

**(2002) 09 BOM CK 0013**

**In the Bombay High Court**

**Case No : Writ Petition No. 4068 of 1991**

Akar Plastics

APPELLANT

Vs

Rajgurunagar Sahakari Bank Ltd. and Others

RESPONDENT

**Date of Decision : 18-09-2002**

**Acts Referred:**

Constitution of India, 1950 — Article 227

**Citation : (2003) 1 ALLMR 7 : (2003) 105 BOMLR 339**

**Hon'ble Judges : A.M. Khanwilkar, J**

**Bench : Single Bench**

## Judgement

A.M. Khanwilkar, J.—This Writ Petition under Article 227 of the Constitution of India takes exception to the Judgment and order dated September 6th. 1991 passed by the Divisional Joint Registrar, Co-operative Societies. Pune Division, Pune in Revision Application Nos. 204 and 205 of 1988-89. It is not necessary to advert to all the events that have given rise to the initiation of proceeding against the Petitioner. Suffice it to point out that the Petitioner had obtained cash credit facility from the Respondent No. 1 - Bank as well as hypothecation loan. Recovery certificates were issued on 26.9.1988 for recovery of sum of Rs. 1,53,000/- and Rs. 3,15,000/- respectively from the Petitioner in respect of above said transactions. R is not in dispute that the Petitioner paid substantial part of the amounts referred to in the certificates except sum of Rs. 32,024.60, out of that Rs. 16,000/- was towards penal interest and Rs. 16,024.60 towards surcharge. It is also not in dispute that the Respondent No. 1 - Bank had granted remission of the said amount of Rs. 32,024.60 vide its Resolution dated 28.11.1990. In this background, the Petitioner pleaded before the Divisional Authority that in view of this development the Recovery Certificates be discharged. However, that contention was resisted by the Special Recovery Officer on the ground that the Respondent No. 1 - Bank had no authority to grant any concession to the Petitioner without obtaining prior approval of the Special Recovery Officer and the concerned Department. The Revisional Authority accepted the said contention of the Special Recovery Officer and therefore, partly

allowed the Revision Application by directing the Respondent No. 1 - Bank to take steps to recover amount of Rs. 32,024.60 towards recovery of the penal interest and surcharge. This decision is challenged by this Petition under Article 227 of the Constitution of India.

2. In this Petition, it is contended by Mr. Dani for the Petitioner that, since the Respondent No. 1 - Bank had taken a conscious decision to forgo amount of Rs. 32,024.60, there was no reason for the Revisional Authority not to accept the Petitioner's plea for the discharge of the subject recovery certificates. According to him, there was novation of contract between the Petitioner and Respondent No. 1 - Bank with regard to outstanding liability of the Petitioner to the extent of the said amount of Rs. 32,024.60.

3. Mr. Govilkar, for the Respondent No. 1 Bank, on the other hand submits that, the Bank would abide by the orders of the Court.

4. What is relevant to note is that an affidavit has been filed on behalf of Respondent No. 7 of Shri Shashikant Shriram Inamdar, Assistant Registrar, Co-operative Societies, Khed, District-Pune, specifically raising a point as can be discerned from paragraph 14 of the affidavit that, the said amount of Rs. 32,024.60 had two components. One being sum of Rs. 16,000/- to be receivable by the Bank towards penal interest and the other being sum of Rs. 16,024.60 recoverable from the Petitioner towards surcharge amount, which amount was to be later on credited to the Government Treasury being Government revenue. It is therefore, contended that the Respondent No. 1 - Bank had no authority to forgo the said claim and the Recovery Certificates as issued, will have to be taken to its logical end by recovering that amount from the Petitioner.

5. Having considered the rival submissions, there can be no doubt that in so far as amount towards penal interest is concerned, being sum of Rs. 16,000/- receivable by Respondent No. 1 - Bank, that arrangement is between the Respondent No. 1 - Bank and the Petitioner. It was open to the Respondent No. 1 - Bank to take decision to waive the penal Interest; No doubt, affidavit filed before this Court on behalf of Respondent No. 7 makes reference to Rule 49 of the Maharashtra Co-operative Societies Rules, 1961 to contend that in the light of that provision Respondent No. 1 - Bank could not have given up even that claim without obtaining prior permission of the concerned authorities. Mr. Dani, for the Petitioner however, rightly contends that Rule 49 has no application to the fact, situation of this case, in as much as the same pertains to procedure relating to writing off bad debts and losses. According to him, in the present case decision to waive penal interest was neither on account of the same becoming bad debts or losses. It is nobody's case that the amount of Rs. 16,000/- payable towards the penal interest was not recoverable or had become irrecoverable from the Petitioner. On the other hand, the Petitioner's brother Chandrakant has guaranteed discharge of that liability if an occasion arise. It is therefore, not possible to suggest that amount, towards penal interest being sum of Rs. 16,000/- had become irrecoverable so as to invoke the provisions of Rule 49. On

the other hand the Respondent No. 1 - Bank had taken a conscious decision to waive that amount. That by itself was sufficient for the Petitioner to contend that the liability to pay the amount towards penal interest being sum of Rs. 16,000/-, which was recoverable under the Recovery Certificates, stood discharged. No doubt if some Competent Authority had raised any objection for waiving of penal interest that the Bank would be required to respond to such an objection and, if the same was not acceptable or held to be impermissible in law, only in that situation the liability of the Petitioner to pay that amount would get revived. In such a situation, the amount would still be recovered from said Chandrakant who has guaranteed to discharge that liability if and when occasion arises. Appropriate arrangement can be worked out between the Respondent No. 1-Bank and the said Chandrakant to ensure that he would satisfy that obligation if and when occasion arises. Accordingly, the Petitioner would be justified in contending that the Recovery Certificate to the extent of Rs. 16,000/- towards penal interest cannot be enforced against the Petitioner.

6. However, the position would be some what, different in so far as the amount towards surcharge being sum of Rs. 16,024.60 is concerned. That amount is to be Recoverable as Government Revenue from the Petitioner and after recovering that, amount under the subject recovery certificate, it will have to be credited to the Government Treasury. There is nothing on record to question this position. If that be so, the contention pressed into service on behalf of Special Recovery Officer that the Respondent No. 1 had no authority to forgo that claim, will have to be accepted. In the circumstances, this Petition would fail to that extent.

7. Accordingly, this Petition partly succeeds. The Recovery Certificates issued against the Petitioner would stand discharged to the extent of Rs. 16,000/- towards the component of penal interest. The said certificates can however, be enforced in so far as amount towards surcharge being sum of Rs. 16,024.60 and/or any interest or any other charges payable on the said amount of surcharge, if any. No order as to costs.