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IN THE COURT OF JUDGE CO-OPERATIVE COURT NASHIK
(Before Shri U.M.Kulkarni)

ABN. Case No- 178/2024

Shri Sudam Shankar Londhe & another

:- Disputants

Versus...

The Custodian / Receiver

Sinnar Marchant Co-op. Bank Ltd Sinnar
Tal-Sinnar, Dist-Nashik

:- Opponent.

Order Below Exh 12.

1. This is an application filed by opponent bank U/Order- 7 R-11 of CPC for rejection of plaint/ dispute. It contended that, present dispute is filed by disputants praying to release the encumbrance on their properties and for cancellation of the mutation entries etc. In fact the registration of the opponent bank has been already cancelled, as per order dated 26/02/2021 passed by District Deputy Registrar and accordingly as per rule 89 (17) of MCS Rules the custodian has been appointed on the said bank. In the circumstances it is improper and illegal to conduct present dispute before this court. It is further contended that the opponent bank has obtained recovery certificate under section 101 in respect of loan taken by Shri Deepak Sundarsa Kshaitriya, in the year 2009 and accordingly execution thereof has been started. It is further contended that the relief's claimed by the disputants are beyond the jurisdiction of this court. The reliefs are regarding cancellation of mutation entries taken under revenue law and therefore the disputants have no locus standi to file present dispute. The dispute is barred by law and hence liable to be rejected. Accordingly the opponent bank has prayed for rejecting the dispute.

2. The disputants have replied the application by filing their say at Exhibit 16. They contended that the application is not legal and proper. In fact in para 2 of the dispute

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application the disputants in the title clause of the dispute itself have contended that the opponent bank is went in to liquidation and it has been dissolved. Along with written statement the opponent has filed circular dated 02/08/2018 issued by the Commissioner for cooperation, and Registrar of cooperative societies which is regarding procedure for appointment of custodian / receiver on the societies of which registrations are cancelled. In para 12 of the said circular there is procedure laid down for conducting the suits , the disputes and as per that the custodian / receiver has been conferred rights to conduct the suits. Therefore the present dispute filed by disputants regarding their legal rights is illegal and proper. There is no provision which bars filing of such dispute before this court. The disputants contended that the allegations in para the of the application are not proper. In fact there is a provision under section 156 read with rule 107 for recovering amount against whom the recovery certificate has been issued. In spite of that the opponent bank, after death of Shankar Sahadu Londhe, has started action against the disputants claiming through him, though there is no recovery certificate obtained against the disputants. The said fact has been purposefully suppressed by the opponent bank. It is submitted that under section 91 of MCS act 1960 there is a provision to decide the dispute if it is touching the business of the society and it is in respect of the rights of a member, the person claiming through member or deceased member. Late Shankar Sahadu Londhe was a member of opponent bank. The present dispute pertains to loan recovery. The disputants are claiming through deceased member and hence the dispute is not barred. The reliefs claim in the dispute are legal and ancillary and based on mixed question of law and fact and therefore residing that the decision can be taken only after recording the evidence. The dispute filed is legal and proper.. Section 94 lays down the procedure for conducting the dispute and therefore barring some provisions under CPC other provisions are not applicable to the dispute filed under section 91 and therefore the application is liable to be rejected. Accordingly the disputants have prayed for rejecting the application with cost.

3. Heard both sides learned Advocates at length. Perused the record.

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4. In the light of rival contentions of the parties, following points arise for my determination and I have recorded my findings thereon for the reasons as under,

<u>Points</u>	<u>Findings</u>
1. Whether present dispute is liable to be rejected U/O 7 Rule 11 of CPC ?	In the affirmative.
2. What order ?	Dispute is rejected.

R E A S O N S

5. As to Points No 1 & 2 :- Under Order 7 Rule 11 of CPC, the plaint shall be rejected by court (a) where it does not disclose a cause of action,

(b) where the relief claimed is under valued.....and....

(c) where the relief claimed is properly valuedbut..

(d) where the suit appears from the statement in the plaint to be barred by any law,

(e) where it is not filed in duplicate

(f) where the plaintiff fails to comply with

Thus as per above provision among other grounds, the plaint shall be rejected by court where the suit appears to be barred by any law from the statement made in the plaint.

6. In the present case there are two objections of the opponent bank on which it prayed for rejecting the dispute viz. that, the registration of opponent bank is already cancelled as per order dated 26.02.2021 passed by the DDR Nashik and custodian has been appointed on it and secondly the opponent bank has already obtained recovery certificate under section 101 of MCS Act 1960 in respect of the loan taken by Deepak Sundarsa Kshaitriya in the year 2009 and it is put to execution and hence on both the said counts the dispute is not maintainable before this court and hence it is liable to be rejected.

7. Therefore the question is whether these objections of the opponent bank can constitute a grounds for rejecting this dispute ? It is cardinal principle of law that while considering prayer for rejection of plaint the averments made in the plaint only are germane and not the defense or objection taken by defendant in his written statement. In this regard it is well settled that while considering such prayer, the plaint must be read as a whole and on its meaningful reading, the court has to conclude whether the averments made in the plaint constitutes a ground for rejecting the same. The defense raised and documents relied upon by the defendant can not be considered and looked in to for deciding such application.

8. In the light of said principle, the dispute averments in this case if seen, it is contended by disputants in para 16 of the dispute that, ***" as per the information of disputants the registration of bank has been cancelled and it is dissolved and for completion of the pending action / proceeding the custodian has been appointed on it as per order. In the present situation since the opponent bank does not have legal existence, no new rights remained for taking action against the property and hence it is legal and proper to release the concerned property from encumbrance"***. Similar contention is raised in para 2 of the dispute application. Furthermore in para 12 of the dispute it is averred by disputants that, ***" the opponent bank had filed claim for obtaining recovery certificate under section 101 of MCS Act 1960 in respect of alleged loan and it appears that the deputy registrar accordingly seems to have issued the recovery certificate on 30.05.2009, however the said certificate is issued against only the Deepak Kshatriya and his two guarantors. The deceased Shankar Sahadu Londhe was not party to the said 101 proceeding nor the said certificate was issued against him. As per section 156 read with rule 107 the further recovery action can be taken only against the person against whom the recovery certificate has been issued"***.

9. Thus the disputants have clearly averred that the registration of opponent bank is already cancelled and it is dissolved and a custodian has been appointed over it to continue the continuation of pending action. It is further averred by disputants that a recovery certificate under section 101 is obtained by opponent bank in respect of loan taken by Deepak Kshatriya, the deceased Shankar Sahadu Londhe was not party to the said proceeding. The disputants have produced documentary evidence in support of the said contentions. Therefore the question is whether on the said contentions the present dispute can be said to be barred by law ?

HA 10. Under section 36 of MCS act 1960 the registration of a society shall render it a body corporate by the name under which it is registered with perpetual succession and a common seal and with a power to acquire, hold and dispose of property, to enter into contracts, to institute and defend suits and other legal proceedings and to do all the things as are necessary for the purpose for which it is constituted. Thus as per this provision the registration of a society renders it a body corporate. That means the registration gives an existence to the society as a body corporate with a power to acquire, hold and dispose of the property etc. Under section 21 of the said Act, the registrar shall make an order cancelling the registration of a society if it transfers the whole of its assets and liabilities to another society or the mix with another society or divides itself into 2 or more societies or if it's sapiens are wound up or it is the registered under the provisions of subsection 1 of section 21A or when you proceeding in respect of the society are closed or terminated under section 109. The society shall from the date of such order cancellation be deemed to be dissolved and shall cease to exist as a body corporate. Thus as per this provision upon cancellation of the registration of a society by the registrar its existence as a body corporate comes to an end and it is deemed to be dissolved.

11. In the present case as stated above the disputants themselves comes with a contention that the registration of opponent bank is cancelled and custodian is appointed

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on it. The said order of registrar still subsists. Therefore on the basis of such dispute averments itself it can be concluded that on the date of filing of the dispute the opponent bank was not in existence as a body corporate. Its said existence had already come to an end on the date of dispute.

12. **Section 91 of MCS Act 1960** says about disputes. The said provision reads that ((1) Notwithstanding anything contained in any other law for the time being in force, any dispute touching the constitution, elections of the committee or its officers other than elections of committees of the specified societies including its officer, conduct of general meetings, management or business of a society shall be referred by any of the parties to the dispute, or by a federal society to which the society is affiliated or by a creditor of the society, to the co-operative Court if both the parties thereto are one or other of the following:-

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- (a) a society, its committee, any past committee, any past or present officer, any past or present agent, any past or present servant or nominee, heir or legal representative of any deceased officer, deceased agent or deceased servant of the society, or the Liquidator of the society or the official Assignee of a de-registered society.
 - (b) a member, past member of a person claiming through a member, past member of a deceased member of society, or a society which is a member of the society or a person who claims to be a member of the society;
 - (c) a person other than a member of the society, with whom the society, has any transactions in respect of which any restrictions or regulations have been imposed, made or prescribed under sections 43, 44 or 45, and any person claiming through such person;
 - (d) a surety of a member, past member or deceased member, or surety of a person other than a member with whom the society has any transactions in respect of which restrictions have been prescribed under section 45, whether such surety or person is or is not a member of the society;
 - (e) any other society, or the Liquidator of such a society or-de-registered society or the official Assignee of such a de-registered society.

Provided that, an industrial dispute as denned in clause (k) of section 2 of the Industrial Disputes Act, 1947, or rejection of nomination paper at the election to a committee of any society other than a notified society under section 73 - 1 C or a society

specified by or under section 73 -G, or refusal of admission to membership by a society to any person qualified therefore ***or any proceeding for the recovery of the amount as arrear of land revenue on a certificate granted by the Registrar under sub -section (1) or (2) of section 101 or sub -section (1) of section 137 or the recovery proceeding of the Registrar or any officer subordinate to him or an officer of society notified by the State Government, who is empowered by the Registrar under sub -section (J) of section 156, or any orders, decisions, awards and actions of the Registrar against which an appeal under section 152 or 152 A and revision under section 154 of the Act have been provided shall not be deemed to be a dispute for the purposes of this section.***

Thus the aforesaid provision confers exclusive jurisdiction in co-operative court to entertain the dispute if it is touching the business or management of a society and it is between the categories of persons as described in clauses (a) to (e) of sub-section 1. To attract section 91, the dispute must be between a co-operative society and its member, past member or a person claiming through a member etc. Thus to maintain the dispute under section 91 of the Act, it is essential that the society must be in existence. The society presupposes a registered co-operative society duly registered under the provisions of MCS act 1960. In the present case as already stated above, on the date of filing of this dispute is self the opponent society had already ceased to be a body corporate, its registration was cancelled and therefore it has no illegal existence as such. Therefore I have to conclude that the dispute, by or against the society which has in fact no legal existence, is no dispute under section 91 of MCS Act 1960. Therefore apparently the dispute is clearly barred in law. The learned Advocate for disputant's Shri J.L.Tadage submitted that the registration of opponent bank though has been cancelled the custodian has been appointed on the said bank to look after the pending actions and therefore the dispute can be filed against the custodian of the opponent bank. He further argues that in fact provisions of civil procedure code are not applicable to the trial of a dispute before this

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court and hence objection of the opponent bank is liable to be rejected. In his submission there cannot be a rejection of a dispute under the provisions of MCS Act 1960. The learned Advocate Shri Tadage though argued so, did not cite any case law on the point. It is true that separate trial procedure is laid down in the MCS Rules 1961 in relation to a dispute. However that doesn't mean the provisions under CPC cannot be looked into, more so, when required. There is no absolute bar to look for CPC provisions when absolutely required and more particularly when similar provision is absent in the procedural rules governing the dispute before co-operative court. Therefore I don't find much substance in the said submission of learned advocate for disputant's.. As far as appointment of the custodian on the opponent bank is concerned, the said appointment is secondary. What is primary is the cancellation of registration of the opponent bank as a cooperative society. The appointment of custodian is followed by the cancellation of registration of the opponent bank. Therefore if the opponent bank has lost its existence as a registered co-operative society then the very fact that the custodian has been appointed on it has very least significance. After all what is to be seen is whether the society was / is in existence. In this case the society was not in existence. Therefore the dispute under section 91 is barred.

13. Second important aspect of the matter is, the disputants themselves comes with an admission about existence of the recovery certificate in the hands of opponent bank. It is their contention that the said recovery certificate is not issued against deceased Shankar Sahadu Londhe. He was not party to the said proceeding. The said recovery certificate therefore cannot be executed against the disputant's who were not parties to the said proceeding. In my considered opinion, apart from the aspect whether the recovery certificate can be executed against the disputant's or not, the real issue is whether dispute before co-operative court is maintainable that too after issuing the recovery certificate by the registrar. The proviso as aforesaid to Section 91 in clear terms says that any proceeding for recovery of the amount as areas of land revenue on a certificate granted by

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the registrar under sub-section 1 or 2 of section 101 or section 137 or the recovery proceeding of the registrar or any officer subordinate to him ... against which an appeal or revision have been provided, shall not be a dispute for the purpose of this section.

Thus after issuance of the recovery certificate by the registrar under section 101 of the Act, the filing of dispute before co-operative court is clearly and legally barred. Therefore in my considered opinion the provisions of Order 7 rule 11 (d) of CPC attracts here on aforesaid both the counts. On careful consideration of the dispute averments it is found that the disputants have filed present dispute against the opponent bank which has no legal existence as such as a body corporate and secondly the dispute has been filed after coming into existence the recovery certificate under section 101 in the hands of opponent bank. Therefore in the light of the legal position as discussed above, in my considered opinion the present dispute, from the statements made in the dispute application itself, is barred in law, to be filed before this court and therefore the dispute has to be rejected. Therefore with the aforesaid discussion I record my finding on point No 1 in the affirmative manner. In answer to point No 2, in the result I proceed to pass the following order,

Order

1. The application stands allowed.
2. The plaint dispute Exh 1 as filed by disputant's is hereby rejected under Order 7 rule 11 (d) of Civil Procedure Code 1908, since it being barred by law.
3. An award be drawn up accordingly.

Date :- 04.07.2026


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Judge

Co-op. Court Nashik

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In view of order passed

) below Exh 12 today the

dispute stands rejected

) w/o order 7 rule 11(d) of CPC
Parties to note. Proceeding closed



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Judge
C. N. Mahalik.