IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

Review Application No. 276 Of 2024
in
Writ Petition No.6908 Of 2021

The Aurangabad District Central Co-Operative Bank Ltd., Head Office at Adalat Road, Aurangabad, Tq. & Dist. Aurangabad
Through its Managing Director,
Shri. Vinod Ramnath Shengule,
Age : 53 years, Occu.: Manager,
R/o : Aurangabad, Tq. & Dist. Aurangabad. **.. Applicant**

Versus

1. The State of Maharashtra,
Through its Secretary,
Co-operation and Textile Department,
Mantralaya, Mumbai-32.

2. The Commissioner for Co-operation
And Registrar Co-operative Societies,
Maharashtra State, Pune.

3. The Regional Joint Registrar,
Co operative Societies, Aurangabad
District Aurangabad.

4. The District Deputy Registrar,
Co-operative Societies, Aurangabad
District Aurangabad.

5. District Supervisory Committee,
C/o. Office of the District Deputy Registrar
Co-operative Societies and the President of District Supervisory Committee, Shakti Suhakar
Building Opposite Kartiki Hotel,
C.B.S. Road, Aurangabad.

6. Aurangabad Zilla Dekhrekh Sahakari Sangh,
Ltd. Laxmi Apartment, Nirala Bazar, Aurangabad
Through its Secretary.

7. Aurangabad District Co-operative
Societies Group Secretaries Association,
Laxmi Apartment, Nirala Bazar, Aurangabad,
Through its President, Maroti s/o Tanaji Jadhav
Age : 52 years, Occ. Service,
R/o. Parijatnagar, N-4 CIDCO,
Aurangabad District Aurangabad.

8. Vijay Bapurao Fasate
Age : 45 years, Occ. Service,
R/o Bidkin Tq. Paithan,
Dist. Aurangabad.

9. Subhash Fulchand Bainade
Age : 42 years, Occ. Service,
R/o. Anand Vihar, Paithan Road,
Aurangabad Dist. Aurangabad.

10. Pradeep Vithalrao Harde
Age : 39 years, Occ. Service,
R/o Harisidhi Housing Society,
Harsool Aurangabad Dist. Aurangabad. .. **Respondents**

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* Mr. V.D. Salunke a/w Mr. K.J. Suryawanshi,
Advocate for the Applicant.

* Mr. S.R. Yadav-Lonikar, AGP for Respondent Nos. 1 to 5.

* Mr. S.B. Kakde, Advocate for Respondent No. 6.

* Mr. V.H. Dighe, Advocate for Respondent Nos. 7 to 10.

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**CORAM : S.G. MEHARE AND
SHAILESH P. BRAHME, JJ..**

RESERVED ON : 7th MARCH 2025

PRONOUNCED ON : 13th MARCH 2025

FINAL ORDER (Per Shailesh P. Brahme, J.) :

. Heard both sides finally at the admission stage with their consent.

2. The Applicant – Aurangabad District Central Co-operative Bank, is seeking review of judgment and order dated 19.11.2024 passed by our bench in Writ Petition No.6908/2021. A pre-dominant ground seeking review is the liability imposed on the Applicant-Bank to disburse the arrears of salary to the members of the Petitioner No.1.

3. Learned Counsel Mr. V.D. Salunke holding for Mr. K.J. Suryawanshi for the Applicant submits that imposing liability on the Applicant-Bank is mistake apparent on the face of record for the following reasons :

(i) Applicant-Bank is not liable for the disbursement of arrears of salary because group secretaries are neither their employees, nor engaged by them.

(ii) Applicant-Bank has no funds and impugned direction is un-executable.

4. It is further submitted that writ petition filed by the Respondent Nos.7 to 10 was not maintainable as res-judicata cannot be made applicable, which is another perversity or mistake apparent on the face of the record. He would further submit that it is overlooked while passing the judgment under review Applicant-Bank was not having the funds deposited either by primary Societies or Respondent No.5/Supervisory Committees. It is further submitted that without resorting to any alternate remedy, Respondent Nos.7 to 10 had directly approached High Court and claimed disbursement of the arrears of salary.

5. Applicant has placed on record following judgments :

(i) Shamrao Vithal Co-operative Bank Limited and Anr. Vs. Padubidri Pattabhirara Bhat and Anr., 1993 BCI 116.

(ii) Vassudev Medkaikar and Others Vs. State of Goa and Others 2021 (6) AIR Bom R 718

(iii) Jaipur Vidyut Vitran Nigam Limited and Others Vs. MB Power (Madhya Pradesh) Limited and Others

(iv) Union of India Vs. Sandur Manganese and Iron Ores Ltd. and Ors., 2014 AIR(SC)(Supp) 254.

6. Respondent Nos.7 to 10 have contested the application by filing affidavit-in-reply. Mr. Dighe learned Counsel submits that no case is made out to upset judgment and order under review by exercising jurisdiction under Order 47 read with Section 114 of the Civil Procedure Code. All the aspects of the matter are dealt with. The submissions of the applicant are amounting to reopening of the matter and re-appreciation of the material is impermissible. It is submitted that applicant is rightly held liable because it failed to adhere to the directions contained in Clause No.4 of Order dated 06.12.2010. Applicant did not extend loan as directed by the competent authorities when there was no recovery from Village

Level Societies. It is submitted that Respondent Nos.7 to 10 did not approach High Court directly. When all attempts failed, the petition was filed. He would submit that the Respondent No.5/Supervisory Committee informed the Applicant-Bank on 24.02.2011 to follow the order dated 06.12.2010 which was accepted by it, but still no steps were taken. It is further submitted that Applicant-Bank suffered adjudication in Writ Petition No.3836/2022 but it is still agitating the same issues again and again. Mr. Dighe would advert our attention to Paragraph Nos. 4 to 9 of the affidavit-in-reply to support the submission that present review is nothing, but appeal in disguise.

7. Respondent nos. 7 to 10 are relying on the following judgments :

(i) Aurangabad District Central Cooperative Bank Ltd. Vs. State of Maharashtra and Ors. Writ Petition No.3836/2022.

(ii) Sardar Associates and Others Vs. Punjab and Sind Bank and Others, (2009) 8 SCC 257

(iii) S. Madhusudhan Reddy Vs. V. Narayana Reddy, 2022 (4) CCC 464

8. We have considered rival submissions of the parties. In review jurisdiction, it is not permissible to re-appreciate the evidence on record. Just because findings are erroneous or another view is possible, those cannot be interfered with. We propose to consider latest judgment of the Supreme Court in case of S. Madhusudhan Reddy (supra) pressed into service by the Respondent No.1 before deciding present application. The scope is considered by the Supreme Court in paragraph nos. 11 to 19 by referring to various earlier pronouncements. Principles are culled down in following Paragraphs :

“**21.1.** When the review will be maintainable:

(i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;

(ii) Mistake or error apparent on the face of the record;

(iii) Any other sufficient reason. The words "any other sufficient reason" has been interpreted in Chajju Ram Vs. Neki 17, and approved by this Court in Moran Mar Basselios Catholicos Vs. Most Rev. Mar Poulose Athanasius & Ors. 18 to mean "a reason sufficient on grounds at least analogous to those specified in the rule". The same principles have been reiterated in Union of India V. Sandur Manganese & Iron Ltd. & ors.25,.”

“**20.2.** When the review will not be maintainable:
(i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.

(ii) Minor mistakes of inconsequential import.

(iii) Review proceedings cannot be equated with the original hearing of the case.

(iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.

(v) A review is by no means an appeal in disguise whereby an erroneous decision is re-heard and corrected but lies only for patent error.

(vi) The mere possibility of two views on the subject cannot be a ground for review.

(vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.

(viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.

(ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived.”

9. Respondent No.7 has 359 members of group secretaries who are claiming arrears of salary recoverable from the Applicant. Despite directions issued by the competent authority under

Section 79(1) of the Maharashtra Cooperative Societies Act (For short 'Act'), they are not being paid the arrears. Respondent No.7 and its members had filed Writ Petition No.11124/2010 and secured orders against the Applicant way back on 24.02.2011. Thereafter Writ Petition No.3836/2022 was filed by selfsame Applicant. The coordinate bench by a reasoned order dated 22.02.2024 dismissed the petition upholding directions dated 06.12.2010 and 26.03.2021. The liability of the Applicant is conclusively decided on earlier occasions which was duly considered by our judgment under review.

10. The liability of the Applicant to deposit the amount for the disbursement of the arrears of salary of the members of Respondent No.7 is fixed vide order dated 06.12.2010 under Section 79(1) of the Act. It was confirmed vide letter dated 24.03.2021 issued by the Respondent No.5/Supervisory Committee relying on the assurance given by the Applicant-Bank. Lastly, the liability is confirmed vide order dated 26.03.2021. The Applicant is reopening old and overruled argument under the pretext of error apparent on the face of record. The orders passed in the Writ Petitions referred above are still intact. We have dealt with the aspect of the matter in the judgment under review.

11. The liability of the Applicant is attracted when primary level Societies failed to credit contributions in the account of District Supervisory Committee. The role of the Applicant-Bank starts by extending loan and crediting the amount in the bank. The Applicant failed to discharge the duties and therefore the competent authorities held it liable which is confirmed by High Court in previous litigation. We do not find substance in the submissions of the Applicant that it is not liable to pay the arrears. This cannot be mistake apparent on the face of record.

12. We have also dealt with the submissions of Applicant in our judgment under review regarding maintainability of the petition. Those are again overruled arguments which cannot be agitated in the review application. Similar is the case with submission made by Mr. Salunke in respect of directions dated 15.03.2022. That aspect of the matter is also considered by us. It is vehemently submitted by Mr. V.D. Salunke that maintainability of the Writ Petition can be gone into because that issue goes to the root of the matter. We have already recorded findings in this regard. We find no merit in the submission of the Applicant in this regard. The judgment pressed into services by the Applicant would pertain to overrule arguments. We are not impressed by those judgments while exercising writ jurisdiction.

13. It is not that by our judgment for the first time liability is imposed upon the Applicant. Previously also Applicant suffered the adjudication. It is up to the Applicant as to how to raise the funds to satisfy the liability. We find no merit in the submission that our directions are un-executable.

14. We have elaborately dealt with the steps taken by the Respondent No.1 and the procedure adopted by it for claiming the arrears. It is not that the members of Respondent no.7 are approaching High Court directly. Their pursuit commenced from order dated 06.12.2010 issued by Commissioner. Then Applicant suffered adjudication in Writ Petition No.11124/2010. The members approached Applicant-Bank on 15.10.2018. There was recommendation by District Level Committee on 19.09.2019. Respondent No.7 then approached District Deputy Registrar on 03.12.2001. There was correspondence dated 24.03.2021 to the Applicant-Bank to comply with the directions. Thereafter on 26.03.2021, Divisional Joint Registrar also passed orders indicating the Applicant to comply with earlier orders and judgment of the High Court. We do not find substance in the submission of Mr. V.D. Salunke that there was alternate remedy and Writ Petition was not maintainable. This point was not argued by Mr. K.J. Suryawanshi, but still we entertained the submission.

15. We have also considered the arguments made relying on judgment of District Solapur Cooperative Bank. We do not find any ground to cause interference in review jurisdiction relying on the repetitive submissions.

16. We cannot be oblivious of the conduct of the Applicant. It is already recorded that Applicant suffered adjudication by earlier coordinate benches, twice before the judgment under review. After pronouncement of judgment under review, a request was made by learned Counsel Mr. K.J. Suryawanshi for staying the operation of the judgment. By assigning reasons and relying on the bonafides, we had stayed the operation for three weeks so as to enable Applicant to approach Higher Forum. Instead of doing so, present review is filed. We deprecate conduct of the Applicant. Present review is an attempt to reopen the matter on overruled arguments. Therefore, this review application is liable to be rejected with cost of Rs.50,000/- to be paid to the Respondent Nos.7 to 10.

17. The Review Application is rejected with cost of Rs.50,000/- to be paid to the Respondent Nos. 7 to 10.

[SHAILESH P. BRAHME]
JUDGE

[S.G. MEHARE]
JUDGE

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