Sayali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4661 OF 2026

The Greater Bombay Co-operative Bank Ltd … Petitioner

V/s.

Alka Rambhau Gapat and Others … Respondents

Mr. Harish R. Pawar with Mr. Shivam S Gawde, for Petitioner.

Dr. Dhruti Kapadia, AGP for State- Respondent nos. 4 and 5.

Mr. Sachin Borhade, for Respondent nos. 1 to 3.

CORAM : AMIT BORKAR, J.

DATED : APRIL 21, 2026

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

1. The challenge raised in the present petition takes place against issuance of recovery certificate under Section 101 of the Maharashtra Co-operative Societies Act. Record shows that initially the competent First Authority had issued such certificate in favour of the petitioner bank for recovery of dues claimed by it. However, it further appears that while issuing said certificate, respondent nos. 1 to 3 were not granted opportunity of hearing.

They were thus not heard before adverse order affecting civil rights came to be made. On that basis, respondent nos. 1 to 3 approached the Revisional Authority by filing revision application.

2. The Revisional Authority, by the impugned order, interfered with the certificate and allowed the revision application. While doing so, the Revisional Authority accepted factual defence of respondent nos. 1 to 3 that according to them entire amount due under the concerned transaction had already been repaid and therefore no recoverable amount remained outstanding. Thus, instead of merely examining legality of procedure adopted by the First Authority, the Revisional Authority entered into factual controversy touching repayment itself.

3. Learned Advocate appearing for the petitioner bank submitted that the course adopted by the Revisional Authority was legally unsustainable. According to him, defence of complete repayment was never raised before the First Authority and was put forward for the first time in revision proceedings. Such defence, according to the petitioner, involved disputed questions of fact requiring scrutiny of accounts, statement of transactions, appropriation entries, ledger records, loan documents and connected material. It was submitted that when such plea was raised for the first time in revision, the petitioner suffered prejudice because adequate opportunity was not available to place all supporting record before the Revisional Authority in proper manner. Learned counsel further submitted that the amount allegedly repaid by respondent nos. 1 to 3 was not relatable to the loan account forming subject matter of the certificate, but according to bank, the same had been adjusted towards another loan liability standing against concerned borrowers. This required detailed factual examination. Therefore, direct acceptance of borrowers' plea in revision, without remand and without full evidence before fact-finding authority, has caused serious legal injustice to the petitioner bank.

4. Learned Advocate appearing for respondent nos. 1 to 3 fairly did not dispute that certificate under Section 101 had been issued without granting hearing to respondent nos. 1 to 3. Thus, breach of opportunity at initial stage was substantially accepted. However, he submitted that mere procedural defect should not defeat substantive justice when in fact the amount due had already been paid. According to him, if borrowers had discharged liability, remanding matter would only prolong proceedings unnecessarily. It was therefore contended that the Revisional Authority rightly considered available material and granted relief by noticing that no recoverable dues survived. In substance, defence of respondent nos. 1 to 3 is that procedure should not override actual repayment.

5. In my opinion, controversy as to whether respondent nos. 1 to 3 had in fact repaid the loan amount is a question of fact. Such issue ordinarily requires examination of original accounts, dates of payment, mode of deposit, authority of receiving officer, appropriation entries, correspondence between parties, existence of multiple loan accounts, and correctness of statement of dues. These are matters examined by the First Authority functioning as fact-finding forum. Where parties remained absent before such authority and later satisfy the Revisional Court that they were prevented by sufficient cause from appearance, or were otherwise unable to contest proceedings for justified reasons, the normal course is to restore opportunity before original authority. Revision is not intended to become first forum for recording disputed factual satisfaction. If borrower disputes disbursement, interest calculation, quantum due, set-off, repayment, adjustment, or any allied factual matter, both sides must receive equal chance to produce records. If Revisional Authority itself decides such issues for first time, petitioner bank loses fair chance to rebut defence by producing material to show that sums paid were adjusted towards another liability. Such deprivation of opportunity amounts to legal prejudice and affects fairness of adjudicatory process.

6. In my considered opinion, in matters of this nature, the Revisional Authority ought to first examine whether applicants before it were prevented by sufficient cause from contesting proceedings before the First Authority. If such satisfaction is reached, then consequence should normally be remand of proceedings to the original authority. This ensures observance of natural justice. It also prevents revision proceedings from being converted into trial forum for first instance factual disputes. Allowing parties to build an new factual case in revision deprives opposite side of evidentiary opportunity. Therefore, once absence is satisfactorily explained, matter should go back for fresh consideration.

7. In view of above discussion, and without expressing any final opinion upon merits of rival factual claims, namely whether respondent nos. 1 to 3 had actually paid amounts towards the very loan account forming subject matter of certificate, or whether petitioner bank lawfully appropriated such payments towards some other loan account, or whether such appropriation is permissible in law, or whether respondent nos. 1 to 3 were otherwise liable under another transaction, this Court considers it inappropriate to sustain the impugned revisional order. Any observation on these issues at present stage may prejudice fresh adjudication. Therefore, the impugned order dated 10 October 2024 passed in Revision Application No. 03 of 2023 deserves to be quashed and set aside, and is accordingly quashed and set aside.

8. The proceedings are remanded back to the Divisional Joint Registrar, Co-operative Societies, for fresh consideration in accordance with law. Said authority shall grant due opportunity to respondent nos. 1 to 3 to file their reply and place on record all material in support of their defence. Thereafter the authority shall afford hearing to all parties as contemplated under applicable provisions and rules, and shall pass reasoned fresh order on its own merits, uninfluenced by earlier observations made in the impugned order or by any prima facie observations contained herein except on question of procedure. The matter shall be decided expeditiously.

9. The petition stands disposed of.

(AMIT BORKAR, J.)