ABN CASE NO.324/2022

CNR NO.MHCO150003682022

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

Shri.Amol Dattatray Patil .....Disputant

V/s.

Khedgaon Bruhat Vividh Karyakari Seva
Sakhari Sanstha Mdt. ......Opponents
and Others.

1] Present application is filed by the disputant seeking injunction to stay the proceeding initiated by the opponents with the co-operative department.

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 Nashik District. The opponent No.2 is run by an Administrator. Opponents No.3 & 4 are officers of the opponent No.2 bank. The opponent No.1 distributes loan to its members as per the sanction from the opponent No.2 in view of the Ka Ma Patrak.

3] Since 30/6/2021 the disputant is a member of the opponent No.1 and has account No.0001538 with the opponent No.1. The disputant's father Shri.Dattatray Ramchandra Patil obtained loan from the opponent No.1

in the year 2011 and opponent No.1 and 2 renewed the loan from time to time. During which on 22/7/2021 the opponent No.2 disbursed loan amount of the disputant's father Shri.Dattatray R.Patil to the disputant's account and in the account of his brother and mother, namely Shivraj Dattatray Patil and Vidyatai Dattatray Patil respectively being an amount of Rs.55,00,000/-, Rs.55,00,000/- and Rs.56,00,000/- respectively. The opponent also opened his new loan account. The disputant and his brother and mother never asked for any loan amount from the opponent No.1 and 2. On 22/7/2021 an amount of Rs.55,00,000/- was transferred from the disputant's father's loan account however, the disputant has not received any amount. Because of the renewal method of disputant's father's loan account by opponent No.1 and 2 they wrongly transferred the amount to the disputant's account and because of the renewal method the amount has drastically increased.

4] The disputant's father has filed CC No.319/2022 for settling the account and which case is pending. The disputant has never taken loan from the opponents and it is also necessary that the accounts be properly calculated. It is also necessary that the opponent No.1 to 4 keep proper account. The opponent No.1 has wrongly transferred amount to the disputant's account and has shown the loan outstanding from the disputant which was to be repaid by 31/5/2022. The disputant is member of opponent No.1 and has right to ask for proper accounts from opponent No.1. Considering the above since there is variation in the calculation it is necessary that the matter before the Co-operative Department be stayed. There is prima facie case in favour of the disputant and balance of convenience lies in his favour. Hence, the disputant has prayed to grant stay to the proceedings before the co-operative department.

5] The opponent No.1 has filed its say at Exh.22 wherein it contended that the disputant had obtained the loan from the opponent No.1 and has not repaid the amount. The disputant did not pay any amount and renewed the loan. Hence, the disputant is liable to pay amount of the loan and interest to the opponent No.1. Since the disputant is liable to pay amount this suit is vague. The documents filed by the disputant show that amount of Rs.55,00,000/- is outstanding and which the disputant is liable to pay to the opponent No.1. The opponent No.1 has filed proceedings u/s.101 of the M.C.S. Act which is pending before the Asstt. Registrar, Co-operative Societies, Dindori. The opponent No.1 has hopes to succeed and get recovery certificate in the recovery proceeding u/s.101. This dispute is filed by the disputant only to obstruct the proceeding u/s.101 so that opponent No.1 does not succeed to obtain the recovery certificate. Inspite of notice by the opponent No.2 for recovery of amount of Rs.55,00,000/- the disputant did not repay the amount which shows that he does not have any intention to repay the amount. The disputant does not have any prima-facie case. 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. Hence, prayed to reject the application with cost of Rs.50,000/-.

6] 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 seen if 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 Joint Registrar, Co-operative Societies, Nashik had directed the Auditor to proceed as per Section 81 (5-B) of the M.C.S. Act. It also appears that the disputant has financially cheated the opponent No.1 and 2.

7] 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 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.

8] 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 there is prima facie case 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

9] It is averred by the disputant that he is member of the opponent No.1 and has account No.000974 with the opponent No.1. 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 further averred that the disputant's father Shri.Dattatray Ramchandra Patil had obtained loan from the opponent No.1 and while renewal of his loan, the opponent No.1 without consent and intimation to the disputant transferred the amount to the disputant's account and to the account of his brother and mother. The opponent No.1 has also opened loan account of the disputant without his knowledge and consent. Because of the renewal procedure of the opponent No.1 and 2 the amount of the loan outstanding against the disputant has drastically increased and which now shows an outstanding of Rs.55,00,000/- from the disputant. Opponent No.1 and 2 have transferred the amount without any application of the disputant and without his consent. The disputant has not received any amount which is shown by the opponent No.1. The opponents have done this to show 100% recovery for the opponent No.2. Since the disputant has not received the loan amount and the amount transferred was without his application and consent it is necessary to stay the proceeding before the co-operative department.

10] The opponent No.1 has contended that the disputant obtained loan from the opponent No.1 and outstanding amount against the disputant is of Rs.55,00,000/-. The opponents No. 2 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 paid the outstanding amount. Hence, the proceeding u/s.101 of the M.C.S. Act was filed and is pending before the Asstt. Registrar, Co-operative Societies, Dindori. Admittedly, the proceeding u/s.101 of the M.C.S. Act has been initiated with the Asstt. Registrar, Co-operative Societies. The opponent Nos.2, 3 and 4 have filed documents and copies of the loan documents of the disputant in support of their contention which also includes the loan application, promissory note, etc. On going through the pleadings and contentions, it appears that the disputant has denied the loan itself and also that he never gave any application to the opponent No.1 for loan and that he never received any amount from the opponent no. 1 society. Opponent No.1 and 2 in the renewal method have transferred amount from his father’s loan account to his account and shown that the loan was taken by the disputant. Thus, it can be seen that the disputant has altogether denied the loan itself. On the other hand, the opponent No.1 and 2 have claimed that the disputant had made application for loan and also filed the same with the list of documents at Exh.24. Considering the above it appears that since the loan itself is denied by the disputant the dispute requires detailed adjudication regarding the loan documents, amount etc. which requires full fledge trial and for which substantial and detailed evidence will be required record and which cannot be decided at this interim stage.

11] 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.

12] 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.

13] 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. The disputant has also averred that the accounts are required to be properly settled. On perusal of the entire pleadings of both parties, it appears that the proceeding pending before this Court might result in affecting the proceeding u/s. 101. If the amount or the legality of the loan of the disputant is found different than the prayers in the proceedings u/s.101 then there is likelihood that there will be conflicting orders. Hence, to protect the interest of the parties during the decision of the application before the Asstt. Registrar, Co-operative Societies, it is appropriate that recovery proceeding before the Co-operative Department be stayed. As the legality of the loan itself requires adjudication. Hence, there appears prima-facie case in favour of the disputant.

14] 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 suit rendering this dispute infructous. Also it is necessary to protect the interest of the party. No hardship as such will be caused to the opponents as this order being temporary in nature i.e. till the decision of the dispute, the opponents are as such not permanently restrained from pursuing the remedy before the Co-operative Department. 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.

(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.