
(2002) 08 BOM CK 0080

In the Bombay High Court

Case No : Writ Petition No. 2901 of 2001

Khamgaon Urban Co-operative Bank Limited and Another

APPELLANT

Vs

Deepak Ware and Others

RESPONDENT

Date of Decision : 08-08-2002

Acts Referred:

Citation : (2003) 1 ALLMR 603 : (2003) 1 BomCR 154 : (2003) 1 MhLj 10

Hon'ble Judges : S.A. Bobde, J

Bench : Single Bench

Advocate : A.V. Bhide, for the Appellant; Rohit Deo, for Respondent Nos. 1 and 2 and Deopujari, AGP for Respondent Nos. 3 to 5, for the Respondent

Final Decision : Allowed

Judgement

S.A. Bobde, J.—This petition is directed against the order dated 15th June, 2001, passed by the Minister of State for Co-operation, u/s 154 of the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as "the Act").

2. The predecessors of Khamgaon Urban Co-operative Bank (hereinafter referred to as petitioner/bank) gave a loan to Ajintha Sahakari Ginning and Pressing Factory Ltd., Buldana/respondent No. 2-society. The respondent No. 2-society failed to repay the loan amount. Thereafter the predecessors of the petitioner-bank demanded repayment of the loan from the respondent No. 2-society. On 5-11-1987, the respondent No. 2-society requested the predecessors of the petitioner-bank for sympathetic consideration, i.e. grant of further time to repay the loan outstanding amount of Rs. 14,31,672=08. After about a year the petitioner-bank initiated proceedings for recovery of the loan amount u/s 101 of the Act before the Assistant Registrar, Co-operative Societies, Buldana. In response to the notice issued by the Assistant Registrar, Co-operative Societies, Buldana, dated 21-11-1988, the respondent No. 2-society, by its communication dated 9-12-1988 informed the Assistant Registrar that it is in the process of obtaining loan from Maharashtra State Co-operative Bank and that loan amount would be available in or about four months and, therefore, the respondent No. 2-

society may be granted four months" time to repay the loan amount. By that letter it was requested by the respondent No. 2-society for particulars of accounts. It is noteworthy that the respondent No. 2-society did not deny its liability.

3. Eventually, the Assistant Registrar, Co-operative Societies, Buldana, issued a Recovery Certificate u/s 101 of the Act. Before issuing the recovery certificate, as aforesaid, the Assistant Registrar duly issued notices to the respondent No. 2-society and an inquiry was also conducted. By the said recovery certificate the Assistant Registrar directed the petitioner-bank to recover a sum of Rs. 16,89,316=45 with interest @ 16% per annum. There is apparently a typographical error in the copy of the recovery certificate annexed to the writ petition. In the copy of recovery certificate filed in this Court at Annexure-IV, the rate of interest is shown as 6%. However, Mr. Bhide, learned Counsel for the petitioner-bank has submitted on the basis of a photo copy of certified copy of the original recovery certificate that the rate of interest is 16% per annum. He has also tendered an affidavit to that effect.

4. After issuance of the Recovery Certificate dated 31st January, 1989, admittedly, the respondent No. 2-society did nothing for a period of about 9 years. On 20th June, 1998, the respondent No. 2-society, filed a revision petition u/s 154 of the Act, in which notices were issued to respondent No. 2-society, which was dismissed on 24-3-1999.

5. The respondent No. 2-society, thereafter did nothing for almost a year. On 7-3-2000, they have filed a second Revision before the State Government in which impugned order is passed by the respondent No. 3-Minister. It must be noted here that before the impugned order was passed by the Minister, the respondent No. 2-society had filed a Writ Petition No. 1593/2000, which was withdrawn on 18th July, 2000 in order to pursue revision, which it had already filed. While allowing withdrawal of the aforesaid writ petition, this Court granted liberty to the respondent No. 2-society to pursue the revision, if maintainable.

6. Eventually, the Revision has been allowed by the impugned order dated 15th June, 2001. The Minister while deciding the Revision, without considering the question of limitation, has simply held that the Revision is maintainable. He has further held that the petitioner-bank should resort to the recovery in question by initiating proceedings u/s 91 of the Act, against the respondent No. 2-society, because the petitioner-bank had given an undertaking while disbursing the loan that it would resort to remedy u/s 91 of the Act, if any dispute in regard to loan amount arose. That undertaking is not on record of this Court.

7. Mr. Bhide, learned counsel for the petitioner-bank questions the order of the Minister on the ground of total lack of jurisdiction vested in the State Government to entertain the second revision.

Section 154 of the Act reads as follows :

"154. (1) The State Government or the Registrar, suo motu or on an application, may call for and examine the record of any inquiry or proceedings of any matter, other than those referred to in Sub-section (9) of Section 149, where any decision or order has been passed by any subordinate officer, and no appeal lies against such decision or order, for the purpose of satisfying themselves as to the legality or propriety of any such decision or order, and as to the regularity of such proceedings. If, in any case, it appears to the State Government, or the Registrar, that any decision or order so called for should be modified, annulled or reversed, the State Government or the Registrar, as the case may be, may, after giving the person affected thereby an opportunity of being heard, pass such orders thereon as to it or him may seem just.

(2) Under this section, the revision shall lie to the State Government if the decision or order is passed by the Registrar, the Additional Registrar or a Joint Registrar, and to the Registrar if passed by any other officer.

(2A) No application for revision shall be entertained against the recovery certificate issued by the Registrar u/s 101 unless the applicant deposits with the concerned society, fifty per cent amount of the total amount of recoverable dues.

(3) No application for revision shall be entertained, if made after two months of the date of communication of the decision or order. The revisional authority may entertain any such application made after such period, if the applicant satisfies it that he had sufficient cause for not making the application within such period.

(4) The State government may, by order, direct that the powers conferred on it by this section shall, in such circumstances and under such conditions, if any, as may be specified in the direction, be exercised also by an officer of the rank of Secretary to Government."

8. It is obvious from the aforesaid provision that the petitioner's contention is liable to be upheld. The provision contemplates a single revision. This is clear from the use of article "the" preceding "revision" in Sub-section (2). It further provides for period of limitation of two months from the date of communication of the decision or order. In that view of the matter, it is clear that no second revision lies. Hence, the impugned order of the respondent-Minister is totally without jurisdiction.

9. Mr. Deo, learned counsel for the respondent, however, contended, relying on the judgment of this Court reported in the case of *Madhukar Baburao Deshmukh Vs. Jalgaon Jilla Maratha Vidya Prasarak Co-op. Samaj Ltd., Jalgaon and Others*, that this Court must decline to exercise its jurisdiction under Articles 226 and 227 of the Constitution of India, on the ground that if, the impugned order is set aside, it would revive an illegal order. According to Mr. Deo, learned Counsel, the illegal order, that would be revived, would be the recovery certificate, issued u/s 101 of the Act.

10. Having regard to the fact that it is not the respondent's contention that the

recovery certificate, u/s 101 of the Act is void ab initio, having been issued by an authority, which had no inherent jurisdiction, whatsoever, to issue it, in my view, setting aside the impugned order would not result in reviving any illegal order. If the recovery certificate u/s 101 of the Act was illegal in any manner, whatsoever, then some proceedings ought to have been taken within the prescribed time for setting aside the same, before the authority competent to set it aside. In fact, the proceedings taken to set aside the same, i.e. the first revision preferred by the respondent No. 2-society against the recovery certificate, was dismissed, by the Divisional Joint Registrar on 24th March, 1999. The dismissal of the revision has set to rest any dispute as to the legality of that order. The order dismissing the revision must be taken to have confirmed the legality of the recovery certificate. I am, therefore, not inclined to accept the contention of the learned counsel for the respondent No. 2-society that extra ordinary writ jurisdiction of this Court should not be exercised on the ground that it would revive an illegal order.

11. Though in Madhukar's case (supra) this Court, undoubtedly declined to exercise its jurisdiction on the ground that it would result in revival of an illegal order, that decision was rendered in a different situation. This Court took that view in a situation where, if it would have been exercised its jurisdiction under Article 227 of the Constitution of India, and set aside the order made in the second revision, and it would have revived the earlier order dated 31-12-1998 passed by the Divisional Joint Registrar, Co-operative Societies, Nasik, which had been passed in violation of principles of natural justice, as is apparent from para No. 15 of the said judgment.

12. An interesting question which has arisen in this case is whether the petitioner-bank, having filed the undertaking in accordance with Rule 46-A of the Rules, framed under the Act, to refer any dispute arising out of the loan transaction, for decision u/s 91, was entitled to approach the Assistant Registrar u/s 101 of the Act, for issuance of recovery certificate. It is however too late in the day to allow the respondent No. 2-society to raise this question. As observed earlier, it is not the submission of the respondent No. 2-society that the Assistant Registrar, had no power whatsoever to issue recovery certificate u/s 101 of the Act. If the respondent No. 2-society was aggrieved by the order of issuance of recovery certificate, which in its opinion was illegal, it ought to have taken steps to set aside the same. It did take to file the Revision, which, as observed earlier, was dismissed on 24-3-1999. I do not consider it appropriate to go into the question of legality of the recovery certificate at this stage.

13. In this view of the matter, the writ petition is allowed. The impugned order dated 15-6-2001, passed by the Minister of State for Co-operation in Revision No. 112000/PK 124/15-C, thereby quashing the recovery certificate issued by the Assistant Registrar, Co-operative Societies, Buldana, in favour of the petitioner No. 1-bank and against the respondents Nos. 1 and 2, is hereby quashed and set aside.

14. At this stage, Mr. Deo, learned Counsel for the respondents, requests for stay of this order. The request for stay is rejected.
15. The petition stands disposed of as aforesaid.