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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2123 OF 2023

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Tuljaram Laxman Chambhar (Hardikar) ... Petitioner

V/s.

Ningappa Mailari Pyati & Anr. ... Respondents

Mr. Drupad S. Patil with Mr. Balasaheb G. Ligade for
the petitioner.

Mr. R.M. Haridas i/by Mr. Somnath Thengal for
respondent Nos.1 and 2.

Ms. Priyanka B. Chavan, AGP for the State.

CORAM : AMIT BORKAR, J.

DATED : JANUARY 30, 2025

P.C.:

1. The challenge in the present writ petition emanates from the orders rendered by the Authorities under the provisions of the Bombay Money-Lenders Act, 1946 (hereinafter "the Act"). The factual matrix reveals that the petitioner instituted an application under Section 18 of the Act, seeking redressal against respondent Nos. 1 and 2 for alleged contraventions thereof. However, both the Competent Authorities, in exercise of their statutory mandate, dismissed the petitioner's application, categorically opining that the same was not maintainable in law. This conclusion ostensibly rested on the absence of jurisdictional prerequisites under Section 18, warranting closer scrutiny.

2. The Learned Advocate for the petitioner strenuously contended that the triggering event for initiating proceedings under Section 18, at the instance of a debtor, is unequivocally predicated on the date of delivery of possession consequent to a mortgage or loan transaction. It was asserted that in the absence of a demonstrable act of dispossession, the statutory machinery under Section 18 cannot be invoked by the debtor.

3. A perusal of Section 18 of the Act reveals that proceedings thereunder are indeed contingent upon an application filed by the debtor, rendering the debtor's initiative indispensable. A harmonious reading of the provision, particularly the limitation clause embedded therein, clarifies that such proceedings must be instituted within 15 years from the date of dispossession. This temporal constraint, rooted in principles of statutory finality and evidentiary integrity, underscores the legislature's intent to preclude stale claims. Consequently, any application extraneous to this temporal framework would be rendered barred by limitation, divesting the Authorities of jurisdiction to entertain it.

4. A critical lacuna in the present case lies in the indeterminate state of the record regarding the actual date and factum of dispossession. The petitioner's assertion of dispossession remains unsubstantiated by corroborative evidence, while respondent Nos. 1 and 2 deny such occurrence altogether. This factual imbroglio, pertaining to the existence and timing of dispossession, constitutes a substantive question of fact falling squarely within the adjudicatory domain of the Authorities under the Act. It is incumbent upon the Authorities to meticulously examine oral and

documentary evidence, including mortgage deeds, possession receipts, or witness testimonies, to conclusively determine whether dispossession—a jurisdictional precondition—has indeed transpired.

5. The impugned order dated 15th December 2017, passed by the District Deputy Registrar, Cooperative Societies, Solapur, and the subsequent order dated 31st May 2019, rendered by the Divisional Joint Registrar, Cooperative Societies, Solapur, are hereby quashed and set aside under Article 226 of the Constitution of India.

6. The proceedings are restored to the file of the District Deputy Registrar, Cooperative Societies, Solapur, who shall adjudicate the matter afresh after affording both parties a reasonable opportunity of hearing, consistent with the principles of natural justice. The Authority is directed to:

- (i) Ascertain the factum and date of dispossession, if any, through rigorous evidentiary scrutiny;
- (ii) Determine the question of limitation in light of the 15-year statutory window under Section 18;
- (iii) Render a reasoned decision on the merits, inclusive of all contentions raised by the parties.

7. The Authority shall conclude proceedings expeditiously, preferably within six months from the date of this order.

8. The writ petition stands disposed of in the aforementioned terms. No order as to costs.

(AMIT BORKAR, J.)