IN THE COURT OF
JUDGE, CO-OPERATIVE COURT, SATARA AT SATARA
Presided Over by Smt.S.M.Waghmare

CC No-389/2024
CNR No- MHCO110003982024

Order Below Exh. 5

1. This is an application for temporary injuntion against the opponent no. 01 and 02 restraining them from recovery of loan amount or from taking any action for recovery of said amount.

2. The disputant stated that, The disputant stated that, the opponent no. 01 Patsanstha is registered under the provision of MCS Act 1960. On demand of the disputant and the opponent no. 03, the opponent no. 01 has sanctioned and disburssed loan of Rs. 20,00,000/- on 03.04.2018 with interest at rate 15% per annum on the surety ship of the opponent no. 04 and 05. The said loan was to be repay within stipulated period by monthly installments. But due to spread of Covid-19 disease in year 2019, the disputant suffered from loss in his business. That time the Govt permitted to give consession in payment of loan installment. Accordingly, the disputant has paid

14,52,164/-. The loan was valid till date 03.02.2014. After that also, the opponent no. 01 and 02 started to recover loan amount and given proposal to Sub-Registar Koregaon about recovery of Rs.6,30,075/-. The opponent also recieved recovery certificate from said authority. However, through this application the disputant stated that, to allow his application and restrain the opponent no. 01 and 02 from recovery of loan amount till disposal of this dispute on merity.

3. The opponent no. 01 and 02 duly served with summons. Accordingly they appeared and filed their written statement and say at exh. 32. The opponent stated that, the disputant and the opponent no. 03 have executed all the necessory document required for the loan. They have borrowed loan on date 03.04.2016. It was agreed to satisfy loan within 7 years. After giving sufficient opportunities to the borrower and sureties, the opponent no. 01 has recieved recovery certificate as per order passed in recovery application no. 24/2024. However as per the recovery certificate given under Sec 101 of MCS Act, amount of Rs. 7,67,974/- is due at the hands of disputant and opponent no. 03. To cause delay in recovery proceeding the disputant has filed this dispute on this ground. The opponent prayed for rejection of application of the disputant.

4. In view of these rival pleadings of both parties and arguments advanced on their behalf, following points arised for determination. And I have recorded my findings against each of them for the reasons stated below.

Sr. no	Points for determination	Findings
1	Whether the disputant has prima facie case?	In the negative
2	Whether balance of convenience is in favour of the disputant?	In the negative
3	Whether the disputant will suffer irreperable loss in case of rejection of injunction application?	In the negative
4	What order?	As per the final order

Reasons

As to Point no. 1

5. The point no 1 to 4 are interconnected and ancillary to each other, they are discussed together in order to avoid repetition.To substantiate their respective cases, both the parties have filed documents in respect of loan and other documents. Similarly, the application of the disputant and the say of the opponent is supported by their respective affidavites. The documents are mentioned in

following discussion as per their reference. I have heard Adv. Shri. P. C. Bhosale for the disputant and Adv. J. B. Yadav for the opponent no. 01 and 02.

6. Before discussing the merits, it will desirable to see the admitted position. It is admitted that, the disputant and the opponent no. 3 have borrowed loan of Rs.20,00,000/- from the opponent no. 01. It is also admitted that, the duration of repayment of loan was 7 years. Further it is admitted that, the opponent no. 01 has filed application under Sec 101 of MCS Act before Asst. Registar Koregaon for recovery of loan amount. The dsiputant has produced copy of notice given to him in said recovery proceeding along with list at exh. 03/1&2. It is required to note here that, the disputant has not produced documents executed at the time of disburssement of loan amount. It is case of the disputant that, he has paid Rs. 14,52,164/- in the loan account. Due to spread of Covid-19 disease he suffered from loss in his business. Therefore he failed to repay loan amount. On perusal of record, the disputant has produced copy of loan account extract along with list at exh. 3/3. It shows that, he has paid total 14,52,164/- in 02.08.2024. But it is required to note here that, the disputant has borrowed loan on 03.04.2016 and it was till 03.02.2024. The disputant has not produced any oral or documentary evidence to show that, due to spread of Covid-19 he suffered from loss and failed to repay loan amount. The documents of recovery proceeding produced at exh. 3/1&2 shows that on

06.08.2024 notice was given to the disputant, co-borrower and sureties. It means the opponent no. 01 has filed recovery application before concern authority after expiry of time limit of repayment of loan.

7. The disputant has produced copy of notice given to opponent no. 02 dated 05.03.2025 along with list exh. 23 and 29. It shows that, the opponent no. 01 and 02 have recieved recovery certificate on 16.12.2024 and in execution of said certificate they have issued this attachment notice. The disputant has not filed any document to show that, he has filed revision application against the order dated 16.12.2024. It means the order of issuance of recovery certificate is still in existance. Therefore prima facie it appears that the opponent no. 01 and 02 have not took any illegal action against the disputant.

8. During the argument the Adv. For the opponent submitted that, the disputant has filed this dispute and prayed to stay the recovery proceeding and to declare that the recovery proceeding is illegal. In such circumstances this Court having no jurisdiction to entertain such types of disputes. For that purpose he relied on following Case law-

1. **Kedarling Vikas Seva Society Ltd.**

v/s

Dinkar Bhimrao Raut

2003 (1) Mh.LJ

"It is held in this case that, recovery certificate obtained by petitioner society after following due procedure- Certificate is the circumstances having attained finality cannot be challenged by raising dispute under Sec 91 of MCS Act."

9. On the other hand the Adv for the disputant argued that, this Court having jurisdiction to entertain this dispute for that purpose he has relied on following case law.

1. Mr. Sadanand Belvalkar

V/s

State of Maharashtra

Writ Petition no. 4057 of 2020 dated 13.01.2022

"It is held in this case that, legality of the proceeding under Sec 101 cannot be challenged by filing a dispute under Sec 91. For foundation of filing dispute can be refused by Bank to give benefit of OTS. Issueance of recovery certificate is one aspect and grant of benefit of OTS is another aspect. Therefore dispute is mentainble under Sec.91 of MCS Act."

10. On perusal of record, it appears that, the disputant prayed to grant stay against the recovery proceeding in execution of recovery

certificate issue under Sec 101. Further the disputant also prayed to declare that the recovery proceeding is illegal. Lastly, the disputant prayed that, to give directions to the opponent no. 01 and 02 to recover loan amount by granting simple interest in OTS Scheme. However, it appears that, the opponent first denied the recovery and legal recovery proceeding of loan amount. On the other hand he agreed to pay the loan amount in OTS Scheme with simple interest. In such circumstances, no doubt the disputant is entitled to pay remaining amount. He cannot seek any relief against the recovery certificate issue by concern authority. The disputant has not filed this dispute merely on the pair of OTS Scheme. Therefore the above cited case law filed by the disputant is not applicable here. As stated above the disputant has not filed any appeal/revision against the order dated 16.12.2014 of issuance of recovery certificate. However the recovery proceeding become legal. On the basis of this fact the above case law filed by the opponent is applicable here.

11. The disputant stated that he has paid total loan amount of Rs 14,52,164/-. The opponent no. 01 and 02 are tried to recover the remaining loan amount with the compound and penal interest. But disputant is ready to pay the OTS amount along with simple interest. Accordingly, The disputant and the opponent no. 3 are not entitled to pay amount mentioned in attached notice dated 05.03.2025. On perusal of the loan account extract of the disputant it appears that after 02.08.2024 amount of Rs. 6,43,275/- is due

against the disputant. But as stated above, there is nothing prima facie on record to show that the opponents are try to illegally recover loan amount from the disputant. Hence, it cannot be conclude even prima-facie that the disputant has paid his loan and loan of the opponent no.03. In the circumstances, I hardly see any substance in the submissions advanced on behalf of the disputant.

12. Above discussion clearly shows that the disputant has failed to establish the prima-facie case in his favour. Moreover, the opponent have sent a notice in execution of recovery certificate. It cannot say that the opponents have took any illegal action against the disputant for recovery of loan amount. Thus, as the disputant has not established the prima-facie case, in his favour, I answer point no.01 in the negative.

<u>As to Point No.02 to 04 :-</u>

13. As there is no prima facie case in favour of the disputant, the question of balance of convenience and irreperable loss would not arise. Even otherwise as discussed above the loan account of the disputant found not totally paid. On the other hand, it is also not found that, the opponents have taken any illegal action for recovery of loan amount against the disputant. Hence it will be too risky to grant injunction in favour of the disputant as there is every likelihood

of misuse of such injunction order against the opponent. In such circumstances irreperable loss will be cause to the opponent if an injunction order is passed. Thus balance of convenience is also not in favour of disputant also. Accordingly, I have answer Point no. 2 and 3 in negative. And for point no. 4 I pass following order.

ORDER

1. The application is rejected.
2. Cost in main cause.

(Dictated and pronouced in open court)

Date - 08.04.2025

Satara

sd/-

(Smt. S. M. Waghmare)

Judge

Co-operative Court, Satara