(2023) 03 BOM CK 0101

In the Bombay High Court

Case No : Civil Writ Petition No. 3165 Of 2022

Madhav Gangadhar Bodke APPELLANT

Vs

Balaji Baliram Chandapur And Others RESPONDENT

Date of Decision : 28-03-2023

Acts Referred:

Code Of Civil Procedure, 1908 — Order 26 Rule 9
Money Lending Regulation Rules, 2014 — Rule 17, 17 (9)(10)
Maharashtra Money Lending (Regulation) Act, 2014 — Section 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 18(2)

Citation : (2023) 03 BOM CK 0101

Hon'ble Judges : S.G. Chapalgaonkar, J

Bench : Single Bench

Advocate : Anand V. Indrale Patil, S.B. Ghatol Patil, P.K. Lakhotiya

Final Decision : Allowed

Judgement

S.G. Chapalgaonkar, J

1. The petitioner impugns the order dated 31.1.2022 passed by the Registrar for Money Lenders/Special Registrar (Coopeartive Societies), Maharashtra State/ respondent No.4., whereby the respondent No.4 has quashed and set aside the order dated 18.2.2022 passed by the District Deputy Registrar, directing to refer the handwriting of respondent No.1 (alleged money lender) for opinion of expert.

2. The petitioner filed a complaint resorting to the provisions of Section 18(2) of the Maharashtra Money Lending (Regulation) Act, 2014 (hereinafter referred to as the "Money Lending Act" for sake of brevity) before the respondent No.2 contending that the respondent No.1 has indulged in illegal money lending transactions and he got executed sale deed dated 27.1.2016 by way of security against the loan of Rs. 5,20,000/-. The petitioner alleges that despite return of the aforesaid loan amount by him along with exorbitant interest, the respondent No1. refused to return the land to the him. It is the contention of the petitioner that the respondent No.1 is in the practice of getting executed illegal sale deeds

under garb of security of loan advanced to needy agriculturists.

3. The cognizance of the complaint of the petitioner has been taken by the respondent No.2. The notice of the proceeding was given to the respondent No.1. The petitioner has placed on record various receipts issued by the respondent No.1 in his handwriting. The petitioner moved an application with a request that the aforesaid handwriting of the respondent no.1 be sent to the expert so as to verify the genuineness of the handwriting of the respondent No.1. In pursuance of the said application, the respondent No.1 passed order dated 18.2.2021 and referred the document containing handwriting of the respondent No.1 to the handwriting expert. The petitioner was called upon to deposit the requisite expenses. The petitioner complied with the said requirement and deposited the amount of Rs. 32,450/- in the bank account of the expert. The respondent No.1 was called upon to provide his handwriting samples. However, he refused to cooperate. The respondent No.2 vide order dated 23rd July, 2021, directed the respondent No.1 to remain present before the handwriting expert and provide sample of handwriting. Meanwhile, the respondent No.1 filed an application for recalling of the order passed by the respondent No.2 on the ground that he has no jurisdiction to appoint a commissioner or sending the handwriting to the expert for opinion. The respondent NO.2 vide his order dated 18.2.2021 rejected said application.

4. The respondent No.1 approached the respondent No.4/Registrar of Money Lenders, invoking the provisions of Section 9 of the Act vide Revision Application No. 43 of 2021. The respondent No.4, after hearing the parties allowed the revision application vide order dated 31.1.2022 holding that the respondent No.2 do not possess the power analogous Order XXVI, Rule 9 of the Code of Civil Procedure,1908 to call the opinion of expert or appoint a commission.

5. Mr. Anand V. Indrale Patil learned Advocate appearing for the petitioner would submit that the petitioner has placed on record voluminous evidence to justify his complaint before the respondent No.2 showing indulgence of respondent No.1 in illegal money lending business and grabbing the properties of the poor agriculturists by way of security against the loan. He would submit that the petitioner executed sale deed dated 27.1.2016 towards the security of loan amount of Rs.5,25,000/-. The loan amount is already repaid to respondent no.1 however, the respondent No.1 has refused to return land to the petitioner by executing the sale deed. The petitioner possesses handwritten receipts of respondent No. 1 depicting repayment of the amount against loan. The application was moved before the respondent No.2 for referring the handwritten receipts to the handwriting expert. The respondent No.2 vide his order dated 18.2.2021 referred the documents to the Handwriting expert, so as to verify the genuineness of the handwriting of the respondent No.1.

6. Mr. Anand V. Indrale Patil would further submit that Section 15 of the Act stipulates that for the purpose of Section 6 to 16 the Registrar General and his subordinates are having powers of civil court and those may be exercised as are

vested in the civil court under the Code of Civil Procedure, 1908. He would submit that the authorities exercising powers under the Act are duly authorized to enforce attendance of any person, compel the production of documents, issue commissions for examination of witnesses. Mr. Indrale Patil learned advocate for petitioner assails the order passed by the respondent No.4 branding it to be contrary to the provisions and procedure prescribed under the Money Lending Act and the Rules.

7. Mr. S.B. Ghatol Patil learned advocate for respondent No.1 would submit that the respondent No.2 District Registrar erroneously assumed the powers to appoint the commission or seek the report of the expert while discharging his functions under the Money Lending Act or Rules. He would submit that respondent No.2 do not possess the power analogous to civil court. The provisions of CPC have limited application in the proceeding under the Money Lending Act. He would submit that Section 15 of the Act confers limited powers with the authorities. The procedure in the proceeding before Authority is governed in terms of the of Rule 17 of 2014 Rules. He would submit that directions issued by Authority in present case was beyond scope of Section 15 read with Rule 17 hence ultra-vires.

8. Mr. S.B. Ghatol learned advocate appearing for respondent No.1 would submit that respondent No.1 has already instituted R.C.S. No. 71 of 2019 in the Court of Civil Judge (J.D.), at Umri district Nanded seeking the relief of perpetual injunction against the petitioner. The civil court after appreciation of evidence granted temporary injunction in favour of the respondent No.1. The said order is confirmed by the higher courts. He would further submit that the issue regarding the nature of transactions is sub-judice before the civil court. Therefore, the respondent No.2 is not expected to permit parallel proceeding in the same subject. Relying upon the judgment of this court in the matter of "Bhanudas @ Suryabhan Shinde Vs. State of Maharashtra reported in 2023(1) Bom.C.R. 242, he would submit that the finding recorded by the civil court would prevail over authorities under the Money Lending Act while exercising summary jurisdiction. He urged to dismiss the writ petition.

9. Mr. P.K. Lakhotiya, learned advocate for respondent Nos. 2 to 4 supported the impugned order. He would submit that the authorities under the Money Lending Act are expected to follow the summary procedure and exercise their jurisdiction within the ambit and scope of the provisions of Money Lending Act and Rules. They are not expected assume powers of the Civil Court, particularly, in relation to the matters regarding appointment of commissioner or calling for evidence of the Expert for scientific examination. He would submit that the respondent No.4 has rightly set aside the order passed by the respondent No.2 which was ultra-vires.

10. Having considered the arguments advanced by the respective advocates, it can be observed that the proceeding under Section 18(2) of the Act is governed by the self-contained provisions of Section 15 of the Money Lending Act read

with Rule 17 of 2014 Rules. Section 15 of the Act reads thus :-

“15. Registrar General and his subordinates to have powers of Civil Court :-

For the purposes of Sections 6 and 16, the Registrar General, Divisional Registrar, District Registrar, Assistant Registrar and the officer authorized under section 16, and for the purposes of (sections 14 and 18) the District Registrar shall have and may exercise the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, in respect of the following maters, namely:-

(a) enforcing the attendance of any person and examining him on oath;

(b) compelling the production of documents and material objects.

(c) issuing commissions for the examination of witnesses;

and

(d) proof of facts by affidavits.

11. Plain reading of the aforesaid provisions shows that the application of Code of Civil Procedure 1908 is regulated to the extent of enforcing attendance of any person and examination on oath, compelling production of documents and material objects, issuing commissions for examination of witnesses and recording evidence by way of affidavits. Similarly, the procedure in the proceeding for return of immovable property acquired in the course of money lending is regulated under Rule

17 of the Money Lending Rules 2014. Sub-rule (10) provides for powers with the District Registrar or Enquiry Officer to examine the applicant or such other person as he may deem fit, which he considers necessary by inspecting documents in order to ascertain the real nature of transaction.

12. It appears that petitioner invoked jurisdiction of respondent No. 2 under Section 18(2) of the Act. He recorded his oral evidence and tendered certain documents, which according to petitioner contains the handwriting of respondent no.1 in form of acknowledgments of money received from the petitioner. The petitioner filed an application dated 24.11.2020 to refer documents containing handwriting of respondent No. 1 to the expert for comparison. The respondent no. 2 allowed prayer of petitioner vide order dated 15.2.2021. The objection raised by the respondent No.1 to maintainability of the application was rejected. The said order was assailed by respondent No.1 before the respondent No.4 by filing a revision application under Section 9 of the Act. The respondent No.4 please to set aside order dated 18.2.2022. It is observed in paragraph. Nos. 8, 9 and 10 of the order that the respondent No.2 do not possess the power like Order XXVI, Rule 9 of CPC and refer the document to handwriting expert

13. It is trite, the statutory or quasi-judicial authority invested with the statutory functions is expected to exercise such powers within the parameters of

jurisdiction that has been regulated under the statute or rules. At this stage reference can be made to basic object of legislation. The Money lending Act of 2014 is brought into force with benevolent object to curb harassment of farmers at the hands of money-lenders in state resulting into frequent suicides by farmers. The authorities under the Act are armed with necessary powers of civil courts. For the purposes of (sections 14 and 18) the District Registrar can exercise the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908. The power includes enforcing the attendance of any person and examining him on oath, compelling the production of documents and material objects. Rule 17 of the Money Lending Regulation Rules, 2014, prescribes procedure for return of immovable property acquired or usurped in the course of money lending. Sub-clause (9) and (10) provide for power to be exercised by the District Registrar or Enquiry Officer analogous to civil court. In the present case, the respondent No. 1 denied handwriting on documents/ acknowledgement receipts relied by petitioner to establish alleged repayment of loan amount to respondent No. 1 during relevant period. The petitioner, left with no other option, made prayer before Respondent No. 2 for reference of disputed documents to handwriting expert for comparison. The respondent No.2 District Deputy Registrar issued such directions and called for the opinion of the expert to ascertain handwriting on documents tendered in evidence by petitioner. Such directions are necessary to evaluate and appreciate documentary evidence tendered in to service by petitioner in his attempt to prove nature of transaction under the sale deed in question.

14. If the authority has to arrive at definite conclusion regarding nature of transaction, it is imperative to look in to the documents in form of money acknowledgements alleged to be issued by respondent No. 1. The Authority can not be treated as powerless to have opinion of expert like handwriting expert in case of such dispute. If authority is bestowed with jurisdiction to find out nature of transaction to be money lending or otherwise, the powers cannot be limited by adopting narrow interpretation of enabling provisions under act and rules. The procedure is handmaid of justice. Liberal interpretation of provisions prescribing procedure needs to be adopted looking to the object of social legislation.

14. Mr Ghatol Patil learned Advocate for respondent No. 1 relied on judgement of this court in the matter of Bhanudas @ Suryabhan Shinde vs State of Maharashtra and ors. Reported in 2023 (1) Bom.C.R.242. This court held that the findings recorded by civil court would prevail over the authority exercising his jurisdiction under the act. There cannot be debate on the preposition of law espoused in the judgement (supra). However, in present case, there is no issue of parallel exercise of jurisdiction by Authority under Act vis a vis Civil court. It is true that the Respondent no. 1 has resorted to civil suit seeking the decree of perpetual injunction against the Petitioner based on the subject sale deed and succeeded in securing temporary injunction. The substantive suit is still pending before civil court. However, that cannot bar jurisdiction of the authority under the act to find out nature of impugned transaction to be money lending or otherwise.

If contention of petitioners that authority could not have proceeded to consider application of petitioner on account of pendency of civil suit cannot be accepted since it would result in unrooting legislative intent behind the act. In facts of present case the reliance of the learned Advocate for Respondent no. 2 on the judgement in case of Bhanudas (supra) appears to be misplaced. Similarly, judgement in case of Rajiv Pathak vs. Achyut Karekar reported in 2012(2) Mh.L.J Page 1 relied on behalf of Respondent No. 2 is not useful in the facts of the case. The said judgement lays down the preposition that the Tribunals are creatures of statute and derive their power from express provisions. The powers which have not been expressly given by statute cannot be exercised. The issue that was under consideration in that case was regarding powers with District or State Commission to set aside its own ex-parte orders. Such is not the case in hand. It is difficult to accept the contention of the Respondent that the Respondent no. 2 authority has exercised powers beyond the jurisdiction conferred or procedure prescribed under the Act of 2014 or the rules framed thereunder.

15 Considering benevolent object of legislation and the scheme of Act & Rules framed thereunder, it is difficult to accept narrow interpretation of provisions of act and rules sought to be advanced on behalf of respondent No. 1. The order passed by Respondent No. 2 can not be equated with order of appointment of court commissioner U/O 26 R 9 of CPC. The respondent No. 4/ revisional authority while dealing with challenge to order dated 18.02.2021 erroneously assumed that order passed by respondent No 2 is analogous to appointment of commissioner under CPC. The respondent No. 2 has only accepted prayer of petitioner to refer document to handwriting expert and issued further direction to respondent no. 1 to provide handwriting samples for comparison. The directions appears to be well within powers of Authority under money lenders act and rules that empowers Authority to enforce the attendance of any person and examining him on oath and also compel the production of documents and material objects as per Section 15 of the Act coupled with Rule 17 (9)(10) of the Rules of 2014. Hence, this court has no hesitation to hold that the reasoning adopted by respondent No.4 while exercising revisional jurisdiction under Section 9 is erroneous. The respondent no. 4 has failed to exercise his jurisdiction in judicious manner while setting aside the order dated 18/02/2021, passed by Respondent no. 2.

16. In view of the aforesaid discussion, impugned order dated 31/01/2022 passed by respondent No. 4/ Registrar General in Revision Application No. 43/2021 cannot be sustained under law, hence liable to be quashed and set-aside.

ORDER

A The writ petition is allowed.

B The order dated 31/01/2022 passed by respondent No. 4/ Registrar General in Revision Application No. 43/2021 is hereby quashed and set aside.

C. The order dated 18/12/2021 passed by Respondent No.2 District Deputy Registrar is hereby restored.