
(2015) 06 BOM CK 0010
In the Bombay High Court
Case No : Writ Petition No. 867 of 2013

Shewalkar Developers Ltd.	Vs	APPELLANT
Rupee Cooperative Bank Ltd. and Others		RESPONDENT

Date of Decision : 18-06-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Maharashtra Co-operative Societies Act, 1960 — Section 101
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13(2)

Citation : (2016) 1 ABR 636 : (2016) 1 MhLj 382

Hon'ble Judges : B.R. Gavai, J;I.K. Jain, J

Bench : Division Bench

Advocate : A.C. Dharmadhikari and S.O. Ahmed, for the Appellant; R.H. Chandurkar, Advocates for the Respondent

Judgement

B.R. Gavai, J.—Rule. Rule made returnable forthwith. Heard finally by consent of the learned Counsel for the parties.

2. The learned Counsel for the petitioner seeks liberty to withdraw the petition. However, taking into consideration the seriousness of the matter and in order to give due respect to the orders passed by the Coordinate Bench of this Court on earlier occasions, we refuse the permission to withdraw the petition and proceed to decide the same.

3. The petition arises out of very peculiar facts. The petitioner is a borrower of the respondent nos.1 and 2 Bank. Since the petitioner was liable to pay dues of the Bank, it appears that the respondent nos.1 and 2 Bank had initiated proceedings for recovery. A dispute came to be filed by the present petitioner being a Dispute No.263/2012. In the said dispute, an application for temporary injunction also came to be filed below Exh.5.

4. The learned Judge of the Co-operative court initially granted ex parte order on 12.9.2012. It appears that the relief which was sought by the petitioner was to

the effect that the Assistant Registrar Cooperative Societies should not grant any recovery certificate under the provisions of Section 101 of the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as "the said Act"). The learned Judge of the Co-operative Court vide order dated 8.10.2012 passed the following order :-

"(i) Application below Exh.5 is allowed.

(ii) Ex-parte ad-interim relief in terms of Prayer Clause 1 granted by this court on 12/09/2012 is hereby confirmed till the disposal of dispute.

(iii) No order as to costs.

(iv) Order pronounced in open court."

5. It further appears that subsequently the present petition was filed, thereby raising the challenge to the notice issued by the respondent no.1, dated 3.1.2013, under the provisions of Section 13(2) of Securitisation and Reconstruction of Financial Assets and Enforcement Security Interest Act, 2002 (hereinafter referred to as "the SARFAESI Act"). The present petition came to be filed challenging the said notice on the ground that the respondent Bank had no jurisdiction to issue the said notice. The petition came up for hearing before the Division Bench of this Court (A.P. Lavande and A.B. Chaudhari, JJ.) on 28.2.2013. It appears from the order passed by the Division Bench that upon a query by the learned Judges as to whether the petitioner was at least inclined to pay the principal amount, the learned Counsel for the petitioner expressed his inability to do so. One of the grounds raised by the petitioner at the time of hearing was that the petitioner himself had to recover an amount of rupees two crores and odd from the respondent no.1 Bank. It was also urged before the Court that since there is already an order of injunction passed by the learned Cooperative Court, there is no question of depositing any amount in the present petition. The learned Judges in the order observed that an amount of Rs.4,41,32,643.43 was shown as a principal amount in the notice impugned in the present petition. The learned Judges of this Court after referring to the reason given by the learned Cooperative Court observed in paragraph nos.7 and 8 thus :-

"7. Prima facie, we are shocked to see the way in which the learned Judge of the Cooperative Court has granted blanket injunction from recovery of huge amount of Rs.Five Crores and odd at one stroke even without asking for deposit of a single paisa. The reasons cited above are preposterous and contrary to the settled legal position in respect of recovery of money dues due to Banks. The impugned orders are clearly in contravention of the Apex Court judgment in the case of Shiv Kumar Chadha and Others Vs. Municipal Corporation of Delhi and Others, (1993) 3 JT 238 : (1993) 2 SCALE 772 : (1993) 3 SCC 161 : (1993) 3 SCR 522 . To our mind, the above orders made by the Judge, Cooperative Court, Nagpur are based on a cock and bull story and made for extraneous reasons and, therefore, we call upon the petitioner to explain why the said order below Exh.-5 dated 08.10.2012 in Dispute No.263/2012 should not be quashed and set aside

in exercise of power under Article 227 of the Constitution of India, since retention of such an order is likely to cause dent to the image of the institution.

Respondent no.1 -Bank is also called upon to explain why the said order has not been put to challenge till date before the appropriate court.

8. Since we are satisfied that the said order dated 08.10.2012 passed by the Judge, Cooperative Court has been secured by the petitioner and the Judge Cooperative Court has readily granted the same for extraneous reasons, we grant ad interim stay of the said order dated 08.10.2012 in Dispute No.263/2012."

6. It could thus be seen that the learned Judges of this Court have categorically found that the order which was sought and the relief granted by the learned Cooperative Court was on extraneous reasons and therefore, granted ad interim stay to the order dated 8.10.2012 passed in Dispute No.263/2012. This Court also called upon the petitioner to show cause as to why the order passed by the learned Cooperative Court dated 8.10.2012 should not be quashed and set aside while exercising the extraordinary powers vested in this Court. It further appears that the said order of the Division Bench came to be challenged before the Hon"ble Apex Court by way of a Special Leave Petition. It is informed at the bar that initially Their Lordship of the Apex Court had granted stay to the recovery. It further appears that on 26.3.2015 the learned Counsel appearing on behalf of the petitioner sought liberty to withdraw the Special Leave Petition for filing suitable petition in the High Court. The Special Leave Petition was, therefore, permitted to be withdrawn. The status quo which was operating was directed to be maintained for a period of two weeks from the date of the said order.

7. It further appears that in the interregnum though there was no necessity on behalf of the respondent no.1 Bank to file an appeal against the order of the Cooperative Court inasmuch as this Court was already seized of the matter since it had called upon the petitioner to show cause as to why the order of the Cooperative Court should not be quashed and set aside, the respondent Bank for the reasons best known to it preferred an appeal before the learned Cooperative Appellate Court, Nagpur. It further appears that since the Member of the Cooperative Appellate Court, Nagpur was not available, the charge at the relevant time was with the Cooperative Appellate Court, Pune. However, since the Cooperative Appellate Court, Pune was also not available, the appeal was heard at the Principal Seat of the Cooperative Appellate Court at Mumbai. The learned President of the Cooperative Appellate Court, Mumbai stayed the order passed by the learned Cooperative Court, Nagpur. It appears that being aggrieved thereby, the petitioner filed the petition before the learned Single Judge of this Court at the Principal Seat. The learned Single Judge vide order in Writ Petition No.9309/2013, dated 24.2.2015, allowed the writ petition and set aside the order of the Cooperative Appellate Court, Mumbai and restored the order of the Cooperative Court, Nagpur.

8. It appears that the matter came up again before the another Division Bench of this Court (A.B. Chaudhari and P.N. Deshmukh, JJ.) on 13.4.2015. The learned Judges of the Division Bench were prima facie of the view that the Principal Seat at Mumbai did not have jurisdiction to entertain the petition inasmuch as the jurisdiction to entertain an appeal challenging the order passed by the Cooperative Court at Nagpur would be with the Member of the Cooperative Appellate Court at Nagpur and the jurisdiction exercised by the learned President of the Cooperative Appellate Court, Mumbai was only as the in-charge Court of the Nagpur Bench. The Division Bench, therefore, framed the following question for its consideration.

"Whether the judgment and order dated 24.2.2015 in W.P. No.9309/2013 passed by the learned Single Judge, at the Principal Seat at Bombay High Court suffers from the vice of territorial jurisdiction and can be ignored in the present proceedings i.e. W.P. No.867/2013 and whether the directions to ignore the same can also be made to the subordinate Co-operative Appellate Court whose order was set aside therein ?"

9. We do not propose to go into the question of the territorial jurisdiction as has been raised by the learned Judges of the Division Bench inasmuch as we are of the considered view that the present petition needs to be dismissed and a finding needs to be recorded that the order passed by the learned Single Judge of this Court at Mumbai in Writ Petition No.9309/2013 dated 24.2.2015 needs to be ignored on a more serious view of the matter. The Division Bench of this Court vide order dated 28.2.2013 in categorical terms granted stay to the order passed by the Cooperative Court and also called upon the petitioner to show cause as to why the order of the Cooperative Court should not be quashed and set aside by invoking the extraordinary jurisdiction of this Court under Article 227 of the Constitution of India. The Judgment of the learned Single Judge of this Court at the Principal Seat would reveal that the learned Single Judge has referred to the order passed by the Division Bench of this Court on 28.2.2013 as is evident from paragraph no.4 of the said order.

10. Perusal of the Judgment passed by the learned Single Judge reveals that though in paragraph no.4 of the order the learned Single Judge specifically makes a reference to the order passed by the Division Bench of this Court, in subsequent part of the Judgment the learned Single Judge has not considered the order passed by the Division Bench of this Court.

11. Time and again we have observed that the Court acts as one Court. The Judges sitting at different Benches at the same Seat or on different Benches at the Principal Seat and its Benches cannot be permitted to pass the orders contrary to the orders passed by other Benches. At least in a lis between the same parties, there has to be consistency in the orders passed by different Benches. If this is not done and every Judge is permitted to pass the orders contrary to the orders passed by the other Bench, it would create chaos. This would lead to a situation of criss-cross and it would hit at the basic doctrine of

"Rule of Law".

12. The Hon"ble Apex Court in the judgment in the case of Official Liquidator Vs. Dayanand and Others, (2008) 4 CompLJ 401 : (2008) 11 JT 467 : (2009) 3 LLJ 305 : (2008) 13 SCALE 558 : (2008) 10 SCC 1 : (2009) 1 SCC(L&S) 943 , has held as under :

"78. There have been several instances of different Benches of the High Courts not following the judgments/orders of coordinate and even larger Benches. In some cases, the High Courts have gone to the extent of ignoring the law laid down by this Court without any tangible reason. Likewise, there have been instances in which smaller Benches of this Court have either ignored or bypassed the ratio of the judgments of the larger Benches including the Constitution Benches. These cases are illustrative of non-adherence to the rule of judicial discipline which is sine qua non for sustaining the system. In Mahadeolal Kanodia v. Administrator General of W.B. this Court observed : (AIR p.941, para 19)

"19....If one thing is more necessary in law than any other thing, it is the quality of certainty. That quality would totally disappear if Judges of coordinate jurisdiction in a High Court start overruling one another's decisions. If one Division Bench of a High Court is unable to distinguish a previous decision of another Division Bench, and holding the view that the earlier decision is wrong, itself gives effect to that view the result would be utter confusion. The position would be equally bad where a Judge sitting singly in the High Court is of opinion that the previous decision of another Single Judge on a question of law is wrong and gives effect to that view instead of referring the matter to a larger Bench. In such a case lawyers would not know how to advise their clients and all courts subordinate to the High Court would find themselves in an embarrassing position of having to choose between dissentient judgments of their own High Court."

13. It could thus be seen that the Hon"ble Apex Court in clear terms has held that the thing which is more necessary in law than any other thing is the quality of certainty. It is further held that the said quality would totally disappear if Judges of coordinate jurisdiction in a High Court start overruling one another's decisions.

14. After considering its earlier judgments, the Hon"ble Apex Court, in paragraph no.90, has observed as under :

"90. We are distressed to note that despite several pronouncements on the subject, there is substantial increase in the number of cases involving violation of the basics of judicial discipline. The learned Single Judges and Benches of the High Courts refuse to follow and accept the verdict and law laid down by coordinate and even larger Benches by citing minor difference in the facts as the ground for doing so. Therefore, it has become necessary to reiterate that disrespect to the constitutional ethos and breach of discipline have grave impact on the credibility of judicial institution and encourages chance litigation. It must be remembered that predictability and certainty is an important hallmark of

judicial jurisprudence developed in this country in the last six decades and increase in the frequency of conflicting judgments of the superior judiciary will do incalculable harm to the system inasmuch as the courts at the grass roots will not be able to decide as to which of the judgments lay down the correct law and which one should be followed."

15. The Hon''ble Apex Court has in clear terms reiterated that the disrespect to the constitutional ethos and breach of discipline have grave impact on the credibility of judicial institution. It has been held that the predictability and certainty is an important hallmark of judicial jurisprudence developed in this country in the last six decades and increase in the frequency of conflicting judgments of the superior judiciary will do incalculable harm to the system.

16. No doubt that wide discretion is vested with the Court under Articles 226 and 227 of the Constitution of India. But when a Court and that too a Division Bench of this Court at Nagpur Bench is seized of the matter and had passed an order thereby specifically granting stay to the order of the Cooperative Court and had called upon the petitioner to show cause as to why the order passed by the Cooperative Court should not be quashed and set aside, the learned Single Judge of this Court ought to have stayed his hands away and directed the petitioner to approach this Court for seeking appropriate relief in the present petition. We do not wish to go into the question as to whether the petitioner had rightly filed the petition at Principal Seat, inasmuch as we find that since the order passed by the learned Single Judge has the effect of nullifying the order passed by the Division Bench of the same Court, the same would not be valid in law.

17. The more seriousness of the matter is that the petitioner being aggrieved by the order passed by the Division Bench of this Court dated 28.2.2013 had already approached the Hon''ble Supreme Court. On the date on which the order was passed by the learned Single Judge, the Hon''ble Apex Court was already seized of the matter. When the Highest Court in the Country is seized of the matter, all Courts subordinate thereto including the High Courts, be a Division Bench or a Single Judge ought to have stayed their hands away and waited till the outcome of the decision of the Special Leave Petition that was pending before the Hon''ble Apex Court.

18. We do not propose to go into the legality or otherwise of the order passed by the learned Single Judge of this Court dated 24.2.2015 and the question as to whether the law has been correctly considered by the learned Single Judge of this Court or not or as to whether the judgment of the Division Bench of this Court delivered in the case of M/s. Top Ten and Shri Narsidas Katkoria Vs. State of Maharashtra and Others., (2012) 2 ALLMR 127 : (2012) 2 BomCR 647 : (2012) 1 MhLj 347 has been correctly applied by the learned Single Judge or not. We find the same not to be necessary, inasmuch as we find that since the order passed by the learned Single Judge is in conflict with the earlier order passed by the Division Bench of this Court, it is null and void in law. In that view of the matter, we answer the part of the question, which was framed by the learned

Judges of the Division Bench as to whether the order passed by the learned Single Judge dated 24.2.2015 needs to be ignored, in the affirmative, however, on the different grounds.

19. Now, we refer back to the order dated 28.2.2013 passed by the Division Bench of this Court. The Division Bench, vide the said order, has called upon the petitioner to show cause as to why the order of the Cooperative Court dated 8.10.2012 should not be quashed and set aside. The learned Judges of the Division Bench have given elaborate reasoning while issuing the show-cause-notice to the petitioner. The learned Judges have found that only considerations given by the learned Cooperative Court were that the respondent no.1 Bank had prematurely encashed the bank guarantee and handed over the same to IDBI Bank; that the disputant raised objection about charging of excess interest; that the disputant is entitled to set off and that the disputant has shown his willingness and readiness to settle the matter amicably. However, the learned Judges have specifically observed that though the petitioner was asked as to whether he was willing to deposit at least principal amount, the petitioner had expressed his unwillingness and had also gone to the extent of saying that since there was an order of the Cooperative Court, there was no question of depositing any amount. The learned Judges of the Division Bench in the said order have categorically observed that the order of injunction granted by the Cooperative Court was in contravention of the law laid down by the Hon'ble Apex Court in the case of Shiv Kumar Chadha and Others Vs. Municipal Corporation of Delhi and Others, (1993) 3 JT 238 : (1993) 2 SCALE 772 : (1993) 3 SCC 161 : (1993) 3 SCR 522 .

20. We are of the considered view that the blanket order which had the effect of preventing the Bank from exercising the statutory right available to it under Section 101 of the said Act was totally untenable in law. Not only that, but if the learned Cooperative Court desired to grant some relief in favour of the disputant, the least that was expected was to pass some order which at least partly protects the interest of the Bank. The effect of the order passed by the learned Cooperative Court was preventing the Bank to exercise the statutory right available to it under Section 101 of the said Act, for recovery of the huge amount which was more than rupees five crores. In that view of the matter, we find that this is a fit case wherein this Court should exercise its extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India to set aside the order of the inferior Court, which is not passed in accordance with law.

21. In that view of the matter, we make the notice issued to the petitioner vide order dated 28.2.2013 absolute and quash and set aside the order passed by the Cooperative Court dated 8.10.2012.

22. The foregoing paragraphs explicitly depict the conduct of the petitioner. The petitioner is a person, who during the pendency of present petition and when there was an order passed by the Division Bench of this Court, calling upon him to show cause as to why the order of the Cooperative Court dated 8.10.2012

should not be quashed and set aside and had also stayed that order had an audacity to approach the learned Single Judge of this Court at the Principal Seat and obtain an order which has the effect of nullifying the order passed by the Division Bench of this Court. Not only this, but the petitioner being aggrieved by the order passed by the Division Bench dated 28.2.2013 had preferred Special Leave Petition, wherein the Hon''ble Apex Court had granted an order of status quo. During the pendency of the Special Leave Petition, the petitioner approached the learned Single Judge of this Court and after getting favourable order from the learned Single Judge on 24.2.2015, sought liberty of the Hon''ble Supreme Court on 26th March, 2015 to withdraw the Special Leave Petition so as to approach the High Court by filing a suitable petition. It appears from the order of Hon''ble Supreme Court that the facts regarding filing of the petition before the learned Single Judge and the order passed by the learned Single Judge, dated 24.2.2015 were not brought to the notice of Their Lordships of the Supreme Court. The chain of events explicitly depicts the conduct of the petitioner.

23. In that a view of the matter, we find that the petitioner is disentitled to any relief only on the ground of equity. The writ petition stands dismissed on this short ground.

Rule is discharged. No order as to costs.

The copy of the above order is directed to be forwarded to the Registrar General of this Court so as to conduct an enquiry about the learned Judge of the Cooperative Court, who has passed an order dated 8.10.2012.