

(2008) 12 BOM CK 0007

In the Bombay High Court

Case No : Letters Patent Appeal No. 33 of 2008 in Writ Petition No. 8692 of 2007 with Civil Application No. 32 of 2008

Shri Basaveshwar Cooperative Credit Society Ltd.

APPELLANT

Vs

Jayant Shivpal Banchhode and Others

RESPONDENT

Date of Decision : 11-12-2008

Acts Referred:

Maharashtra Co-operative Societies Act, 1960 — Section 101, 91
Specific Relief Act, 1963 — Section 41

Citation : (2009) 4 BomCR 504 : (2008) 111 BOMLR 366 : (2009) CriLJ 3185 : (2009) 2 MhLj 216

Hon'ble Judges : Swatanter Kumar, C.J.; S.A. Bobde, J

Bench : Division Bench

Advocate : Amit Borkar, for the Appellant; S.S. Patwardhan, for the Respondent

Judgement

Swatanter Kumar, C.J.—By this common judgment, we will dispose of the above referred seven Letters Patent Appeals as all of them are directed against the order dated 14th December 2007 passed by the learned Single Judge disposing of all the seven Writ Petitions by the same order.

2. The Respondents in all these Appeals had borrowed several sums of money from the Appellant Society from time to time. To begin with, the operation of the loan accounts were satisfactory. However, subsequently, as the Oil Mills suffered a set back, the accounts of the Respondents became irregular resulting in filing of an application u/s 91 of the Maharashtra Cooperative Societies Act, 1960 (hereinafter referred to as "the Act") for recovery of the loan amounts stated to be advanced by the Society. As a result of these proceedings, an ex parte award came to be passed for recovery of the loan amounts. Subsequently, the parties had agreed for a settlement in terms of which the Respondent was to pay 50% of the outstanding amount within a period of two months from 5th July 2005 and the balance amount was to be paid in one year. The Respondent did not deposit the entire amount. In the case of Letters Patent Appeal No. 33 of 2008, a sum of Rs. 5 lakhs was paid but no time for extension was granted by the concerned

authority. Aggrieved from the said order, the Respondent approached the Divisional Joint Registrar for extension of time. Divisional Joint Registrar extended the time. Certain disputes arose as regards to the calculation of the amounts and vide order dated 28th June 2006, the Joint Registrar directed the Appellant Society to accept the balance amount from the Respondent herein as per the compromise formula. As the parties failed to settle the exact amount and the Appellant Society threatened to proceed to recover the amounts as arrears of rent and issued a notice dated 28th July 2006, upon receipt of which, the Respondent filed a dispute u/s 91 of the Act being Dispute No. 857 of 2006 and took up the plea that the recovery proceedings initiated were without authority and were not sustainable. This was contested by the Appellant Society and these proceedings were pending when the Managing Committee of the Appellant, which was superseded and the District Deputy Registrar was appointed as a Administrator, at the instance of the Appellant, initiated proceedings u/s 101 of the Act against the Respondent herein in which a notice was issued and the same was being contested by the Respondent. The Respondent then in those proceedings filed an application before the Cooperative Court for interim injunction directing the Appellant Society not to pursue the proceedings u/s 101 of the Act. The application for interim injunction was heard and decided by the Cooperative Court at Kolhapur which vide its order dated 20th November 2007 granted *ex parte adinterim* order. This order was appealed against by the Appellant Society before the Maharashtra State Cooperative Appellate Court, Bombay, Bench at Nagpur, Camp at Kolhapur. The Appellate Court vide its order dated 23rd November 2007 stayed the operation of the order dated 20th November 2007. The Respondent in the present Appeal, therefore, challenged the correctness of the order dated 23rd November 2007 in Writ Petitions, which, as already noticed, were disposed of by the learned Single Judge vide order dated 14th December 2007, the operative part of which, reads as under:

5. After taking instructions from the Petitioners, Shri Patwardhan makes a further statement that the Petitioners would deposit a sum of Rs. 95,00,000/with the Administrator without prejudice to the rights and contentions of both sides. Such deposits will be made on or before 15.1.2008. In the event the amount is deposited the order of *statuesque* granted by the Trial Court to continue till hearing of the application for temporary injunction. In that event the order of the Cooperative Appellate Court shall stand quashed and set aside. Till the application for temporary injunction is heard and for a period of two weeks after the same is decided and decision is communicated, the Administrator shall not go ahead and proceed with the recovery application u/s 101 of the Maharashtra Cooperative Societies Act, 1960. Needless to state that in the event the Petitioners fail to deposit the amount by 15.1.2008, the Petition shall stand dismissed so also *adinterim* order stands vacated without any further reference to Court.

6. Upon deposit being made the application for temporary injunction may be decided by the Trial Court as expeditiously as possible and preferably within a

period of six weeks from the date of first appearance of the parties. All contentions of both sides on merits are expressly kept open. This order is passed without prejudice to the same. Liberty is also given to the Petitioner to request the Administrator to appropriate the amounts which are already lying with Respondent No. 1 Society. Administrator to consider such request in accordance with law. Petitions disposed of.

3. The argument raised before us by the Appellant is that the order of the Maharashtra State Cooperative Appellate Court did not call for any interference inasmuch as the authority passing the order dated 20th November 2007 was not in consonance with law and in fact no Court could pass an order of injunction restraining the institution or continuation of the legal proceedings before the competent forum. Reliance is also placed upon Section 41 of the Specific Relief Act and the judgment of the Supreme Court in the case of Cotton Corporation of India Limited Vs. United Industrial Bank Limited and Others, . It is further contended that the two are independent proceedings and could continue without any prejudice to the parties.

4. At the very outset, we may notice that exercising its powers under the provisions of the Act, the Government issued a Circular dated 3rd March 2001 wherein directions have been given for the guidelines to be followed for grant of Certificate u/s 101 of the Act. Clause 10 (v) and (vi) of the said Circular are relevant clause. They read as under:

10. Procedure for Hearing of Application.

i) to (iv) xxx xxx xxx

v) If during the pendency of hearing, the Opponent brings to the notice of the Registrar that he has filed dispute u/s 91 for accounts in respect of the loan in question and the cooperative court has passed interim order restraining recovery of dues, claimed in application, till decision of dispute, then the Registrar, may stay the hearing of the application, till decision of such dispute. If in such dispute accounts are settled, then the Registrar shall issue certificate for the amount adjudicated in such dispute. If dispute is dismissed, then he shall proceed with the application according to law.

vi) While deciding the application u/s 101 in case of urban cooperative banks and cooperative credit societies, the Registrar shall give the consideration to the circulars and guidelines issued by the Reserve Bank of India and rate of interest charged in the account. If necessary, the Registrar may call for the relevant circulars and guidelines of the RBI for his satisfaction.

As is evident from the above referred Circular, the Cooperative Court has the power to hear and decide stay application till the decision of the main proceedings before it in relation to Section 91 of the Act and also while dealing with a proceeding u/s 101 of the Act. This power obviously can be exercised for staying the recovery proceedings. The Registrar dealing with the proceedings u/s

91 is for the sake of argument be treated as a Court, would have no jurisdiction in law to restrain continuation of the proceedings before that authority. The Cooperative Court is exercising its statutory powers conferred on it u/s 91, while the Registrar is exercising powers u/s 101 of the Act. They fall in distinct and different jurisdictions. Thus they are distinct and different jurisdictions operating in different fields. The one aspect of the matter that we cannot overlook and which has already been referred in the order impugned before us is that the proceedings u/s 91 are likely to result in affecting the proceedings u/s 101 and vice a versa. If the amount determined u/s 91 is found to be different than the main claim u/s 101, then there would be likelihood of conflicting orders and a position in law may arise which can hardly be reconciled.

5. The argument raised on behalf of the Appellant that they have to recover huge amounts, namely, Rs. 10 crores and the direction has only been made for deposit for Rs. 95 lakhs and thus they will suffer a prejudice hardly justifies acceptance of the Appeals in their entirety. The authorities as well as the learned Single Judge have exercised their discretion in passing an interim order. An interim order is normally passed to protect the interest of the party during the decision of the lis pending before the competent authority. The superior Court can always grant interim orders including an injunction in relation to proceedings before an inferior or a coordinate Court. It would have been more appropriate for the authorities as well as the learned Single Judge to grant stay of recovery rather than prohibit the continuation of the proceedings before the Deputy Registrar. The order passed by the learned Single Judge is stringent in its condition. Firstly, the Respondents have been directed to deposit the amount and, secondly, the consequences of default have also been provided where it is further stated that the Petition itself will stand dismissed and ad interim order vacated without reference to the Court if the amount is not deposited as directed. We are informed that the amount has already been deposited and all the contentions and objections of the parties have been specifically kept open. The proceedings before the Cooperative Court are pending before a statutory Court and the determination of the amount payable to the Appellant would obviously be result of determination of an application u/s 101 of the Act which is a kind of objection filed to the recovery. This order is also passed only till the time the application for a temporary injunction is finally heard and decided. The order being exparte and the authorities and the learned Single Judge having exercised their jurisdiction, we see no reason to interfere with the impugned order. It is not substantially true that the Appellant Society has been permanently restrained from pursuing their remedy before the Registrar. On the contrary, it is an order which is just and fair and no fruitful purpose would be served by continuing the two proceedings which ultimately would result in determining the same controversy. The proceedings before the Cooperative Court are proceedings before a statutory Court. Furthermore, we are informed that even the evidence of the Petitioners before the Cooperative Court has also been concluded and the Respondents in the Appeal are only delaying the proceedings before that Court.

6. In these circumstances, while declining to interfere with the impugned order, we further direct that the Cooperative Court shall make an endeavour to complete its proceedings as expeditiously as possible and in any case not later than six months from today and would also pass final orders on the application for interim injunction at the earliest.

7. All the above seven Letters Patent Appeals are accordingly disposed of with no order as to costs.

8. In view of the disposal of the Letters Patent Appeals, nothing survives in Civil Application Nos. 32, 33, 34, 35, 36, 37 and 38 of 2008 and the same are disposed of as infructuous.