

(2002) 07 BOM CK 0056

In the Bombay High Court

Case No : Writ Petition No's. 2902 with 2908 of 1991

Kedarling Vikas Seva Socy. Ltd.

APPELLANT

Vs

Dinkar Bhimrao Raut and Others

RESPONDENT

Date of Decision : 17-07-2002

Acts Referred:

Citation : (2003) 1 ALLMR 66 : (2003) 2 BOMLR 1 : (2003) 1 MhLj 152

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

Bench : Single Bench

Advocate : P.D. Dalvi, for the Appellant; R.G. Ketkar, for the Respondent

Judgement

A.M. Khanwilkar, J.—Both these writ petitions can be disposed of together by a common order, for the question involved is common. The petitioner in both these petitions initiated action against the respondent No. 1 in the respective petitions for recovery of certain amounts due to it; And after following due procedure obtained Recovery Certificate u/s 101 of Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as the said Act). By virtue of Section 101 of the Act, the Society became entitled to recover the amounts certified therein. That certificate was however, challenged by the respondent No. 1 in both the petitions, by way of statutory revision before the Divisional Joint Registrar. The Divisional Joint Registrar rejected the said revisions and opined that on verifying the papers it is seen that the Assistant Registrar had followed the necessary procedure and that the contention raised before him that the subject loans were Benami and were not genuine document could not be gone into in the revision proceedings. The revisional authority then observed that the respondent No. 1 in the respective cases if so advised could file appropriate proceedings before the appropriate court while it rejected the revisions. Against the said decision respondent No. 1 in the respective petition filed writ petition(s) in this Court which was rejected by one word order "Rejected". After the rejection of the writ petition, respondent No. 1 in both writ petitions, filed dispute before the Co-operative Court for declaration that entry shown in the accounts as against their

respective names was not binding on them and they were not required to pay the said amount and for further reliefs that certificate issued u/s 101 against them in respect of the said amounts should not be allowed to be enforced by the petitioner society. This dispute(s) was contested by both the sides. Interim orders were passed in both these disputes against which the Society carried the matter in appeal and later on in writ petition before this Court, but interim injunction was continued. Eventually, both the disputes have been decided in favour of the respondent No. 1 and declaration as sought has been granted by the Co-operative Court. Against the said Award the petitioner society filed two separate appeals. Both the appeals have been dismissed by the Co-operative Appellate Court, Bombay by the impugned order dated 22-34990.

2. The only question raised before this Court during the arguments is that the certificates issued u/s 101 of the Act are final and binding between the parties and the same cannot be question by way of dispute u/s 91 of the Act. According to the petitioner Society, this question now stands answered in the decision of this Court, Bench at Aurangabad, in Writ Petition No. 2277 of 2001 decided on 30th/31st January 2002 in Bhusawal People's Bank Ltd. The learned Counsel therefore contends that once it is held that the dispute u/s 91 is a complete bar in respect of reliefs claimed, then the other claimed, then the other reasons recorded by the courts below though concurrent would be of no avail and the dispute as a whole will have to be dismissed being barred by operation of law.

3. On the other hand, the learned Counsel for the respondent No. 1 in both the petitions contends that the question whether the dispute filed by the respondent No. 1 was maintainable or not was specifically raised in the earlier writ petition filed by the petitioner society and therefore the same cannot be canvassed in the present writ petition on the principles of res judicata.

4. Having considered the rival submissions I would first advert to the decision in the case of Bhusawal Peoples' Co-op. Bank Ltd. (supra), relied by the Counsel for the petitioner. In paras 10 and 11 of the said decision, the Court has analyzed the scheme of Section 91 and Section 101 of the Act and has unequivocally found that on conjoint reading of Sub-sections (1) and (2) and (3) of Section 101, it makes it plainly clear that the provisions of Section 91 is not available-whereas finality is attached to the certificate issued u/s 101 and it is a conclusive proof of arrears. The court has observed that when the statute gives finality to the action or order, the only way to challenge the same is in the manner as provided by the statute. In such cases, dispute u/s 91 is not the proper remedy, albeit completely barred. The only remedy to challenge the certificate is by way of revision u/s 154 of the Act. In the said case, no doubt the disputant had not challenged the certificate before the revisional authority at all, whereas in the present case the respondent No. 1 had filed revision application but failed to succeed in the said proceedings. Reliance has been placed on the observations made by the revisional authority to contend that the present disputes have been filed pursuant to the liberty granted to them in that behalf. But this would make

no difference to the application of dispute u/s 91 so as to challenge a certificate issued u/s 101 of the Act. Moreover the proper reading of the said observations would be that the revisional authority has said that there was no merits to the challenge relating to the subject certificate(s) issued against the respondent No. 1. The revisional authority has clearly observed that in so far as contention regarding Benami and genuineness of the entry is concerned, the same cannot be gone into in that action. It has been further observed that the respondent No. 1 if so advised may file appropriate proceedings before the appropriate Court. That by itself cannot clothe the respondents with a right to institute a dispute u/s 91 of the Act to challenge the certificate issued u/s 101. For as observed earlier, this Court has already held that such a course is impermissible and is barred. In that view of the matter the dispute(s) as filed by the respondent No. 1 in both the writ petitions would not be maintainable in law.

5. The next contention canvassed on behalf of the respondent No. 1 is that it was not open to the petitioner to canvass the question of maintainability of the subject dispute(s), is again devoid of merits. The order passed in the earlier writ petition filed by the petitioner was against the interim order passed by the Co-operative Court. Moreover, the order passed by this Court while dismissing the previous writ petitions makes no reference to the plea regarding maintainability of the dispute(s). The learned Counsel fairly concedes that in the order passed by this Court on 3-3-1986 there is no reference to the contention regarding jurisdiction. Accordingly, it has not been specifically examined by this Court. If this be so, then surely the question cannot be said to be barred by res judicata as contended. Accordingly, there is no force in this submission as well.

6. The learned Counsel for the respondent No. 1 at this stage contends that certificate issued against the respondent No. 1 in both the writ petitions was without following the mandatory enquiry and such certificate would be non est in the eyes of law. According to him, it has come on record that no enquiry was held. He has relied on the decision reported in 1978 Mh.L.J. 25 in support of this contention. There is no merit in this contention. As observed earlier, the revisional authority has clearly opined in its order dated 11-5-1993 that the Assistant Registrar had followed proper procedure before issuing the certificate in question and that decision has undoubtedly become final after the dismissal of the writ petition preferred by the respondent No. 1 herein. Moreover that contention cannot be entertained in the present writ petition, for if dispute is not maintainable then this plea cannot be considered.

7. In the circumstances, it will have to be held that the dispute(s) filed by the respondent No. 1 in both the writ petitions in substance challenging the certificate(s) issued against them u/s 101 of the Act, is barred. In this view of the matter, the writ petitions would succeed and the impugned orders passed by both the Courts below are being set aside and instead the dispute(s) filed by the respondent No. 1 in the respective matter is dismissed as not maintainable.

8. At this stage the learned Counsel for the respondent No. 1 prays for liberty to

take recourse to appropriate remedy permissible by law. To my mind, there is no question of granting such liberty. The earlier proceedings have already become final by dismissal of writ petitions. Hence that request is rejected.