AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1805 OF 2019

Shamsuddin Rusool Nadaf & Anr. … Petitioners
V/s.
The State of Maharashtra & Ors. … Respondents

WITH
INTERIM APPLICATION NO.1438 OF 2023
IN
WRIT PETITION NO.1805 OF 2019

Karad Merchant Cooperative Credit Society Ltd. … Applicant
In the matter between
Shamsuddin Rusool Nadaf & Anr. … Petitioners
V/s.
The State of Maharashtra & Ors. … Respondents

Mr. Pramod N. Joshi with Ms. Rukmini Khairnar for the petitioners.

Mr. P.V. Nelson Rajan, AGP for respondent Nos.1 to 3-State.

Mr. Tejas D. Deshmukh for respondent No.4 & applicants in IA.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 25, 2025

<u>P.C.</u>:

1. That by this writ petition, instituted under the auspices of Article 226 of the Constitution of India, the petitioners seek to challenge and set aside the impugned Judgment and Order dated

26th November 2018 rendered by respondent No.1. This Judgment and Order, inter alia, confirmed the earlier Order dated 13th January 2016 passed by respondent No.2, which facilitated the transfer of the disputed property to respondent No.4-Society. The said transfer was effected under the statutory provisions of Section 100, read with Rule 85(r) of the Maharashtra Cooperative Societies Act, 1960 (hereinafter "said Act"), and the accompanying rules framed thereunder.

2. The facts and circumstances which have necessitated the filing of this writ petition are set forth as follows: It is averred that respondent Nos.5 and 6 had procured a loan aggregating Rs.35,25,000/- from respondent No.4-Society on 30th November 2005, the repayment of which was secured by the mortgage of their property bearing Gat No. 243, situated at Village Shivade and ad-measuring 78 guntha. Subsequent to this transaction, respondent Nos.5 and 6 defaulted in the repayment of the loan amount, thereby precipitating the initiation of dispute proceedings by respondent No.4 under Section 91 of the said Act. This dispute was referred as Cooperative Case No.2151 of 2007. In its adjudication, the Cooperative Court, by an order dated 11th July 2011, partially adjudicated the dispute by directing respondent Nos.5 and 6, along with the guarantors, to remit the sum of Rs.30,00,000/- as joint and several liabilities, accruing interest at the rate of 12% per annum from 30th November 2005.

3. Further, it is pertinent to record that respondent No.4-Society, in pursuance of its remedial measures under the ambit of the said Act, conducted successive auction proceedings of the mortgaged property on three distinct dates, namely, 24th August 2013, 2nd May 2014, and 15th December 2014. In each instance, however, the auction process was rendered ineffectual owing to the non-emergence of any bona fide purchaser willing to effect the acquisition. In light of these unsuccessful auction endeavors, respondent No.4-Society subsequently advanced a proposal before respondent No.2 on 26th May 2015, invoking the provisions of Section 100 of the said Act read with Rule 85, thereby seeking to formalize the transfer of the subject property.

4. Moreover, the petitioners, having appeared before respondent No.2, have contended that the disputed mortgaged property was, in fact, subject to a valid lease in their favour, as evidenced by a lease deed executed on 1st October 2008. Additionally, it is averred that on 21st August 2013, respondent Nos.5 and 6 entered into an agreement for the sale of the mortgaged property to the petitioners, for a consideration amounting to Rs.50,00,000/-. In light of these transactions and the bona fide interests asserted by the petitioners, it is submitted that the impugned orders passed under Section 100 of the said Act read with Rule 85, which facilitated the transfer of the property in favour of respondent No.4-Society, are devoid of merit and must accordingly be set aside.

5. After having duly afforded both parties a fair opportunity of being heard, respondent No.2, in exercise of its jurisdiction, passed an order dated 13th January 2016, whereby the mortgaged property was transferred in favour of respondent No.4, subject to the conditions and limitations expressly stated therein. In furtherance of the proceedings, respondent No.2 also issued a certificate in compliance with Rule 85(r) of the Rules, thereby evidencing the formal transfer of the said property to respondent No.4-Society.

6. In response to the order dated 13th January 2016, the petitioners sought recourse by filing Revision No.351 of 2016 under Section 154 of the said Act before respondent No.1. After affording an adequate opportunity for both sides to be heard, respondent No.1 dismissed the revision filed by the petitioners. Consequently, having exhausted the remedy available under the statutory framework, the petitioners have now instituted the present writ petition before this Court.

7. Mr. Joshi, the learned Advocate representing the petitioners, submitted that the borrowers had, in fact, repaid an amount exceeding that adjudicated by the Cooperative Court in its Award dated 11th July 2011. He further contended that the proceedings undertaken under Section 100 read with Rule 85 were conducted without affording the petitioners a reasonable opportunity of being heard. Moreover, in light of the existence of a lease deed executed in favour of the petitioners by respondent Nos.5 and 6, as well as an agreement to sell executed on 21st August 2013, it was submitted that no order under Section 100 of the said Act, read with Rule 85, could justifiably have been passed in favour of respondent No.4-Society. On these grounds, the learned counsel argued that the impugned order dated 13th January 2016 ought to be quashed and set aside.

8. Conversely, Mr. Deshmukh, the learned Advocate for respondent No.4, submitted that it is an uncontested fact that the property in dispute was mortgaged in favour of respondent No.4-Society in the year 2005. He further observed that the purported lease deed executed in favour of the petitioners by respondent Nos.5 and 6, having been entered into in 2008, had lapsed upon expiry in 2014. Additionally, he contended that the alleged agreement to sell, purportedly executed by respondent Nos.5 and 6, was a sham transaction—evidenced by the nominal payment of Rs.5 lakh in cash—which undermines its credibility. Furthermore, Mr. Deshmukh submitted that Section 48 of the said Act renders any transfers of the property mortgaged in favour of the cooperative society null and void, thereby precluding the petitioners from asserting any rightful claim over the mortgaged property. In light of these submissions, he maintained that the present writ petition must be dismissed.

9. Upon a meticulous examination of the record, it is incontrovertibly established that respondent Nos.5 and 6 had, in the year 2005, mortgaged the property bearing Gat No.243 at Mouje Shivade, ad-measuring 78 guntha, in favour of respondent No.4-Society. Moreover, it is not in dispute that on 11th July 2011, the Cooperative Court passed an Award directing respondent Nos.5 and 6, along with the guarantor, to repay jointly and severally the sum of Rs.30,00,000/- with interest accruing at the rate of 12% per annum from 30th November 2005. This uncontested factual matrix forms the bedrock upon which the present dispute is adjudicated.

10. The petitioners contend that they possess a claim over the mortgaged property, Gat No.243, predicated upon two purported instruments: (a) a lease deed allegedly executed in the year 2008, and (b) an agreement to sell allegedly executed on 21st August 2013. On a careful examination of the record, it is apparent that the lease deed, even if accorded a presumption of validity, conferred rights only for the period expressly specified therein, which expired in the year 2014. Furthermore, the purported agreement to sell—allegedly entered into by respondent Nos.5 and 6—provides for a sale consideration of Rs.50 lakh, with an earnest money deposit of Rs.5 lakh purportedly remitted in cash.The earnest money of Rs.5 lakh, which was stated to have been paid by the petitioners, was allegedly remitted in cash, raising concerns regarding the authenticity and transparency of the transaction. This evidentiary submission, however, raises substantial questions regarding the bona fide nature and legal efficacy of the alleged sale transaction, thereby failing to sustain a continuing claim in favour of the petitioners over the subject property. Upon scrutiny, it becomes evident that the lease deed executed in favour of the petitioners expired in the year 2014, thereby rendering the leasehold interest obsolete and incapable of supporting the petitioners' current claim.

11. At this juncture, it is imperative to bring to light the legal effect of the Award passed by the Cooperative Court, as per the provisions of Section 98 of the said Act, which confers upon such an Award the status of a civil court decree. This Award, therefore, holds the force of a decree and may be executed in the manner prescribed under civil law. Furthermore, Section 99 of the said Act places a categorical prohibition on any private transfer of the mortgaged property after the issuance of a certificate by the Cooperative Court, declaring such transfers to be void. In addition, Section 48 of the said Act is pertinent, as it stipulates that any creation of charge on a property subsequent to its mortgage becomes subject to the prior sanction of the Society, thereby rendering any transfer of the mortgaged property without such permission invalid. Therefore, the petitioners' reliance on these documents to contest the transfer is entirely misplaced within the contours of the legal framework established by the Maharashtra Cooperative Societies Act, 1960.

12. Before proceeding to issue an order effecting the transfer of the mortgaged property in favour of respondent No.4-Society, respondent No.2 ensured that all procedural safeguards were adhered to. In particular, respondent No.2 sought to satisfy himself that previous efforts made by respondent No.4-Society to sell the property through auction had failed on three separate occasions: 24th August 2013, 2nd May 2014, and 15th December 2014. The failure of these auctions, attributable to the lack of any prospective buyer, underscored the necessity of proceeding with the transfer as contemplated under Section 100 of the said Act, read with Rule 85, to mitigate the ongoing default and recover the outstanding dues. Such circumstances evidenced the prudent exercise of statutory authority by respondent No.2 and validated the subsequent action taken in accordance with the law.

13. It is incumbent upon this Court to observe that the Award passed by the Cooperative Court, which mandated respondent Nos.5 and 6, along with the guarantor, to repay an aggregate sum of Rs.30,00,000/- with interest from 30th November 2005 at 12% per annum, has been accorded the status of a decree of a Civil Court pursuant to Section 98 of the said Act. In this regard, such an Award is enforceable in the same manner as any decree rendered by a Civil Court. Moreover, Section 99 of the said Act unequivocally provides that any private transfer of the property subsequent to the issuance of a certificate by the Cooperative Court shall be null and void. In addition, Section 48 of the said Act mandates that if any charge is created on any property after its mortgage, such property cannot be transferred without the prior consent of the Society. These statutory provisions collectively preclude the possibility of the petitioners asserting any independent or conflicting rights over the mortgaged property.

14. Before effecting the transfer of the property in favour of respondent No.4-Society, respondent No.2 meticulously ensured that all requisite procedural safeguards were observed. The record unequivocally demonstrates that respondent No.2 satisfied himself that the Society had made bona fide efforts to dispose of the property by conducting auctions on three separate occasions—namely, on 24th August 2013, 2nd May 2014, and 15th December 2014. On each occasion, the auction process failed to culminate in a sale due to the non-appearance of a willing buyer. In light of these unsuccessful attempts, respondent No.2, exercising his discretion under the provisions of Section 100, read with Rule 85 of the said Act, proceeded with the order of transfer. This due diligence underscores that the transfer was effected only after exhausting all viable alternatives to auction, thereby ensuring compliance with the statutory framework governing such transactions.

15. Moreover, it is manifest that the purported lease deed—through which the petitioners purport to claim a leasehold interest for a period exceeding one year—remains unregistered. In light of the mandatory requirement of registration for leases of such duration, the petitioners are precluded from seeking any judicial enforcement of rights purportedly arising therefrom. Furthermore, the alleged agreement to sell dated 21st August 2013 fails to inspire confidence, as the petitioners have not adduced before this Court any evidence of having instituted civil proceedings for its specific performance. Consequently, in the absence of such corroborative proceedings, the alleged instruments cannot be accorded the requisite legal efficacy to support the petitioners' claim.

16. On overall consideration of the factors enumerated hereinabove, and in view of the fact that respondent No.4-Society had lawfully taken possession of the disputed property on 9th August 2018, it is my considered opinion that the petitioners have failed to make out a prima facie case warranting the intervention of this Court under Article 226 of the Constitution of India. The submissions and evidence on record do not surmount the statutory safeguards and legal principles applicable to the matter, and therefore, the petitioners' contentions are not sustainable.

17. In view of the foregoing, the present writ petition is hereby dismissed. No costs are awarded.

18. Accordingly, with the dismissal of the writ petition, all pending interlocutory applications filed in connection therewith stand disposed of.

19. It is further directed that the sum of Rs.10 lakh, which had been deposited by the petitioners, be repaid to them, together with any interest accrued thereon, if any.

(AMIT BORKAR, J.)