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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5309 OF 2024

Sushil Tukaram Shinde .. Petitioner

Versus

Sangli Urban Co-operative Bank Ltd. & Ors. .. Respondents

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- Mr. S.S. Patwardhan i./by Mr. Ajay Rajenimbalkar, Advocate for Petitioner.
- Mr. Vikram N. Walawalkar a/w. Mr. Amey Sawant, Advocates for Respondent No.1.
- Mr. Hamid Mulla, AGP for Respondent Nos.2 and 3.

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CORAM : MILIND N. JADHAV, J.

DATE : JULY 01, 2025.

P.C.:

1. Present Writ Petition takes exception to judgement and order dated 31.01.2024 passed by Respondent No.3 - Divisional Joint Registrar of Co-operative Societies, Miraj by which Revision Application No.252 of 2023 filed by Respondent No.1 - Bank was allowed and order dated 04.08.2023 passed by Respondent No.2 - District Deputy Registrar of Co-operative Societies in Recovery Application No.101/620/22-2023 under Section 101 of the Maharashtra Co-operative Societies Act, 1960 (for short "**the said Act**") was quashed and set aside thereby remanding the matter back to Respondent No.2 for fresh adjudication.

2. Brief facts which necessitated filing of the present Writ Petition are as follows:-

2.1. On 31.03.2017, Petitioner availed a short-term loan for a period of 2 months from Respondent No.1 - Bank for an amount of Rs.25,00,000/- against security of fixed deposits pledged by one Mr. Hanmantrao Patil – the then member of Board of Directors of Respondent No.1 - Bank and his wife Mrs. Pramila Hanmantrao Patil for an amount totalling to Rs.16,50,000/-. Admittedly, Petitioner has repaid an amount of Rs.13,50,000/- to Respondent No.1 – Bank.

2.2. As Petitioner failed to repay the balance loan amount, on 27.01.2023 Respondent No.1 – Bank filed Application for issuance of Recovery Certificate under Section 101 of the said Act before Respondent No.2.

2.3. Before the Respondent No.2, Petitioner appeared and filed his reply dated 05.04.2023 stating that as per the prevalent laws if Petitioner failed to repay the loan then Respondent No.1 – Bank ought to have liquidated the fixed deposits which were kept as lien by Mr. and Mrs. Patil as security against the said loan, however after a delay of 6 years, Respondent No.1 - Bank without taking recourse to the aforesaid action filed Application under Section 101 of the said Act.

2.4. In response thereof, Respondent No.1 - Bank through its Branch Manager filed Affidavit dated 12.04.2023 before Respondent

No.2 stating that as Mr. Patil had raised an objection to liquidation of said fixed deposits which were kept as lien stating that the said fixed deposits were his retirement funds, Respondent No.1 - Bank did not liquidate the same. If that was to be accepted, then in the first instance such deposits ought not to have been taken by the Bank and should have been refused as lien.

2.5. Thereafter on 26.04.2023 Petitioner filed an Application for impleadment of Mr. Patil to the recovery proceedings before Respondent No.2 pursuant to which on 29.05.2023 notice was issued to the said Mr. Patil. On 07.07.2023 said Mr. Patil appeared before Respondent No.2 and filed his reply raising objection to his impleadment to the recovery proceedings and stating that he had kept the said fixed deposit receipts in safe custody of Respondent No.1 - Bank and never offered them as lien to the Bank in lien of the loan availed by Petitioner. He further submitted that as the said fixed deposits comprised of his retirement funds which he received as provident fund, as per provisions of Section 60 of the Code of Civil Procedure, 1908 (for short "**CPC**") readwith Rule 107(5)(n) of the Maharashtra Co-operative Societies Rules, 1961 the same cannot be liquidated by Respondent No.1 - Bank.

2.6. On 21.07.2023, Petitioner filed his rejoinder to the reply of Mr. Patil denying his claims *in toto* and on the same date he filed an

Application to refer the dispute in the subject matter to a Competent Authority under Section 91 of the said Act since according to the Petitioner complicated questions of facts requiring evidence were involved in the present matter.

2.7. After considering the submissions of all parties and evaluating the material on record, Respondent No.2 passed order dated 04.08.2023 rejecting the Application for issuance of Recovery Certificate under Section 101 of the said Act by observing that there are many complexities in the matter which would require an enquiry by leading evidence.

2.8. Being aggrieved by order dated 04.08.2023, Respondent No.1 - Bank filed Revision Application No.252 of 2023 before the Respondent No.3 which was incidentally allowed by the impugned order dated 31.01.2024 by setting aside the order dated 04.08.2023 passed by Respondent No.2 and remanding the matter back to Respondent No.2 for a fresh adjudication.

2.9. Hence, the present Petition.

3. Mr. Patwardhan, learned Advocate for Petitioner would submit that the impugned order passed by Respondent No.3 is erroneous and does not take into account the material aspects of the matter which are crucial for determination. He would submit that Petitioner and the said Mr. Patil had *inter se* arrangement owing to which said Mr. Patil furnished the fixed deposit receipts as security for the short-term loan availed by Petitioner and since he was the then member of the Board of Directors, the Respondent No.1 – Bank advanced the said short-term loan to Petitioner owing to the influential position of Mr. Patil. He would therefore submit that Respondent No.3 erred in passing the impugned order holding that failure of Respondent No.1 – Bank in adjusting the fixed deposit receipts kept as security against the loan is irrelevant for the decision of the dispute in question. He would submit that Respondent No.3 erred in holding that return of 2 out of the 4 fixed deposit receipts were kept as security for loan is irrelevant for decision of the subject dispute. He would submit that said Mr. Patil did not place on record any evidence to corroborate his stance that he has never kept the said fixed deposit receipts as lien for any loan or the money which he invested in said fixed deposits and it was his retirement money. He would submit that considering the overall intricacies of the matter *prima facie* it is evident that the matter involves numerous complexities which require adjudication by leading evidence since a dispute has arisen.

3.1. He would submit that the inaction on part of Respondent No.1 – Bank in liquidating the fixed deposits on expiry of the two months loan period and non-payment of loan amount is significant and further the enormous delay of 6 years in initiation of action for recovery of the said loan amount also speaks volumes on the part of the Bank.

3.2. He would submit that Respondent No.2 had correctly assessed the submissions and the material on record and rejected the Application under Section 101 of the said Act filed by Respondent No.1 – Bank holding that the matter requires adjudication by leading evidence which is not possible in proceedings under Section 101 of the said Act.

3.3. In support of his submissions, he has referred to and relied upon the following decisions of this Court in the case of ***Monica Sagar Kate and Anr. Vs. Joint Registrar Co-operative Societies and Ors.***[1] and ***Top Ten, a partnership firm and Anr. Vs. State of Maharashtra and Ors.***[2] to contend that very small types of disputes in which only limited question is of quantification of arrears due is to be looked into by the Registrar while undertaking enquiry under Section 101 of the said Act and if there arise any disputed questions of facts then he cannot proceed to resolve the disputes and has to deny the recovery certificate by passing appropriate judgement.

3.4. In view of his above submissions, he would urge the Court to allow the Writ Petition and thereby quash and set aside the impugned order dated 31.01.2024 passed by Respondent No.3 in the

1 2023 SCC OnLine Bom 2338
2 2012 (1) Mh.L.J. 347

Revision proceedings filed by Respondent No.1 – Bank and confirm the order dated 04.08.2023 passed by Respondent No.2 in the Section 101 proceedings.

4. ***PER CONTRA***, Mr. Walawalkar, learned Advocate for Respondent No.1 – Bank has supported the order dated 31.01.2024 passed by Respondent No.3 and would submit that Respondent No.1 – Bank gave ample time to the Petitioner to repay his loan and after persistent demands he paid an amount of Rs.13,50,000/- and also requested him to repay the balance amount. Thereafter owing to COVID – 19 pandemic and river flooding in Sangli District, the initiation of recovery proceedings against Petitioner was delayed.

4.1. He would submit that the Petitioner in order to circumvent deposit of 50% of the amount due and payable by him to Respondent No.1 – Bank as per provisions of Section 154(2-A) of the said Act has filed the present Petition without exhausting the revisional remedy.

4.2. He would submit that the issues raised by Petitioner that he had some arrangement with the guarantor Mr. Patil who in turn is refuting any such arrangement are not disputed questions of facts. He would submit that the issues raised by Petitioner in the present Petition infact cannot be adjudicated by this Court in writ jurisdiction as any adjudication of the said issues would fall in the category of adjudication of Appeal. He would submit that the order dated

31.01.2024 has been correctly passed by holding that there are no disputed questions of facts or complicated issues in the matter and Respondent No.2 ought to have proceeded with issuance of recovery certificate.

4.3. In support of his submissions, Mr. Walavalkar has referred to and relied upon the decision of this Court in the case of ***M/s. Medihealth Care Private Limited, Mumbai and Ors. Vs. State of Maharashtra and Ors.***[3] wherein this Court has observed that since the Petitioner therein did not dispute the quantification of the claim, he cannot be allowed to urge that there are disputed questions of facts. In view of his above submissions, he would urge the Court to dismiss the Writ Petition and uphold the order dated 31.01.2024 passed by Respondent No.3 remanding the matter back to Respondent No.2 for fresh adjudication and issuance of Recovery Certificate under Section 101 of the said Act.

5. Mr. Mulla, learned AGP for Respondent Nos.2 and 3 has adopted the submissions made by Mr. Walavalkar, learned Advocate for Respondent No.1 – Bank and would support the order dated 31.01.2024 passed by Respondent No.3.

6. I have heard Mr. Patwardhan, learned Advocate for Petitioner; Mr. Walavalkar, learned Advocate for Respondent No.1

3 2018 (5) ABR 245

and Mr. Mulla, learned AGP for Respondent Nos.2 and 3 – State. Submissions made by the learned Advocates have received due consideration of the Court.

7. In the present case what is intriguing the mind in the first instance is the procedure followed by Respondent No.1 – Bank while advancing the short-term loan to Petitioner. Procedure for grant of loan is provided under Section 44 of the said Act and for immediate reference the said provision is reproduced herein below:-

> *"**44. Regulation of loan making policy.***
> *(1) No society shall make a loan to any person other than a member, or on the security of its own shares, or on the security of any person who is not a member:*
> *Provided that, with the special sanction of the Registrar, a society may make loans to another society.*
> *(2) Notwithstanding anything contained in the foregoing sub-section, a society may make a loan to a depositor on the security of his deposit.*
> *(3) If in the opinion of the State Government, it is necessary in the interest of the society or societies concerned to do so, the State Government may, by general or special order, prohibit, restrict or regulate the lending of money by any society or class of societies on the security of any property:*
> *Provided that, the Registrar may, for ensuring safety of the funds of the society or societies concerned, for proper utilisation of such funds in furtherance of their objects and for keeping them within the loan making limits laid down in the rules and bye-laws, with the approval of the Apex Bank, by general or special order, regulate further the extent, conditions and manner of making loans by any society or class of societies to its members or other societies:*
> *Provided further that, nothing in this section shall apply to the loan making policy made by the co-operative credit structure entity. However, such entity shall adopt its own policy in conformity with guidelines of the Reserve Bank of India or National Bank."*

8. Rule 45A of the Maharashtra Co-operative Societies Rules, 1961 further provides for limits on loans against fixed deposit. For immediate reference, Rule 45A is reproduced hereinbelow:-

> *"**45A. Limits on loans against fixed deposits: -***
> *(1) When a society makes a loan to a depositor on the security of his fixed deposit with the society, the amount of loan shall not exceed 90 per cent of the deposit amount and the period for which the loan is granted shall not extend beyond the date of maturity of the fixed deposit.*
> *(2) If the depositor does not repay the loan within the period for which it is granted, the fixed deposit amount may be adjusted towards the repayment of the loan amount and the interest thereon, and only the balance, if any, shall be paid by the society to the depositor on the date of maturity."*

9. From the above it is seen that if a loan is advanced by any Society on security of a fixed deposit and he fails to repay the loan within the stipulated period then as per Rule 45A(2) the Society (Respondent No.1 – bank herein) has to adjust the same towards repayment of balance loan amount. However the Respondent No.1 – Bank without adopting the said procedure proceeded with initiation of recovery proceedings under Section 101 of the said Act. Such initiation of recovery proceedings without following the statutory procedure laid down under the said Act and the applicable Rules is impermissible in law. The delay of around 6 years in initiating the recovery proceedings is also another facet which requires consideration.

10. In so far as the issue of disputed questions of facts in the present case is concerned, it is seen that as per Petitioner's case there was some kind of *inter se* arrangement between him and Mr. Patil due to which he furnished the fixed deposit receipts as security for the loan advanced to Petitioner and furthermore due to the influential position of said Mr. Patil the short-term loan was advanced to Petitioner. On the other hand, it is Mr. Patil's stance that he never furnished the said fixed deposit receipts as security against Petitioner's loan and they have no such *inter se* arrangement as claimed by Petitioner. Though there is no dispute about the quantification of the loan amount, the aforesaid disputed facts regarding whether fixed deposit receipts were accepted by the Bank as lien against the loan advanced, which is flatly denied by Mr. Patil are necessary to be adjudicated in appropriate proceedings to be determined to put an end to the *lis*.

11. However such determination of disputed questions of facts would need an enquiry with proper appreciation of evidence led by parties which cannot be done in recovery proceedings under Section 101 of the said Act. The scope of proceedings under Section 101 of the said Act has been crystallised by this Court in the case of ***Top Ten*** (2nd *supra*). Relevant paragraph No.19 of the said decision is reproduced below for immediate reference:-

> *"19. Thus very small types of disputes in which only limited question is of quantification of arrears due, is to be looked into by such Registrar while undertaking enquiry under section 101. Importance therefore, is to statement of accounts. The enquiry undertaken is only aimed at ascertaining whether amount disclosed in statement of accounts as arrears, is correct and due. The limited opportunity of defence is, therefore, extended to the borrower like petitioners. The correctness of amount shown as arrears can be verified from the accounts and from accounts of the society and from receipts produced by other side. Denial of*

> *cross-examination in this situation only shows legislative intent that if a genuine and disputed question of facts is found arising by the Registrar, he cannot proceed to resolve that question. The concerned society, in such circumstances, has to take recourse to filing of a dispute under section 91, where such disputed questions can be gone into. Hence, a bona fide defence being raised by a borrower or other person against whom such certificate is sought, cannot be resolved by the Registrar under this jurisdiction. If he finds such dispute arising, he has to deny the recovery certificate by passing appropriate judgment under Rule 86F."*
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> *(emphasis supplied)*

12. The aforesaid proposition has also been adopted by this Court in its later decision in the case of ***Monica Sagar Kate and Anr.*** (1st *supra*). Therefore considering the disputed questions of facts with respect to the security of fixed deposit receipts involved in the present case, the Respondent No.2 has rightly observed that such disputed and complex facts would require leading of evidence which is beyond its scope under Section 101 of the said Act and enquiry under Section 91 of the said Act before the Co-operative Court is therefore inevitable.

13. Resultantly the impugned order dated 31.01.2024 passed by Respondent No.3 in Revision proceedings directing remand of the matter to Respondent No.2 for fresh adjudication is quashed and set aside. I find no fault in the order dated 04.08.2023 passed by Respondent No.2. The said order is upheld and confirmed.

14. All contentions of the parties are expressly kept open.

15. Writ Petition is allowed and disposed in the above terms.

[MILIND N. JADHAV, J.]

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AJAY TRAMBAK UGALMUGALE Digitally signed by AJAY TRAMBAK UGALMUGALE Date: 2025.07.01 15:30:44 +0530