(2025) 03 BOM CK 0253

In the Bombay High Court, Aurangabad Bench

Case No : Writ Petition No. 2746 Of 2023

Aayan Multi Trade LLP — APPELLANT

Vs

Sunitabai Madhukar Patil — RESPONDENT

Date of Decision : 20-03-2025

Acts Referred:

Maharashtra Co Operative Societies Act, 1960 — Section 101
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 — Section 13(2), 17, 34, 35, 37,

Citation : (2025) 03 BOM CK 0253

Hon'ble Judges : Kishore C. Sant, J

Bench : Single Bench

Advocate : V.D. Sapkal, Prashant N.Khedkar, G.D. Jain, K.N. Lokhande

Final Decision : Allowed

Judgement

Kishore C. Sant, J.

1. Rule. Rule made returnable forthwith by the consent of the parties.

2. The petitioner in all these petitions is the same and respondent No.2 is also same. Facts in all these petitions are similar. The judgments under challenge are also identical and therefore all these petitions are taken up together.

3. To understand controversy between the parties, the facts from Writ Petition No. 2746 of 2023 are discussed, as a representative petition.

4. The petitioner is a limited liability partnership firm, who has purchased a property of respondent No.2 – Sugar Factory. Respondent No.1 claims to be a depositor who has filed dispute in the Cooperative Court against respondent No.2 for recovery of deposit amount. In the dispute, the petitioner and its predecessor were not made party. The dispute was allowed directing Sugar Factory to pay an amount to the disputant, with interest thereon @ 20% p.a. The petitioner preferred appeals to the Cooperative Appellate Court. However, all the appeals came to be dismissed. The petitioner is, thus, before this Court.

5. It is a case of the petitioner that respondent No.2 – Factory had raised loan from the Maharashtra State Cooperative Bank [for short "MCS Bank"] . Since the loan could not be repaid, action was initiated by the MCS Bank under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [for short "Securitisation Act"] for recovery of the dues. Pursuant to said action, the MCS Bank, took possession of the assets of the factory, including plant and machinery. The MCS Bank, thereafter, issued sale notice on 30. 10.2010, calling for bidders. One Astoria Agro and Allied Industries Pvt. Ltd. [for short "Astoria"] participated in the bid. The bid of Astoria of Rs.45.48 crores was finalized. The property of the factory thus became property of Astoria. The sale certificate also came to be issued under Rule 9(6) and 7(2) of the Security Interest (Enforcement) Rules, 2002 for movable and immovable properties. Said certificate was issued on 30.08.2011. In view of the certificate, the property was handed over Astoria by following procedure. Even a letter was issued by the Officer of the factory, showing that the possession is handed over. Later-on, the present petitioner purchased the property from Astoria on 22.06.2018 and became owner of the factory and its assets.

6. In the meantime, respondent No.1 (depositor) on 16.07.2010 filed a dispute only against the factory in the Cooperative Court, Jalgaon bearing CC No. 35 of 2010 for recovery of amount along with interest. The depositor, however, did not make MCS Bank as a party. The fact of taking over possession and the action under the Securitisation Act also was suppressed. In written statement by the factory, it is stated that the property is in possession of MCS Bank since 21.06.2010, pursuant to action under the Securitisation Act. The Cooperative Court, Jalgaon allowed claim of the depositors by judgment dated 28.03.2011 and directed the factory to pay an amount of Rs.1,33,250/- along with interest @ 21% p.a. to the depositor.

7. Thereafter, the depositor also filed RD No. 12 of 2013. Same came to be dismissed by order dated 15.03.2014 with liberty to file fresh Darkhast by making the liquidator party as by that time the liquidator was appointed on the bank. Thereafter, the depositor again filed RD No. 23 of 2015 in the Court of CJSD, Nandurbar for recovery of decretal amount.

8. Learned CJSD, thereafter, issued an attachment order under Order 21 Rule 54 of the CPC and prohibited the Astoria from transferring or changing nature of the factory. In the meantime, Astoria received show cause notice from the Executing Court. It is, thereafter, it came to the knowledge that the dispute was filed by the depositor and the same came to be allowed. The Astoria, therefore, filed an appeal in the Cooperative Appellate Court challenging the judgment and decree passed in the dispute, mainly on the ground that the MCS Bank was not a party to the dispute. Since Astoria was not party to the original dispute, it was required to file application seeking leave to appeal bearing MCA No. 78 of 2016. The learned Judge, Cooperative Court, however by order dated 23. 12.2016 dismissed the application. Writ Petition No. 3961 of 2018 was, therefore, filed

and the same came to be allowed. The appeal came to be remanded to the Cooperative Appellate Court by order dated 15.04.2019.

9. On 22.06.2018, Astoria executed sale-deed in favour of present petitioner and in that view name of the petitioner was substituted in the proceeding before the Cooperative Appellate Court. In the appeal, it is mainly contended that in view of Section 34 of the Securitisation Act, the Civil Court or any other Court had no jurisdiction. The decree is, therefore, nullity. The provisions of Securitisation Act would override other laws. The learned Judge, Cooperative Appellate Court, however, dismissed the appeal by its judgment and order dated 13. 01.2020. So far as execution is concerned, the learned CJSD, Nandurbar in Darkhast held that execution petition is maintainable by order dated 29.11.2022. The petitioner is, thus, before this Court, challenging the judgment and order passed in Appeal No.92 of 2019, confirming the order of the learned Appellate Court.

10. Learned Sr. Advocate Mr. Sapkal vehemently argued that the factory failed to repay the amount of loan to the MCS Bank. The MCS Bank, therefore, initiated recovery proceedings under the Securitisation Act. After the remedy under the Securitisation Act was resorted to, no other Court, thereafter, had jurisdiction to entertain a suit. Pursuant to the action under the Securitisation Act, even sale certificate came to be issued. The movable and immovable properties were given in possession of Astoria. Before initiating action under the the Securitisation Act, notice was issued on 30.08.2010. Though the dispute is filed on 16.07.2010, the petitioner or the predecessors of the petitioner were not made party. The factory filed reply on 30.07.2010, wherein it was clearly stated that the MCS Bank has taken possession of the factory on 21.06.2010 pursuant to action under the Securitisation Act. It was, therefore, very much necessary for the respondent depositor to add the MCS Bank and Astoria as parties. It was necessary for the Cooperative Court to consider this aspect and dismiss the dispute solely on that ground. However, the dispute came to be allowed by order dated 28.03.2011. Thus, the petitioner was a necessary party. The right of the petitioner was recognized by this Court in earlier Writ Petition. It was necessary for the Appellate Court to consider all these aspects and to allow the appeal. However, it totally failed to apply its mind properly, though it was pointed out that in view of the provisions of the Securitisation Act, the Cooperative Court will not get jurisdiction.

11. He submits that the provisions of the Securitisation Act being Special Act by the Central Government, it would prevail upon the Maharashtra Cooperative Societies Act. This basic aspect is not considered by the learned Cooperative Appellate Court. He, thus prays for allowing the Writ Petition by quashing and setting aside the Cooperative Appellate Court’s order. On merits, he submits that in view of Bye-law No.1 of the factory, it could not have raised loan from the individual parties like depositor. He relied upon provisions of Sections 34, 35 and 37 of the Securitisation Act. He also relies upon judgments in the case of M/s. Asha Oil Foods Pvt. Ltd. Vs. The Jalgaon Janta Sahakari Bank Ltd. & Ors., 2004

BCI 516 and Marathwada Gramin Bank & Ors. Vs. Maharashtra State Co-operative Bank Ltd., 2007 (1) Bom.C.R.819.

12. Learned Advocate Mr. Jain for the original disputant vehemently opposes the writ petitions. He submits that the respondents are depositors, who had deposited their money in the factory. However, they are deprived of the fruits of the judgment by the Cooperative Court, which is confirmed by the Cooperative Appellate Court. He submits that the notice of auction was given on 30.10.2010, whereas the dispute was filed prior to that i.e. on 16.07.2010. The judgment of the Cooperative Court is dated 28.03.2011, whereas the sale certificate is dated 30.08.2011. The possession is handed over on 30.09.2011. He thus submits that the dispute was filed before notice of auction and thus all the parties are bound by the decree. He prays for rejection of the petitions.

13. Inspite of service, none appears for the respondent –liquidator.

14. This Court has to mainly consider the effect of the provisions of the Securitisation Act and the action that is taken under the said Act. About the dates and events, there is no dispute. The only dispute is about - whether dispute was maintainable in absence of making Astoria as a party?. Secondly, whether the dispute was maintainable in view of initiation of action under the provisions of the Securitisation Act?

15. Sections 34, 35 and 37 of the Securitisation Act are as under :-

34. Civil court not to have jurisdiction.—No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993).

35. The provisions of this Act to override other laws.—The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.

37. Application of other laws not barred.—The provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of, the Companies Act, 1956 (1 of 1956), the Securities Contracts (Regulation) Act, 1956 (42 of 1956), the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) or any other law for the time being in force.

16. From reading of the sections, it is clear that once action under the Securitisation Act is initiated or to be initiated, no Civil Court or any other Court gets jurisdiction to deal with the properties or other claims. In the present case, it is clear that notice was issued under the Securitisation Act by the MCS Bank to

the factory. The possession of the properties was handed over even prior to that on 20.06.2010. The dispute was filed on 16.07.2010. It was therefore very much necessary for the depositors to make the MCS Bank, as a party. In the say itself, the factory had clearly stated that the property is in the possession of the bank. The bank did not even thereafter contest the dispute. However, from the say it was clear to the depositors and the Cooperative Court that the property is not in the possession of the factory and was in possession of the MCS Bank pursuant to proceedings under the Securitisation Act. In view of this it was necessary to add the bank as a party. During pendency, the bank even sold the property in favour of Astoria by accepting bid. The property was subsequently purchased by the petitioner. It was necessary to add at least the MCS Bank and Astoria as party to the dispute, which was not done.

17. So far as Bye-laws are concerned, this Court need not go into the aspect as to whether the factory could have raised loan from the individual depositors. In the judgment in the case of Asha Oil Foods (supra) the Division Bench of this Court considered the effects of the provisions of the Securitisation Act. In that case provisions of section 101 of the MCS Act were resorted to for recovery. It was held that in view of Securitisation proceeding, parties could not have resorted to section 101 of the MCS Act. In the judgment in the case of Marathwada Gramin Bank (supra) it was held that being secured creditor, the MCS bank had issued notice under section 13 (2) of the Securitisation Act on 16.08.2005. The possession was already taken. It is, thereafter, the judgment was passed by the Cooperative Court. This Court held that the provisions of the Securitisation Act being Central Act, will predominate and will have overriding effect over the provisions of the MCS Act, 1960. This Court delivered judgment by considering Article 246(1) of the Constitution. The Court considered various judgments of the Supreme Court and ultimately held that it was necessary for the bank, in that case, to resort to the provisions of appeal under section 17 of the Securitisation Act.

18. The main question before this Court is as to whether the MCS Bank and the Astoria were necessary parties to the disputes. It is seen that it was clearly brought to the notice of the disputant that the property was in possession of the bank. At least, thereafter, it was necessary for the disputant to add the bank as a party. This Court finds that the judgment of the Cooperative Court was bad for non-joinder of the parties. The learned Appellate Court also failed to consider the same.

19. In view of the fact that the action was already initiated and possession was already handed over pursuant to action under the Securitisation Act, this Court holds that the dispute was not maintainable before the Cooperative Court. From the observations of this Court in the earlier Writ Petition, it is clear that the Court has considered and held that the petitioner had the right to participate being successor of Astoria, the Appellate Court, however, has not considered this aspect. It was further necessary to see that the MCS Bank had already initiated

action under the Securitisation Act and had taken possession. The material date is the date on which MCS Bank initiated proceedings under the Act.

20. Thus, considering all the above, this Court has no hesitation in holding that the learned Member, Cooperative Appellate Court erred in dismissing the appeals. For the reasons discussed above, the petitions stand allowed. Hence, following order :-

ORDER

(i) Writ Petition No.12959 of 2017 is allowed in terms of prayer clause (B-1).

(ii) Rest of the Writ Petitions are allowed in terms of prayer clause (B).

(iii) Rule made absolute accordingly.

(iv) Pending civil application stands disposed off.

