(2025) 11 BOM CK 1771

In the Bombay High Court, Kolhapur Bench

Case No : Writ Petition No.18117 Of 2024, Connected With Writ Petition No.18118 Of 2024

Sonia Bhalchandra Godase APPELLANT

Vs

State of Maharashtra RESPONDENT

Date of Decision : 04-11-2025

Acts Referred:
Maharashtra Cooperative Societies Act, 1960 — Section 86, 91, 101, 154

Citation : (2025) 11 BOM CK 1771

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

Bench : Single Bench

Advocate : Prasad Dani, Suhas S. Inamdar, S.D. Rayrikar, V.S. Talkute, Sarang S. Aradhye, Mahesh Bhosale, Sampada Patil

Final Decision : Allowed

Judgement

S. G. Chapalgaonkar, J

1. The petitioners impugn the order dated 24.09.2024 passed by the Deputy Registrar Cooperative Societies, Solapur in Ap-plication No. Sangolabank/Kalam 101/748/2023-24, thereby grant-ing recovery certificate under section 101 in favour of the Respon-dent Bank.

2. The Respondent/Bank is registered under Maharashtra Cooperative Societies Act, 1960 (‘Act of 1960’ for short). The bank filed an application under section 101 of the Act of 1960 for recovery of loan due from petitioners and respondent nos.4, 5 and 6. Accord-ing to the Bank, petitioners and respondent nos.5 to 7 obtained loan from bank and executed loan documents like demand promissory note. Bank issued notice dated 30.6.2023 for recovery of loan and finally initiated proceedings for issuance of recovery certificate against petitioners and respondent nos.5 to 7.

3. Petitioner nos.1 and 4 appeared before the respondent no.2 and denied disbursement of loan. It is specifically pleaded that, loan is shown to be

disbursed in the name of Bhalchandra Sanjay Go-dase and Dharmaraj Baba Borade as co-borrowers with the petitioners. However, as per by-laws of the bank, disbursement of loan is permissi-ble to only one member at a time. There are some discrepancies as to monthly installments fixed and recommendation letter. In short it is contention of petitioners that the bank has prepared false and forged loan documents and attempting to recover loan, which was never dis-bursed. Petitioners took a defence that Mr. Dharmaraj Borade, who is an employee of the Bank, indulged in money lending business, is try-ing to recover the personal loan. According to petitioners, calculation of interest is illegal. Loan amount disbursed has been transferred in savings accounts of bank employees. Bank is required to prove the documents, which is possible in the proceedings under section 91 of the Act. Unless and until dispute as to accounts is settled, certificate under section 101 cannot be issued.

4. Respondent no.2/Deputy Registrar Cooperative Societies, Solapur allowed application filed by Bank and granted recovery cer-tificate under section 101 of the Act, which has been assailed in the present writ petitions.

5. Mr. Prasad Dani, learned senior advocate appearing for the petitioners submits that petitioners have raised serious dispute as to contentions of the Bank. The dispute relates to genuineness of the documents and disbursement of loan. Mr. Dani would invite attention of this Court to the procedure contemplated under Chapter VIII-A for grant of certificate for recovery under section 101 and submits that application tendered by the bank was not in conformity with Rule 86-A. Further, there is serious lapse in complying with the procedure un - der section 86-C and 86-E of the Rules. He would submit that in the present case, petitioners caused appearance in pursuance to the notice of the application and put on record statement of defence. According to Mr. Dani, it was necessary on the part of applicant/society to prove contents of the application. Thereafter, it was incumbent upon part of the Deputy Registrar to pass a reasoned judgment and issue an order for grant or rejection of the application and thereafter issue a certifi-cate in “Form V”. According to Mr. Dani, it was incumbent upon re-spondent no.2 to apply his mind to the defence put-forth on behalf of the petitioners. However, in the present case, respondent no.2 did not bother to consider the defence and deliver a judgment on the con-tentious issues. According to Mr. Dani, circular dated 13.7.2021 is-sued by the Commissioner and Registrar Co-operation contemplates a detailed procedure to be followed at the time of issuance of certifi-cate under section 101 of the Co-operative Societies Act and requires that procedure under rule 86-F has to be scrupulously followed and application moved for issuance of certificate under section 101 has to be decided on merit and judgment has to be passed as regards to ac-ceptability of application, thereupon certificate under section 101 can to be issued. Mr. Dani, invites attention of this Court to the impugned order and submits that there is no application of mind by respondent no.2 to the specific defences raised on behalf of the petitioners.

6. In support of his contentions, he relies upon observations of this Court in case of Shireen Sami Gadiali and Another Vs. Spenta Cooperative Housing Society Ltd reported in 2011 (3) Bom. C.R. 465,

Sundeep Polymers Pvt Ltd and Ors Vs. State of Maharashtra and Ors reported in 2010 (7) Mh.L.J. 538, Vitthal Laxman Fatangade and Anr Vs. State of Maharashtra reported in 2011 (6) Bom C.R. 829, Kranti Associates Pvt Ltd. and Another Vs. Sh. Masood Ahmed Khan and Others reported in 2010 (9) SCC 496, and P.R. Prints and Another Vs. District Deputy Registrar, Co-operative Societies and Others in Writ Petition no.15497 of 2024 decided on 26.06.2025.

7. Per contra, Mr. V.S. Talkute, learned advocate appearing for respondent/bank raised serious objection to entertain present writ petitions contending that petitioners have alternate efficacious rem-edy of filing the revision application under section 154 (2)(A) of the Act. According to him, all contentions raised on behalf of the peti-tioners can be efficaciously dealt with by the competent authority in exercise of revisional jurisdiction. Present writ petitions are filed only with intention to evade compliance of provisions of mandatory pre-deposit of 50% of total recoverable dues. According to Mr. Talkute, petitioners had filed their written statement before the authority and they were also granted sufficient opportunity of being heard. After due deliberation, impugned order has been passed. There is nothing to show infringement or breach of procedure contemplated under Chapter VIIIA of 1961 Rules. Mr. Talkute submits that respondent/ bank has filed requisite documents in support of its entitlement to re-cover arrears from the petitioners. The respondent no.2 has applied his mind and also considered the defence put-forth by petitioners, thereafter issued certificate. The reasons recorded in the impugned order depicts due compliance of procedural mandate under Chapter VIIIA of the Rules.

8. In support of his contentions, he relies upon observations of this Court in case of Tarulata Amritlal Bava Vs. The State of Maharashtra reported in 2023 (3) Mh.L.J. 230, Maharashtra Nagri Sahakari Bank Ltd and Another Vs. Ravindra Prabhakar Kulkarni and others reported in 2011 (1) Mh.L.J. 930, Chandrakant Bhavani Shinde Vs. State of Maharashtra reported in 2012 (2) ALL MR 590, Kusum Rajaram Waghchavare and Ors Vs. Deputy Registrar, Co-opera-tive Society, Solapur reported in 2016 SCC online Bom. 8084, Top Ten, a Partnership Firm and another Vs. State of Maharashtra re-ported in 2012 (1) Mh.L.J. 347 and Ramesh Chudaman Badgujar Vs. State of Maharashtra and others reported in 2015 (2) Mh.L.J. 542.

9. Having considered the submissions advanced by the learned advocates appearing for respective parties and after going through the record tendered into service along with writ petitions and affidavit in reply, this Court requires to firstly deal with question, as to whether the petitioners have made out a case to entertain the writ petition, although remedy of filing revision under Section 154 of the Act of 1960 is available. Secondly, in case petitioners succeeds to make out a case to entertain the challenge to recovery certificate in writ jurisdiction of

this Court, what order can be passed.

10. It cannot be disputed that Section 101 of the Act of 1960 contemplates that the Registrar after making the inquiry in such manner as may be prescribed, grant a certificate for the recovery of the amount stated therein to be due as arrears in favour of the society. Sub-section 3 of section 101 provides that a certificate granted by the Registrar under sub-section (1) or (2) shall be final and a conclusive proof of the arrears stated to be due therein, and the same shall be recoverable according to the law. It further provides that a revision shall lie against such order or grant of certificate, in the manner laid down under section 154 and such certificate shall not be liable to be questioned in any Court. Chapter VIIIA of Rules of 1961 deals with the procedure for grant of certificate for recovery under Section 101. Rule 86-A prescribes for filing an application for grant of certificate for recovery. The applications needs to be accompanied with certified true copies of extract of accounts of dues, copy of notice given by society to its members, certified true copies of relevant documents (copies of loan documents such as loan application promissory notes, loan agreement etc). Rule 86-B deals with the scrutiny of application and notice to the parties. Rule 86-C deals with the consequence of non-appearance of the parties. Rule 86-D deals with the production and inspection of documents. Rule 86-E prescribes the procedure for hearing of the application. Sub-rule (1) of Rule 86-E contemplates that on receipt of statement of defence of opponent, the applicant/society shall prove the contents of the application and also deal with the contents of defences. The opponent is also entitled to file reply in support of defence. However, none of the party can be permitted to cross-examine. Rule 86-E further contemplates that after hearing the arguments of the parties, the Registrar shall issue a reasoned judgment and pass an order for grant or rejection of application. In case the Registrar grants the application, he shall issue a certificate in “Form V”.

11. The close scrutiny of the aforesaid provisions would depict that the opponent is entitled to raise the defence against the contents of the application filed for issuance of certificate under Section 101 of the Act. The Registrar is under statutory obligation to consider such defences and render the judgment either accepting the application or rejecting the same. If the Registrar on application of mind finds that a bonafide and genuine defence about the arrears is raised which calls for finding on disputed fact or need for cross-examination surfaces, his jurisdiction under Section 101 ceases to apply. It is not expected that the Registrar would issue a certificate ignoring the right of the opponent to dispute the facts for its determination and fasten liability upon a person having bonafide and valid defence. However, if the Registrar is satisfied that the amount disclosed in statement of accounts of arrears is correct and due, he can proceed to issue certificate of recovery in favour of the bank/society. The parameters of jurisdiction of the Registrar are laid down by the Division Bench of this Court in case of Top Ten (supra) para 19 which reads thus :

“19. Thus very small types of disputes in which only limited question is of quantification of arrears due, is to be looked into by such Registrar while undertaking enquiry under section 101. Importance therefore, is to statement of accounts. The enquiry undertaken is only aimed at ascertaining whether amount disclosed in statement of accounts as arrears, is correct and due. The limited opportunity of defence is, therefore, extended to the borrower like petitioners. The correctness of amount shown as arrears can be verified from the accounts and from accounts of the society and from receipts produced by other side. Denial of cross-examination in this situation only shows legislative intent that if a genuine and disputed question of facts is found arising by the Registrar, he cannot proceed to resolve that question. The concerned society, in such circumstances, has to take recourse to filing of a dispute under section 91, where such disputed questions can be gone into. Hence, a bona fide defence being raised by a borrower or other person against whom such certificate is sought, cannot be resolved by the Registrar under this jurisdiction. If he finds such dispute arising, he has to deny the recovery certificate by passing appropriate judgment under Rule 86F."

12. The Registrar is under statutory obligation to follow the procedure contemplated under Section 86-A to 86-F of the Rules and pass the judgment upon consideration of the application, documents appended thereto and defence put-forth by the opponent. It is true that the inquiry under Section 101 operates in limited spare and does not require Registrar to delve into the larger disputed questions which would require long drawn trial or recording of the evidence and cross-examination of witnesses. However, the Registrar has to record the reasons in support of his judgment on appreciation of aforesaid material along with the defence put-forth by the opponent. The Division Bench of this Court in case of Sundip Polymers (supra) observed in paragraph nos.9 to 11 as under :

"9. We perused the order passed by the learned Single Judge. The learned Single Judge rejected the Writ Petition mainly on the ground that alternate remedy is available under section 154 of the said Act. We are of the opinion that the learned Single Judge has not considered the procedure prescribed under Rule 86-A to 86-F of the said Rules. It is crystal clear from the Rules 86-A to 86-F that the Authorities pertains quasi judicial work. The Authorities have to follow the rules of natural justice. In the present case, the Authority without passing any Judgment issued Recovery Certificate under section 101 of the Said Act. These facts are not considered by the learned Single Judge.

10. It is mandatory for the Authorities to follow the Rules provided in Chapter VIIIA of the Maharashtra Co-Operative Societies Rules 1961 while issuing Recovery Certificates. It is amply clear that in this case the Recovery Certificate has been issued without following due procedure and also without proper service of notice on the appellants and the Rules of natural justice are violated Hence the Recovery Certificate issued must be held to be invalid and bad in law and needs to be struck down. This has resulted into unnecessary waste of time and money by the appellants as well as the bank.

11. The learned Single Judge of this Court (in Group of Writ Petition Nos 1717 of 2009, Ravindra S/o. Waman Ingle and another Vs. Sahakar Mitra Shri Chandrakant Hari Badhe Sir Urban Co-Operative Credit Society Ltd. Varangaon and others) held that "the Certificate issued without following amended Rules 86-A to 86-F of the said Rules is unsustainable. It is further held that enquiry is required to be conducted in accordance with the Rules".

13. In light of the aforesaid exposition of law, if the impugned order is perused, it can be observed that the learned Deputy Registrar has recorded his conclusions in para 9 of judgment. It records appearance of the respective parties, then refers to the documents tendered by the respondent no.3/bank along with the application and finally accepts the application for issuance of recovery of certificate under Section 101 of the Act. Although petitioner nos.1 and 5 had put up their defence, there is no deliberation to the contentions raised in defence. The reply filed by petitioner nos.1 and 5 raises the serious dispute giving reference to the by-laws of the society and also put-forth the defence of fraud exercised in connivance with the bank/employees. Some discrepancies as to the date of sanction of loan, disbursement of loan amount are raised, however, reasoning part in impugned order does not refer to any such dispute. It was obligatory for Registrar to record brief reasons for declining to entertain such defence. This Court is not oblivious that a speedy remedy is provided for recovery of dues to the co-operative societies under Section 101 of the Act. However Rule 86 mandates the Registrar to render a judgment on application of society for grant of recovery certificate. When opponent caused his appearance and put up the defence, it was imperative for registrar to deliberate upon such defence then render his judgment. As discussed above, if the Registrar rejects the defence in summary manner on the basis of the material tendered before him or find such defence worthless on consideration, he is required to record brief reason in support of his judgement.

14. In the present case, the impugned order depicts that although the defense put-forth in reply is recorded verbatim by registrar in first part so also reference is made to written arguments , there is no deliberation in reasoning part which starts from para 9 onward. It is not discernible that registrar has applied his mind to defenses of petitioner. The order depicts absolute non-application of mind. Such order cannot be given status of judgment as contemplated under section 101 of the Act read with Rule 86-F of Rules of 1961

15. Although Mr. Talkute, learned advocate appearing for the respondent/bank would urge that the Registrar is not required to write an elaborate judgment in proceeding under Section 101 of the Act and also submits that this is not a case where principles of natural justice are violated, this Court finds that recording of reasons or deliberation on the defence tendered by the petitioners was the statutory obligation of the Deputy Registrar. The recording of reasons is one of the important facet of the principles of natural justice. When Rule 86-F requires the Registrar to render the judgment as to grant or rejection of the application,

the recording of reasons has to be presumed as mandate of law. Even otherwise, the Hon'ble Supreme Court of India in case of Kranti Associates (supra) observed that the quasi judicial authority is under obligation to record the reasons in support of its conclusions. Recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well. The reasons reassure that discretion has been exercised by decision maker on relevant grounds and by disregarding extraneous considerations. Such reasons in support of decision must be cogent, clear and succinct. The pretense of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process. The necessity of recording reasons emanates from the broad doctrine of fairness in decision making. Further the reasons facilitates the process of judicial review by superior Courts.

16. In light of aforesaid exposition of law, this Court holds that the impugned order sans requisite reasons and passed in defiance with the mandate under Rule 86 of Rules which incorporates requirement of passing judgment, thereby covers within it, facet of principal of natural justice. In the aforesaid eventuality, the impugned order cannot be sustained in law. The matter requires to be relegated back to the Deputy Registrar by quashing and setting aside the impugned order on limited ground, with further directions to expeditiously decide the proceedings in terms of mandate of Rule 86 of Rules of 1961. In result, the following order is passed :

ORDER

(i) Writ Petitions are partly allowed.

(ii) Impugned order dated 24.09.2024 passed by the Deputy Registrar Cooperative Societies, Solapur in Application No. Sangolabank/Kalam 101/748/2023-24 is quashed and set aside.

(iii) The Deputy Registrar Co-operative Societies, Solapur shall conduct denovo inquiry as per rules and procedure under statute and decide the application afresh by passing an appropriate reasoned judgment and order within a period of four weeks from the date of appearance of parties.

(iv) The parties shall appear before the Deputy Registrar on 17.11.2025.