further raises a ground that after the execution of sale deed in the year 2000, there is an inordinate delay of 14 years, therefore, the complaint of the petitioner is beyond the prescribed period of limitation.

More so when there is no explanation given in the complaint for the delay occurred, hence the complaint itself is not tenable.

22. It is his contention that there is no evidence in support of complaint that respondent No. 4 has indulged in illegal money lending business. Therefore, the Appellate Authority has rightly passed the order holding that the record discloses that during house search conducted on 09.09.2015 there is no recovery of any material which would point towards involvement of respondent No. 4 in illegal money lending business.

23. The learned Advocate further submits that, sale deed which is placed on record discloses that it is a plain out and out sale transaction, between father of petitioner and respondent No. 4 for a consideration. Therefore, it cannot be termed as transaction with a condition to resale upon repayment of loan. The recitals of sale deed do not in any manner indicate that it was a transaction of hand loan. Therefore, the petitioner is estopped from claiming it otherwise in view of Section 115 of the Indian Evidence Act.

24. I have heard the respective parties at length and also

gone through the documents annexed to the writ petition. The fact about ownership of land to the extent of 80 R in Gut No. 55 situated at village Hirapur, Tq. Gangapur, Dist. Aurangabad is not in dispute. Similarly, filing of suit for perpetual injunction by respondent No. 4 i.e. R.C.S. No. 8/2008 which was decreed on 19.03.2018 is also not in dispute. It is the contention of respondent No. 4, that, on execution of sale deed the possession was handed over to her, therefore, she is in possession of suit land from the date of execution of sale deed.

25. Record discloses that complaint was filed by petitioner on 02.09.2014. On receiving the complaint, Assistant Registrar, Co-operative Society, Gangapur was directed to submit a report after conducting enquiry. Accordingly, Co-operative Officer, Class-I conducted an enquiry and submitted a report to the Assistant Registrar, Co-operative Society, Gangapur on 23.09.2015. During the enquiry, notices were issued to the parties. Pursuant to notice, house search of respondent No. 4 was conducted on 09.09.2015 and various documents i.e. copies of nine sale deeds, eight passbooks, one cheque book and fixed deposit were seized. The statement of witnesses have also recorded on 16.09.2015 and panchnama to that effect has been

conducted. Even the statement of witnesses to the disputed sale deed has been recorded by the Enquiry Officer, during which it has been categorically stated by the witnesses that, the loan was obtained by the borrower with a condition that there will be re-sale of land after repayment of loan amount. All the statements which were recorded during the enquiry supports the complaint. The Co-operative Officer Class-I has categorically stated in his report that accompanying sale deed with the application discloses that one Namdeo Dada Gavli executed sale deed of 60R land from Gut No. 26 on 02.04.1999 in favour of Vishnu Tarachand Sable, in the course of money lending business and had obtained loan. After returning the interest amount, he has executed sale deed of 20R land from Gut No. 26 towards satisfaction of substantive amount of loan and thereafter has got re-executed sale deed to the extent of 40R land from respondent No. 4. This supports the allegation of involvement of respondent No. 4 in illegal money lending business. The executant of sale deed Shri. Namdeo Dada Gavli has also given a statement to that effect which was recorded during the enquiry. There are various passbooks in which there are entries of deposits of amounts in various bank accounts of respondent No. 4, which could not be satisfactory explained by her. Based on the various

documents which were seized and the statements of various witnesses, the Co-operative Officer Class-I has recorded a finding that transaction that has been taken place between petitioner and respondent No. 4, has taken place during the course of illegal money lending business.

26. Therefore, the District Deputy Registrar, Aurangabad after taking into consideration the record and the allegations which were made against the parties has passed the order and declared sale deed dated 31.10.2000 to be invalid and has cancelled the same. Though, District Deputy Registrar, Aurangabad has passed a detailed order taking into consideration all the documents which were collected during the enquiry, the Appellate Authority has passed a cryptic order which is contrary to the record.

27. The Appellate Authority after recording facts of the case has been pleased to observe that there were no documents on record that respondent No. 4 has indulged in illegal money lending business. He has further observed that suit land is in the possession of respondent No. 4, on the basis of sale deed executed in her favour. It is also supported by order passed by Civil Court in R.C.S. No. 8/2008. It is only on upon proof of

possession by respondent No. 4, the order of injunction restraining the petitioner has been passed in favour of respondent No. 4. In order to establish possession of respondent No. 4, the Appellate Authority has relied on the order passed by Civil Judge, Junior Division, Gangapur in R.C.S. No. 8/2008, which is totally against the provisions of law.

28. The Maharashtra Money Lending (Regulation) Act, 2014 is a complete Act in itself, providing for a complete mechanism. The provisions under the Act, take care of all eventualities. When there is special statute provided for a remedy, the provisions of other statutes and the order passed thereunder cannot be relied upon. Therefore, reliance placed on the order passed under the general remedy available to the respondent No. 4 is totally uncalled for and untenable.

29. Section 18(1) of the said Act is reproduced, which reads thus;

"18. Return of immovable property acquired in course of money lending.—

(1) If, on the basis of facts disclosed, during verification under section 16 or inspection under section 17, or by an application from a debtor or otherwise, the District Registrar has reason to believe that any immovable property, which has come in possession of the money-lender by way of sale, mortgage, lease, exchange or

otherwise, within a period of 1[fifteen years] from the date of verification or the inspection or the date of receipt of application from debtor, in the nature of the property offered by the debtor to the money lender as a security for loan advanced by the money-lender in course of money lending, the District Registrar may, himself or through an inquiry officer, to be appointed for the purpose, in the manner prescribed, hold further inquiry into the nature of the transaction.

(2) If upon holding the inquiry as per sub-section (1), the District Registrar is satisfied that the immovable property came in possession of the money-lender as a security for loan advanced by the money-lender during the course of money-lending, the District Registrar may, notwithstanding anything contained in any other law for the time being in force, after recording the reasons, declare the instrument or conveyance as invalid and may order restoration of possession of the property to the debtor who has executed the instrument or conveyance as a security or to his heir or successor, as the case may be."

30. Sub Section (1) and (2) of Section 18 provide that District Deputy Registrar, Aurangabad has to record a finding that money lender has come in possession of the land by way of sale, mortgage, lease, exchange or otherwise in course of money lending as the District Deputy Registrar, Aurangabad has to conduct enquiry through officer and upon report being submitted and on recording satisfaction that immovable property has come in possession of money lender as security for loan advanced by

money lender during the course of money lending, the District Deputy Registrar, Aurangabad has to pass orders declaring instrument or conveyance invalid. Therefore in the said Act itself there is mechanism provided to ascertain possession of parties. Hence, reliance placed by Appellate Authority on the order passed by Civil Court in R.C.S. No. 8/2008 in order to draw support for claim of possession of respondent No. 4 is totally illfounded and unsustainable.

31. The second objection raised by the petitioner is to the finding about delay in filing the complaint, recorded by the Appellate Authority. Even in that regard it is clear from the record that while passing order, the District Deputy Registrar, Aurangabad, has referred to the complaint filed by petitioner on 02.09.2014 and thereafter the machinery is set in motion for conducting enquiry and panchnama etc. Section 18(1) of the said Act provides for limitation to take cognizance of the complaint, upon receipt of complaint from Debtor or otherwise if the District Deputy Registrar, Aurangabad has reason to believe that, money lender has come in possession of immovable property within a period of fifteen years, from verification or inspection or the date of application from debtor, the District

Deputy Registrar, Aurangabad himself or through inquiry officer hold enquiry. In the present case, the transaction is of the year 2000 and the date of complaint is 02.09.2014. Hence, there is no substance in objection regarding delay in filing complaint. Therefore, observations made by the Appellate Authority regarding delay in filing complaint by the petitioner are totally contrary to the record.

32. The other observation of the Appellate Authority that as per record during house search of respondent No. 4 conducted on 09.09.2015, there is no material seized in support of allegation that respondent No. 4 has indulged in illegal money lending business, is also totally contrary to the record. Though Appellate Authority has merely observed that there is no record to support the allegation of the petitioner, the documents seized during the house search itself are placed on record which disclose that, there are various sale deeds, cheque books, passbooks and other documents which point towards illegal money lending business of respondent No. 4. Similarly, witnesses to the sale deed as well as adjoining land owners have categorically stated that transaction is of money lending. The record supporting allegation against respondent No. 4 is very

much available and it has been relied by District Deputy Registrar, Aurangabad, while passing order dated 07.04.2016. Therefore, observation of the Appellate Authority regarding non availability of any record to support the allegation of illegal money lending business is contrary the record.

33. As regards the contention of respondent No. 4 that petitioner has not produced any document with complaint in order to take cognizance as provided under Section 16 of the said Act is concerned, Section 16 itself is clear, complaint filed does not require any supporting proof. Section 16 is reproduced herein below, which reads thus:

"16. Power of authorized officer to require production of records or documents.—

For the purpose of verifying, whether the business of money lending is carried on in accordance with the provisions of this Act, Registrar General, Divisional Registrar, District Registrar and Assistant Registrar or any other officer authorized by the State Government in this behalf may require any money-lender or any person in respect of whom the Registrar General, Divisional Registrar, District Registrar and Assistant Registrar or the officer authorized by him, has reason to believe that he is carrying on the business of money-lending in the State, to produce any record or documents in his possession which in his opinion is relevant for the purpose and thereupon such money-lender or person shall produce such record or documents. The Registrar General, Divisional Registrar, District Registrar and

Assistant Registrar or officer so authorized may, after reasonable notice, at any reasonable time enter and search without warrant any premises where he believes such record or documents to be kept and inspect such record or documents and may ask any question necessary for interpreting or verifying such record."

34. Upon reading of Section 16 it is apparent that there is no requirement of material to support the complaint filed by debtor. It is sufficient to file complaint to set the law in motion in order to enquire regarding allegation made in the complaint. Upon complaint being received, a detail enquiry is conducted including recording of statement of witnesses and conducting house search panchnama etc. The said Act does not contemplate any production of evidence in support of complaint by the debtor. Therefore, objection raised by learned advocate for respondent No. 4 does not find support from Section 16.

35. The order passed by Appellate Authority is not a reasoned order. The Appellate Authority has not at all taken into consideration the record produced before him as well as finding recorded by District Deputy Registrar, Aurangabad on the basis of documents which were produced before him, hence he has failed to apply his mind to the documents placed on record, as well as the law in that regard, resulting in an erroneous order.

The Appellate Authority has failed to appreciate the record, resulting into recording of perverse finding.

36. In view of observations herein above, in my opinion, the order passed by Divisional Joint Registrar, Co-operative Societies, Aurangabad in Appeal Application No. 14/2016 being cryptic and unreasoned order, deserves to be quashed and set aside. In the result, I proceed to pass following order:

ORDER

- (i) Writ Petition is allowed.
- (ii) Order dated 30.05.2018 passed by Divisional Joint Registrar, Aurangabad in Appeal Application No. 14/2016 is hereby quashed and set aside.

(MANJUSHA DESHPANDE, J.)