2025:BHC-AUG:14730



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

**925 WRIT PETITION NO. 1094 OF 2018**

DEVGIRI NAGARI SAHAKARI BANK LTD AURANGABAD,
BRANCH JALNA, THROUGH ITS BRANCH MANAGER
*VERSUS*
1. THE STATE OF MAHARASHTRA, THR. PRINCIPAL SECRETARY,
COOPERATION AND TEXTILES DEPARTMENT, MUMBAI
2. THE DIVISIONAL JOINT REGISTRAR, COOPERATIVE SOCIETIES,
AURANGABAD
3. THE ASSISTANT REGISTRAR, COOPERATIVE SOCIETIES, JALNA
4. SMT. AANJU SURYAPRAKASH DEMDA
5. SHRI. SURYAPRAKASH TEKCHANDJI DEMDA
6. SHRI. PRAKASH ARJANDAS BASRANI

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Mr N. T. Tribhuwan, Advocate for petitioner
Mr K. N. Lokhande, A.G.P. for respondent Nos.1 to 3
Mr A. G. Talhar, Advocate for respondent Nos.4 and 5
Mr P. S. Gaikwad, Advocate for respondent No.6

**WITH
CIVIL APPLICATION NO. 3236 OF 2021
IN WP/1094/2018**

AANJU SURYAPRAKASH DEMDA AND ANOTHER
*VERSUS*
DEVGIRI NAGARI SAHAKARI BANK LTD THROUGH BRANCH
MANAGER / OFFICER AND OTHERS

….

Mr A. G. Talhar, Advocate for applicants
Mr N. T. Tribhuwan, Advocate for respondent No.1
Mr K. N. Lokhande, A.G.P. for respondent Nos.2 to 4

**CORAM : PRAFULLA S. KHUBALKAR, J.**

**DATE : 10th June, 2025**

**PER COURT:**

1. Heard learned Advocate Mr Tribhuwan for the petitioner, learned A.G.P. for respondent Nos.1 to 3 and learned Advocate Mr Talhar for respondent Nos.4 and 5 in presence of respondent No.5/Shri. Suryaprakash Tekchandji Demda.

2. This petition takes exception to the order dated 29/03/2014, passed by respondent No.3/Assistant Registrar, Cooperative Societies, Jalna and the order dated 31/03/2017, passed by the Divisional Joint Registrar of the Cooperative Societies, Aurangabad, refusing to issue recovery certificate under Section 101 of the Maharashtra Co-operative Societies Act, 1960 (for short 'the MCS Act') against respondent Nos.4 to 6.

3. The petitioner is a cooperative bank which has advanced loan to respondent Nos.4 to 6 and on account of failure to repay the loan, instituted proceeding under Section 101 of the MCS Act before respondent No.3/Assistant Registrar, Cooperative Societies, bearing Application No.1466/2008, seeking recovery certificate for an amount of Rs.20,15,217/- as on 31/07/2008 with future interest. The Assistant Registrar issued recovery certificate dated 31/12/2008 in favour of the petitioner bank against respondent Nos.4 to 6 for an amount of

Rs.20,15,217/- with costs, expenses and interest @ 16.5% p.a. w.e.f. 01/08/2008. Respondent Nos. 4 to 6 challenged this certificate vide Writ Petition No.2255/2009 before this Court and by order dated 16/04/2012, the writ petition was disposed of by remanding the matter back to respondent No.3/Assistant Registrar with a direction to make fresh enquiry, subject to deposit of Rs.8,00,000/- by respondent Nos.4 to 6. After the matter was remanded, the Assistant Registrar conducted the proceeding afresh after issuing notices to both the parties.

4. By order dated 29/03/2014, the Assistant Registrar, Cooperative Societies, Jalna, respondent No.3, passed an elaborate order observing therein that there was discrepancy with respect to the amount claimed by the petitioner bank, since initially recovery certificate was claimed with respect to amount of Rs.20,15,217/-, however, after the matter was remanded, the claim was made for Rs.35,60,746/-. It was also specifically observed that, since the bank has not specified the exact amount for which the certificate was claimed, the bank was not entitled for certificate under Section 101 of the MCS Act.

5. Feeling aggrieved by the order passed by the Assistant Registrar, the petitioner filed Revision Application No.05/2015 before

the Divisional Joint Registrar, Cooperative Societies, Aurangabad, respondent No.2. The parties appeared before respondent No.2 and on consideration of the controversy, the revision application was decided by order dated 31/03/2017, by which it was rejected. By this order, the Divisional Joint Registrar also observed that, there was discrepancy in the amounts claimed by the petitioner bank, as earlier an amount of Rs.20,15,217/- was claimed in the year 2008 and thereafter, an amount of Rs.35,60,746/- was claimed in the year 2014. The Divisional Joint Registrar also observed that the respondents/borrowers have expressed readiness to compromise the matter by paying Rs.6,00,000/- and by considering this aspect, the revision application was rejected, thereby refusing to grant certificate under Section 101 of the MCS Act. The petitioner has challenged both these orders by way of instant petition.

6. Learned Advocate Mr Tribhuwan for petitioner submits that the impugned orders are grossly erroneous since there is no discrepancy at all as observed by respondent Nos.2 and 3. He vehemently submits that there is no dispute about advancing loan to respondent No. 4 to 6 and on account of their failure to repay the loan, proceedings were filed under Section 101 of the MCS Act in the year 2008, claiming an amount of Rs.20,15,217/- and thereafter in the year

2014, after the matter was remanded, the claim was raised for Rs.35,60,746/- and as such, there is no discrepancy. He submits that repeated readiness of the respondents to compromise the matter and some payments made by respondents show that there is an outstanding amount for which bank is entitled for recovery certificate. By inviting my attention to the impugned order passed by respondent Nos.2 and 3, he submits that the exact amount due can now be brought on record by granting opportunity to the bank by remanding the matter to respondent No.3/Assistant Registrar, Cooperative Societies, Jalna. He submits that, undisputedly the loan amount is not recovered and an opportunity be granted to the bank to submit the necessary documents, in the interest of justice.

7. Per contra, learned Advocate Mr Talhar for respondent Nos.4 and 5 strongly opposes the petition. His primary contention is that the proceeding under Section 101 of the MCS Act itself were not maintainable in absence of any statement of accounts as required by provision of Section 101 of the MCS Act. He further submits that, in view of the disputed questions of fact, particularly the discrepancies in the amount, the petitioner bank ought to have approached the Cooperative Court by filing Dispute under Section 91 of the MCS Act.

By pointing out the reasons mentioned in the impugned order, he supports the impugned order.

8. I have considered the rival contentions. Perusal of the impugned orders show that respondent No.3/Assistant Registrar, has simply observed that the amount claimed in the year 2008 was Rs.20,15,217/-, however, after the remand, the amount is enhanced to Rs.35,60,746/- as on 31/03/2014. Pertinent to note that, this cannot be considered to be a discrepancy since the amounts claimed are after a gap of about eight years. The other reasons mentioned in the impugned order for refusing the certificate under Section 101 of the MCS Act are also cryptic. Even the order passed by the Divisional Joint Registrar is on the same lines, and by observing the discrepancies and readiness of the borrower to make some payment by way of compromise, the revision application was rejected.

9. It has to be noted that provisions of Section 101 of the MCS Act require the bank to place on record substantial documents in the nature of statement of accounts and any other documents for seeking the certificate. In the instant case, the respondents also contend that the outstanding amount was recovered out of fixed deposit of the borrowers, and therefore, nothing remained to be paid.

As such, it appears that the claim of petitioner bank for recovery certificate under Section 101 of the MCS Act was not properly decided only on account of alleged discrepancy. The bank is entitled for recovery of its dues, if any, in case it is in a position to substantiate its claim for recovery certificate under Section 101 of the MCS Act. Interest of justice would be subserved if rival contentions of parties are allowed to be considered afresh.

10. In view of the controversy involved, it is in the interest of justice to remand the matter back to Assistant Registrar of the Cooperative Societies, Jalna, respondent No.3. Accordingly, the impugned orders passed by respondent Nos.2 and 3 are quashed and set aside and the matter is remitted back to respondent No.3/Assistant Registrar, Cooperative Societies, Jalna, to consider it afresh on its own merits by granting opportunity to the parties to place on record relevant documents. In view of the controversy involved, it is desirable that the proceedings are decided expeditiously and in any case within a period of two months from the date of the appearance of the parties. The parties are directed to appear before respondent No.3/Assistant Registrar, Jalna on 01/07/2025. Parties are directed to cooperate the authority in early disposal of the proceedings.

11. Registry of this Court is directed to send the Record and Proceeding to the office of respondent Nos.2 and 3 expeditiously.

12. The writ petition is disposed of. Accordingly, pending civil application also stand disposed of.

**(PRAFULLA S. KHUBALKAR, J.)**

sjk