ABN CASE NO.321/2022

CNR NO.MHCO 150003642022

ORDER BELOW Exh.5
(Delivered on 14/02/2023)

Shri.Dattatray Ramchandra Dhokare ....Disputant

V/s.

Khedgaon Small Vividh Karyakari Seva Sahkari
Sanstha Mdt. Khedgaon, Tal.Dindori, Dist.Nashik.
And Others. ....Opponents

1] This application is filed by the disputant seeking temporary injunction to stay the proceedings with the co-operative department filed by the opponents for recovery of amount.

Brief facts of the application are as under:

2] It is averred by the disputant that the opponent No.1 is a co-operative society registered under the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred as the M.C.S.Act) and aim and object of the society is to give crop loans to the members under its jurisdiction. The members of the opponent No.1 are agriculturists whose property come under the jurisdiction of the opponent No.1. The opponent No.2 is a bank registered under the M.C.S. Act and its object is to provide finance to the co-operative societies in the Nashik District. The opponent No.2 is run by the Administrator. Opponents No.3 & 4 are officers of the opponent No.2 bank. It is further averred that the disputant is member of the opponent No.1 in view of which the disputant had taken various small loans from the opponent No.1 and also repaid the same. The opponent No.1 distributes loan to its members as per the sanction from the opponent No.2 according to the Ka Ma Patrak. On 22/6/2011 the disputant obtained loan from the opponent No.1

society of Rs.20,05,000/- which was to be repaid by 23/6/2012. However, before 23/6/2012 the opponent No.1 and 2 renewed the loan and sanctioned the same vide Ka.Ma.Patrak and approved the loan of Rs.23,00,000/- on 25/6/2012. Hence, the renewal loan was of Rs.23,00,000/-. The opponent No.1 informed the disputant that to show that the recovery is within the stipulated period, the loan was renewed. However, the disputant had never asked for any renewal of the loan. Instead of renewing loan of Rs.21,87,150/- the loan was renewed to Rs.23,00,000/- and same was sanctioned. Thus there is difference of Rs.1,12,850/-. However, this was not informed to the disputant.

3] Likewise, while renewing the loans by opponent No.2 i.e. in the year 2014 an amount of Rs.35,500/-, in the year 2015 an amount of Rs.48,341/- in the year 2016 an amount of Rs.26,400/-, in the year 2017 an amount of Rs.19,850/-, in the year 2018 an amount of Rs.29,000/-, in the year 2019 an amount of Rs.25,750/-, in the year 2020 an amount of Rs.46,250/- and in the year 201-22 an amount of Rs.2,87,515/- appear to be the difference amounts. Thus, there is difference in the recoverable amount and the renewed amounts. Such information was never given to the disputant. Also these amounts were not given to the disputant by the opponent Nos.1 and 2. The amount which was obtained by the disputant was as per the sanctioned Ka.Ma.Patrak by the opponent No.2. The disputant has never taken any loan beyond the rules of the society.

4] The disputant is the member of opponent No.1 and has rights to ask for accounts from the opponent No.1. In the year 2013 relying on the opponent No.1 and 2 the disputant had given his consent to renew the loan and the disputant also repaid interest to the opponent No.1 within the prescribed time. In the year 2022 when the disputant asked for loan, he was informed that Ka.Ma.Patrak was not sanctioned and the permission to renew the loan was not given. Thereafter, the disputant asked for the account extract and he was surprised to see that there were differences in the amounts and the disputant never received the difference amount. The interest levied upon the loan account of the disputant is illegal and the opponent No.1 is responsible for the same. The opponent No.2 has not given benefit of any Government schemes regarding concession or waiver scheme. The disputant has never obtained any amount from the opponent in the form of cash or cheques from the opponent No.1 and 2 except for the amount of the loan taken in the year 2013. The disputant had deposited amounts in the loan account. However, the same was not adjusted towards the principal loan amount by the opponent No.2. Hence, because of this wrong renewal method by the opponent No.2 the amount is increased. The disputant had never given any such rights of loan renewal to the opponents.

5] The opponent No.1 and 2 have shown this disputant as a defaulter and initiated recovery proceeding against the disputant. The disputant is ready to deposit the amount with the opponents. However, the disputant requires time for the same. Because of the mistake of opponent No.2, there is a huge outstanding amount against the disputant and because of which different proceedings have been initiated with the co-operative department. Hence, it is necessary that the recovery proceeding initiated with the co-operative department be stayed. There is prima-facie case in favour of the disputant and balance of convenience lies in favour of the disputant. If the recovery proceedings are not stayed then irreparable financial loss will be caused to the disputant. Since there apparently difference in the amount which can be seen from the loan account extract, the disputant has prayed to stay the proceeding against the disputant with the co-operative department till the accounts are settled.

6] The opponent No.1 has filed its say at Exh.22 wherein it contended that the disputant had obtained loan from the opponent No.1 and had renewed the loan with the opponent No.2 to 4. The information about the renewal is given to the disputant and accounts are properly maintained. As per the loan documents filed with the dispute, there is outstanding of amount of Rs.1,25,22,500/- from the disputant and opponents had issued notice to the disputant for demanding this outstanding amount. The disputant had signed all the loan documents given by the opponent No.1. The recovery proceeding u/s.101 of the M.C.S. Act is appropriate and opponents have hope to succeed in that. On the contrary, because the disputant has not repaid the amount the opponent No.2 bank is facing financial problems. In view of Sec.163(3) of the M.C.S. Act, jurisdiction of the Co-operative Court is barred. There is no balance of convenience in favour of the disputant. If the stay is granted then it will cause injustice to the opponent No.1. The disputant is only avoiding to repay the loan. There is no prima facie case in favour of the disputant and if the stay is granted to the recovery proceeding then irreparable loss would be caused to the opponent No.1. Hence, prayed to reject the application with cost of Rs.50,000/-.

7] The opponent No.2, 3 & 4 have filed say to this application at Exh.21. It is contended by these opponents that they are employees of the opponent No.2. Nashik District Central Co-operative Bank is a registered bank and has not been made party to this dispute. Hence, it is proper party to the dispute and since the proper party is not made party to the dispute, no prayer can be granted against it. The renewal of the loan was done as per the permission of the disputant and as per the renewed amount, the disputant has obtained and utilized that amount. The disputant has never complained about that amount and because of which, the loans of the disputant were renewed from time to time. The disputant is falsely stating that she never obtained loan. The sanctioned amount was transferred to the savings account of the disputant and the disputant withdrawn the same by cheque or cash and the same can be perused from the statements of opponent No.1 and 2 regarding the loan of the disputant are perused together. It is not true that the disputant obtained the loan as per the rules and the same can be seen from the Audit Report of the opponent No.2 which shows illegal transaction. In view of which the Joint Registrar, Co-operative Societies, Nashik had directed the Auditor to proceed as per Section 81 (5-B) of the M.C.S. Act.

8] It also appears that the disputant has defrauded the opponent No.1 and 2. The proceeding against the disputant are legal hence no injunction can be granted against them. The outstanding amount against the disputant is huge and if the injunction is granted it will only cause hurdle to recover the amount from the disputant. The cheques of the amounts issued by the opponent No.1 to the disputant were deposited in the savings account of the disputant and thereafter the disputant has withdrawn the same by cheque or cash. Hence, the disputant does not have any right to complain regarding the same. The disputant has alternate remedy to take defence in the proceeding with the co-operative department. Hence, this application is not maintainable. The proceeding u/s.101 of the M.C.S. Act have already been initiated. Hence, there is no prima-facie case in favour of the disputant. Accordingly, opponents prayed to reject the application.

9] Heard both the sides at length. Considering the rival pleadings of the parties, following points arose for my determination and I record my findings thereon supported with the reasons as under.

NO.	POINTS		FINDINGS
(1)	Whether prima facie case is in favour of the disputant?	…	Yes
(2)	Whether balance of convenience lies in favour of the disputant?	...	Yes
(3)	Whether the disputant will suffer irreparable loss if the injunction, as prayed, is not granted?	…	Yes
(4)	What order?	…	Application is allowed as per final order.

R E A S O N S

AS TO POINTS NO.1 TO 4

10] It is averred and admitted that the opponent No.1 is Multipurpose Co-operative Credit Society registered under the M.C.S.Act and main object of the society is to give crop loan to members whose property comes under the jurisdiction of the society. Opponent No.2 is a co-operative bank registered under the M.C.S. Act and its object is to provide finance to the co-operative societies in Nashik District. It is averred by the disputant that he is member of the opponent No.1 and that he had obtained loan from the opponent No.1 and repaid the same. On 22/6/2011 he had obtained crop loan of Rs.20,05,000/- which was to be repaid till 23/6/2012. Before

23/6/2012 opponent No.1 and 2 renewed the loan as per the Ka.Ma.Patrak on 25/6/2012 amounting Rs.23,00,000/-. Opponent No.1 and 2 informed the disputant that the renewal was required to show that the amount was repaid within the stipulated period. Hence, the disputant gave consent to renew the loan. However, the disputant had never asked the opponent No.1 and 2 to renew any loan amount of the loan. Actually, the amount of Rs.20,05,000/- was required to be renewed but instead of that renewal amount increased to Rs.23,00,000/-. Thus, there is difference of Rs.1,12,850/-. The increase in the amount was not intimated to the disputant. Also the calculation of the interest rate was not informed to the disputant nor the amount was given to the disputant.

11] Likewise, while renewing the loans by opponent No.2 i.e. in the year 2014 an amount of Rs.35,500/-, in the year 2015 an amount of Rs.48,341/- in the year 2016 an amount of Rs.26,400/-, in the year 2017 an amount of Rs.19,850/-, in the year 2018 an amount of Rs.29,000/-, in the year 2019 an amount of Rs.25,750/-, in the year 2020 an amount of Rs.46,250/- and in the year 201-22 an amount of Rs.2,87,515/- are the excess amount shown by the opponents. Thus, there is difference in the recoverable amount and the renewed amounts. Such information was never given to the disputant. Also these amounts were not given to the disputant by the opponent Nos.1 and 2. The amount which was obtained by the disputant was as per the sanctioned Ka.Ma.Patrak by the opponent No.2. The disputant has never taken any loan beyond the rules of the society.. The amounts which are shown by the opponent No.1 are never received by the disputant. Because of the wrong renewal procedure of the opponents, outstanding amount has drastically increased. The amount outstanding against the disputant needs to be recalculated.

12] In defence, the opponent No.1 has contended that the disputant has obtained loan from the opponent No.1 which disputant failed to repay within the stipulated time and therefore, the loans were renewed from time to time. The loan accounts are properly maintained and information and intimation about the same was always given to the disputant. Every year disputant had taken loan from the opponent No.1. The loan amount was always transferred to the account of the disputant and the disputant has signed on the loan documents also. The disputant has not come with clean hands and is only trying to avoid repayment of the outstanding amount. The opponents No.1 to 4 contended that the disputant obtained loan amount and has also taken benefit of the same and inspite of obtaining the loan, the disputant did not pay the outstanding amount. Hence, the proceeding u/s.101 of the M.C.S. Act has been filed filed and is pending before the Asstt. Registrar, Co-operative Societies, Dindori.

13] The Ld. Advocate for the opponents Shri.S.G. Sonawane and Shri.S.R. Mujumdar argued that, the loan was obtained by the disputant and hence the proceeding u/s 101 was initiated, the documents filed also show that the disputant had made an application to obtain loan. Further that once the proceedings u/s 101 are initiated this Court would not have jurisdiction to entertain the dispute and grant injunction.

14] Ld. advocate for opponent No.2 to 4 relied upon the cases, Kusum Gupta And Others v/s. Sarla Devi and Others of the Hon’ble High Court of Allahabad reported in 1988 CJ (All) 103, in the case of Indian Bank

Association And Another V/S. Calcutta Transport Operators Co-Operative Service Society Limited And Another of the Hon'ble High Court of Calcutta reported in 1981 CJ(Cal) 172, in the case of Municipal Corporation Of Delhi V/S. Suresh Chandra Jaipuria of the Hon'ble Supreme Court of India (Delhi) reported in 1976 CJ(SC) 274, in the case of Surat Municipal Corporation V/S. Rameshchandra Shantilal Parikh reported in 1984 CJ(Guj) 258, on the point of grant of relief of injunction. Perusal of the cases, it enunciates the settled principles underline granting of injunctions and that temporary injunction cannot be claimed as mater of rights, the three basic aspects regarding the prima facie case, balance of convenience and irreparable loss and have to be considered while considering any application for temporary injunction. That injunction is discretionary equitable relief which cannot be granted when equally efficacious relief is available.

15] Admittedly, the proceeding u/s.101 of the M.C.S. Act are initiated by the opponent No.1. However, the proceeding u/s.101 is not concluded. It is also admitted that the disputant had obtained loan from the opponent No.1. The opponents No.2 to 4 have filed copies of the loan documents in support of their contention which includes loan application, promissory note, etc. Though the disputant has admitted that he obtained loan from the opponent No.1 and has also stated that he gave permission to renew the loan. However, he has specifically denied the renewal of the loan to the extent that the amount which was renewed was excess than the amount which was required to be renewed. Thus, it appears that the amount of renewal loan is required to be calculated and which is main prayer of the disputant. In view of which since there is dispute about the amount and the calculations of the loan, it would require full fledge trial for which the substantial evidence is required and which cannot be decided at this interim stage. If the amount or legality of the renewal loan of the disputant is found different then prayers in the proceeding u/s.101 then there is likelihood that there will be conflicting orders.

16] On perusal of the pleadings of both parties, it appears that the proceeding pending before this Court might result in affecting the proceeding u/s.101. Hence, to protect the interest of the parties during the proceeding before the Asstt. Registrar, Co-operative Societies, it is appropriate that the recovery proceeding before the co-operative department be stayed pending the decision of this dispute. As if the proceeding u/s.101 is decided it will result in rendering this dispute infructuous. Hence, there appears prima facie case in favour of the disputant.

17] Also the balance of convenience lies in favour of granting the stay to the proceeding u/s. 101, as if the recovery certificate is issued then more hardship would be caused to the disputant as the liability of the disputant will already be adjudicated on basis of the documents filed therein which the disputant has denied in the present dispute rendering this dispute infructous. As such no hardship will be caused to the opponents if injunction is granted as this order is temporary in nature i.e. till the decision of the dispute, the opponents are not permanently restrained from pursuing the remedy which is pending before the Co-operative Department. However, prima facie there appears some outstanding amount from the disputant. While deciding this application it is also necessary that no injustice will be caused to either party and it is necessary to protect interest of both the parties. It is also to be seen that there is recovery of amount from the disputant and that the working of the society also depends on the amounts given as loan and repaid. Hence, it is just that the disputant be required to pay some amount pending decision of this dispute so that there is regular functioning of the society. Considering the settled principles in the cases cited supra, I answer the point Nos. 1 to 3 in the affirmative and in answer to the point No.4, I pass following order:

ORDER

(1) Application is hereby allowed.

(2) The proceeding before Asstt. Registrar, Co-operative Societies, Dindori u/s.101 of the M.C.S. Act, 1960 filed by the opponent No.1 against the disputant is hereby stayed till the decision of this dispute, on the disputant depositing 10% of the claimed amount in the proceeding u/s.101, within the period of 20 days from today with the opponent No.1.

(3) The disputant is directed to expedite this dispute and abstain from taking adjournments.

(4) Cost in cause.

Sd/-
(Smt.R.P.Ghole)
Judge,
Co-operative Court,Nashik.

Date:14/02/2023
Place:Nashik.