AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7759 OF 2023

Nashik Zilla Girna Sahakari Bank Ltd., through its authorized officer … Petitioner

V/s.

The Divisional Joint Registrar & Ors. … Respondents

WITH
WRIT PETITION NO.4576 OF 2024

Bapusaheb Ganpatrao Gawali … Petitioner

V/s.

The Divisional Joint Registrar & Ors. … Respondents

Mr. Nitin Gaware Patil with Mr. Divyesh Jain for the petitioner in WP/7759/2023.

Mr. V.S. Tadake for the petitioner in WP/4576/2024.

Mr. Mufeez Ansari for respondent Nos.4 to 6 in both WPs.

Mr. B.B. Hahiphale, AGP for State in WP/7759/2023.

Mr. P.V. Nelson Rajan, AGP for State in WP/4576/2024 & WP/13819/2024.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 20, 2025

P.C.:

1. By the present writ petitions under Article 226 of the Constitution of India, the petitioners assail the legality and propriety of the Judgment and Order dated 13th December 2022, passed by the Divisional Joint Registrar, Nashik Division, in exercise of powers under Section 151 of the Maharashtra

Cooperative Societies Act, 1960 ("MCS Act"). By the impugned order, the Divisional Joint Registrar has quashed and set aside the certificate issued under Section 101 of the MCS Act in favour of the petitioner-Bank. The primary issue that arises for consideration is whether the Divisional Joint Registrar was justified in setting aside the entire certificate issued under Section 101 of the MCS Act, instead of considering the legality of the claim in its entirety or partially.

2. It is pertinent to note that in the first round of litigation, the parties had approached this Court, which resulted in an order of remand passed by the Revisional Authorities. Pursuant to the said remand, the Assistant Registrar, after affording due opportunity of hearing to both parties, issued a certificate in favour of the petitioner in Writ Petition No.7759 of 2023 on 16th January 2014. The said certificate recognized the entitlement of the petitioner to recover an amount of Rs.17,62,997/- along with interest accrued thereon from respondent No.7.

3. Aggrieved by the issuance of the said certificate, respondent No.7 preferred Revision Application No.106 of 2015 before the Divisional Joint Registrar. By the impugned order, the Divisional Joint Registrar allowed the said revision application and remanded the matter to the first authority for reconsideration. In compliance with the remand directions, the District Deputy Registrar, upon re-evaluating the matter, issued a fresh certificate under Section 101 on 27th January 2017, once again recognizing the claim of the petitioner-Bank. Respondent No.7, however, once again assailed the issuance of the said certificate by filing Revision Application

No.5 of 2017. By the impugned order, the Divisional Joint Registrar quashed and set aside the certificate dated 27th January 2017.

4. A perusal of the reasoning assigned by the Divisional Joint Registrar in allowing the revision application reveals that the order proceeds on the ground that the petitioner-Bank had failed to substantiate its entire claim. The primary contention appears to be that certain amounts debited in the borrower's account were not backed by sufficient entitlement of the petitioner to claim such amounts. However, it is striking to note that the Divisional Joint Registrar has not engaged in an examination of the merits of the application in its entirety. The settled position in law that adjudication of financial claims must be guided by principles of fairness, and where a claim is partly found unsustainable, only such part ought to be excluded. The revisional authority, instead of setting aside the entire certificate, was obligated to determine whether any portion of the claim was valid and uphold that part accordingly.

5. The failure of the Divisional Joint Registrar to exercise its revisional jurisdiction in a judicious manner vitiates the impugned order. The law mandates that procedural fairness and application of mind to the entirety of the material placed before the authority is an indispensable requirement in quasi-judicial proceedings. It is evident that the Divisional Joint Registrar, in the present case, has not weighed the material evidence in its correct perspective and has summarily annulled the entire certificate without examining the validity of the claim in a piecemeal manner.

6. In view of the aforesaid discussion, the impugned order passed by the Divisional Joint Registrar is unsustainable in law and deserves to be set aside. Accordingly, the following order is passed:

:ORDER:

a) The impugned judgment and order dated 13th December 2022, passed by the Divisional Joint Registrar, Nashik Division, Nashik, in Revision Application No.5 of 2022, is quashed and set aside.

b) Revision Application No.5 of 2022 is restored to the file of the Divisional Joint Registrar, Nashik Division, for a fresh decision on merits.

c) The Divisional Joint Registrar shall, after affording a reasonable opportunity of hearing to all parties concerned, decide the revision application afresh in accordance with law, uninfluenced by the earlier observations, within a period of six months from the date of appearance of the parties.

d) The parties are directed to appear before the Divisional Joint Registrar, Nashik Division, on 3rd March 2025 at 10:30 a.m. without further notice.

7. Both the writ petitions accordingly stand disposed of in the above terms. No costs.

(AMIT BORKAR, J.)