

(2000) 02 BOM CK 0006

In the Bombay High Court

Case No : Writ Petition No's. 732, 733, 734 and 735 of 1999

Shri Ramesh T. Gopalani

APPELLANT

Vs

The Janata Sahakari Bank Ltd. and Another

RESPONDENT

Date of Decision : 22-02-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2
Constitution of India, 1950 — Article 227

Citation : (2000) 3 ALLMR 177 : (2000) 3 BomCR 474 : (2000) 3 MhLj 115

Hon'ble Judges : J.A. Patil, J

Bench : Single Bench

Advocate : B.J. Mulchandani, for the Appellant; Y.R. Naik, for the Respondent

Judgement

J.A. Patil, J.—These four writ petitions can be disposed of by this common judgment since they arise out of a common order dated 15th January, 1999 passed by the Minister of State Co-operation in Revision Applications Nos. 1797/CR-316/15-C. The relevant facts are very few and they are as under :-

2. The petitioner is a debtor while respondent No. 1 is a Co-operative Bank. Respondent No. 2 is the Recovery Officer of the said Bank. In the year 1994 the petitioner was granted cash credit facility of Rs. 13,50,000/-. In addition, he was granted 3 loans. The first being of Rs. 2,30,000/- for purchase of a car. The second of Rs. 50,000/- and the third of Rs. 50,000/-. It appears that the petitioner failed to clear arrears of the above mentioned loans hence the respondent Bank filed an application before the Dy. Registrar, Co-operative Society and obtained 4 separate recovery certificates against the petitioner u/s 101 of the Maharashtra Co-operative Societies Act, 1960 (for short, the "Act"). On the basis of the said recovery certificates, the respondent bank took up execution proceedings and attached the car and shop belonging to the petitioner. The petitioner then filed a revision application u/s 154 of the Act, challenging the recovery certificates issued against him. The Divisional Joint Registrar by his order dated 10-4-1997 partly allowed the revision applications and confirmed

recovery certificates issued by the Dy. Registrar. However, he directed the respondent bank to release the car and shop of the petitioner forthwith. The order further states that the respondent bank was at liberty to execute the recovery certificates against any other assets of the petitioner. Being dissatisfied with the said order, the respondent bank filed a revision application u/s 154 of the Act to the State Government. The Minister of State for Co-operation by his order dated 15th January, 1999 allowed the revision applications and set aside the order passed by the Joint Registrar and restored the order passed by the Dy. Registrar. It is this order which is impugned by the petitioner in this writ petition under Article 227 of the Constitution of India.

3. Shri Mulchandani, the learned Advocate for the petitioner contended before me that the impugned order is patently illegal since section 154 of the Act does not contemplate any second revision. Shri Naik, the learned Advocate for the respondent, however, pointed out that the petitioner did not raise the question of maintainability of the second revision before the State Government and therefore, it is now not open to him to agitate this point. In order to appreciate the controversy it would first be proper to refer to section 154 of the Act, which reads as under:-

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.

(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.

It is seen from the said section that the State Government as well as the Registrar has revisionary powers. Sub-section (2), however, makes it clear that

against the order passed by the Additional Registrar or Joint Registrar the revision lies to the State Government, while that against the order passed by any other subordinate officer, it would lie to the Registrar. But the question is whether there can be a second revision application to the State Government against the order passed by the Registrar in exercise of his revisionary powers u/s 154 of the Act. According to Shri Mulchandani, no second revision application would lie in the same matter and in support of his submission, he relied upon two unreported decisions of two learned Single Judges of this Court. The first is dated 18-2-1999 given by Lodha, J., in (Writ Petition No. 4168 of 1998), which was a case under the Maharashtra Land Revenue Code. In that case, the petitioner had applied for correction of revenue record but the Tahasildar passed an order in favour of the respondent. The petitioner then preferred an appeal before the Sub-Divisional Officer who dismissed the same. The petitioner then filed second appeal before the Collector which was also dismissed. Against the concurrent orders of the three revenue authorities, the petitioner filed a revision application u/s 257 of the Maharashtra Land Revenue Code before the Additional Commissioner who set aside the orders passed by the revenue authorities below and remanded the matter back to the Tahsildar. It appears that the respondent filed a revision application to the State Government and the Secretary and Officer on Special Duty (Appeals to Government of Maharashtra), allowed the said revision and set aside the order passed by the Additional Commissioner and confirmed the order passed by the Collector in the second appeal. In the writ petition filed by the petitioner, it was held that the second revision was not maintainable and therefore the order of the Secretary and Officer on Special Duty was without jurisdiction.

4. The second unreported decision relied upon by Shri Mulchandani is dated 9-9-1999 in Bhupendra Villa Premises Co-operative Society Ltd. and another Vs. Chandrakant G. Shah and others, . It was a case for an admission of a writ petition, wherein a question was raised as to whether the second revision would lie u/s 154 of the Act. Referring to the two Supreme Court's decision reported in Vishesh Kumar Vs. Shanti Prasad, and Aundal Ammal Vs. Sadasivan Pillai, which were u/s 115 of the Civil Procedure Code. Gokhale, J., indicated that there cannot be a second revision u/s 154 of the Act.

5. As against this, Shri Naik cited before me the decision in Nathuram, son of Shyamlal Mahajan v. District Co-operative Bank Ltd. Shivpuri & others, reported in the High Court of Madhya Pradesh at Jabalpur in Misc. Petition No. 31/67 decided on 11-2-1970. In that case the Division Bench of Madhya Pradesh High Court considered the provision of section 72 of the Madhya Bharat Co-operative Societies Act, 1955 and observed that the fact that the Registrar had already revised the order did not stand in the way of the State Government, entertaining a further application for revision against the Registrar's order. Section 72 of the Madhya Bharat Co-operative Societies Act reads as under :-

"72. The Minister-in-charge and the Registrar may call for and examine the

record of any inquiry or the proceedings of any officer subordinate to them for the purpose of satisfying themselves as to the legality or propriety of any decision or order passed and as to the regularity of the proceedings of such officer. If, in any case, it shall appear to the Minister-in-charge or the Registrar that any decision or order or proceedings so called for should be modified, annulled or reversed, the Minister-in-charge or the Registrar, as the case may be, may pass such order thereon as to any of them may deem fit."

A comparison of the said section with section 154 of the Act would make it clear that there is no provision like sub-section (2) of section 154 of the Act in the Madhya Bharat Co-operative Societies Act, 1955. The provision of subsection (2) of section 154 gives a clear indication that a revision application against the order of any subordinate officer would lie to the Registrar, Additional Registrar or Joint Registrar while revision application against the order passed by any of these three authorities would lie to the State Government. Therefore, in my opinion, "the reliance of Shri Naik upon this decision will not be of any help. I am inclined to hold that section 154 does not contemplate two revision applications in the same matter. There cannot be a revision against an order passed in a revision application.

6. It will thus be seen that the second revision application filed by the respondent Bank to the State Government was not a maintainable and it was not competent for the Minister for State (Co-operation) to have passed the impugned order. However, Shri Naik pointed out that the petitioner did not raise any issue before the State Government about the maintainability of the second revision application and therefore it is not now open to him to agitate that question in this writ petition. In support of his submission Shri Naik relied upon the decision in Rukmini Amma Saradamma Vs. Kallyani Sulochana and others, , wherein it was observed: "It is too late in the day to urge on behalf of the appellant that the earlier exercise of the second revisional jurisdiction by the High Court was wrong. She ought to have raised it then and there. Having taken a chance after remit and pursued the eviction petition, merely because the order of the High Court went adverse to the appellant, it cannot be contended that the order of remit in exercise of second revisional jurisdiction is wrong". I think that this authority applies with equal force to the present writ petition. Admittedly the petitioner did not raise a question about the maintainability of the second revision application filed before the State Government and therefore even though the second revision application was not maintainable, still the petitioner cannot be allowed to take advantage of that fact.

7. Shri Naik further submitted that even assuming that the second revision application is not maintainable, still in the facts and circumstances of the case it would be appropriate for this Court to decline to interfere with the impugned order since the said order has done substantial justice. In support of his submission he relied upon the decision in The Hindustan Construction Co. Ltd. Vs. Shri G.K. Patankar and Another, , wherein the Supreme Court refused to

interfere on the ground that substantial justice had been done. I think that having regard to the facts of the case, there is no warrant to interfere with the impugned order. Admittedly, the petitioner is in heavy arrears of loan. The respondent Bank has obtained recovery certificates against him and the same are confirmed even by the Joint Registrar. The respondent Bank is trying to recover its dues on the basis of recovery certificates and has attached the car and shop of the petitioner. There is nothing illegal or wrong in doing the same. The Joint Registrar appears to have directed the release of the car and the shop of the petitioner on the ground that the petitioner does not have any other source of income. However as Shri Naik pointed out that the petitioner does not have any other property which can be attached and put to sale to recover the outstanding dues. In these peculiar circumstances of the case, I am of the opinion that it is not necessary to interfere with the impugned order.

8. Consequently, all the four above mentioned writ petitions are hereby rejected. Rule is discharged with no order as to costs.

9. Writ petitions rejected.