IN THE COURT OF CO-OPERATIVE COURT AHMEDNAGAR

(Presided over by Shri. B.S. Lakhote- Judge)

Case No.175/2017

Dr.Rohini Bhaskar Sinare and others ……………**Counter claimant**

Vs.

Ahmednagar Shahar Sahakari Bank Ltd …………**opponent**

ORDER BELOW EX.166

1. The applicant who is the opponent in the dispute filed by the Ahmednagar bank filed counter claim in the dispute and in the counter claim filed present application for addition of the parties to the counter claim. according to the applicant opponent bank filed dispute against the applicant and opponent no.2 and 3 for the recovery of the amount Rs.6,83,77,650.50/- and since the loan was never disbursed to the applicants, filed counter claim seeking declaration that the loan in question was never disbursed to the applicant by the bank.

2. The applicant submitted that opponent no.2 Dr. Nilesh Shelke in collusion with the directors and bank officials has committed misappropriation and fraud in the bank. It is stated that the loan was sanction in the name of the applicant, was not actually disbursed to them hence present applicants have already lodge FIR on 27/09/2018 against the bank officials and others at kotwali police station, Ahmednagar U/s 406,420,467,468,120B and 34 and the said matter charge sheet also filed and forensic audit I also being conducted by EOW Ahmednagar.

3. It is averred that board of directors and employees of the Ahmednagar Shahar Sahakari Bank Ltd. have taken diversion from the prudent banking practice and RBI master circular of IRAC norms, Exposure limit, willful

defaulter and sanction and disbursed loans which were siphoned in the purchase of properties. It is fact that the there was long standing association between board of directors , bank officers and Dr. Nilesh Shelke. Bank has sanction number of loan to him from 2009 to 2016. New loan was sanction and disbursed to him and his family members even after this dispute loan were NPA. The section 89A report has stated the loss suffered by bank because of these loans. Till the year 2018,45% of the total NPA of bank was because of these loans of Dr. Nilesh Shelke. The Hon'ble High court also in its order on the anticipatory bail application by Nilesh Shelke has observed that bank officials were in league with Nilesh Shelke. The section 89A report has held bank directors and officers are liable for this misdeed. Therefore the board of directors and officers are jointly and severally liable for the condition of the bank.

4. According to applicant whatever illegalities are committed or misappropriation of huge loan amount are made, it was not possible without consent of directors and therefore the board of directors of the Ahmednagar Shahar Sahakari Bank are equally liable for the fraud and misappropriation and hence the board of directors are necessary parties to the counter claim filed by the applicants. The applicants want to impleaded the following persons in the counter claim as opponents.

i) Mr. Girish Mukund Ghasisas, A-303, Meghana Archade, in front of Tarakput bus stand, Ahmednagar.

ii) Ashok Madhavrao Kanade, 22, Mutha Chambers, Vasant talkies road Maliwada, Ahmednagar.

iii) Subhas Chandmal Gundecha, Nava Maratha karyalaya, Ganjbajar, Ahmednagar.

iv) Mrs. Surekha Rajesh Vidye, in front of Laxinarayan school, Bagadpatti, Ahmednagar.

v) Avahar Hastimal Katariya, CEO, Sarvarth, Main branch, Ahmednagar Shahar sahakari bank ltd. Navi peth, Ahmednagar.

vi) Dinkar Yashavant Kulkarni, CEO, Sarvarth, Main branch, Ahmednagar Shahar sahakari bank ltd. Navi peth, Ahmednagar.

vii) Sunil Ramkrishn Phale, 1, Anand colony, near puja vihar, saurabh nagar, Bhingar, Ahmednagar.

viii) Raosaheb Jijaba Anbhule (Diseased), behind Shahar sahakari bank Savedi branch, premdan chowk, Savedi, Ahmednagar.

ix) Satish Dattatraya Adgatala, Shriram complex, near Shahar sahakari bank, Navi peth, Ahmednagar.

x) Machchindra Laxman Kshetre, Shanti, in front of rayat shikshan sanstha Burudgaon road, Ahmednagar.

xi) Sanjay Vitthalrao Ghule, 7434, pargalli, near vishal ganpati, Maliwada, Ahmednagar.

xii) Dr. Vijaykumar Manakchand Bhandari,7033, sardar patel road, in from of hanuman mandir, Dalmandai, Aadtebajar, Ahmednagar.

xiii) Sujit Shrikant Bedekar, Bedekar classes, Ghumare Galli, Ahmednagar.

xiv) Shivaji Ashokrao Kadam, Datta lodge, in from of Baratoti karanja, Maliwada, Ahmednagar.

xv) Adv. Laxman Vadekar, Saidamb, Siddheswar colony, near ekvira chowk, pipeline road, Savedi, Ahmednagar.

xvi) Mrs. Reshma Rajesh Athare (chavhan), in from of vaibhav hotel, Nandanvan hotel, Nandanvan colony, Burudgaon road, Ahmedngar.

xvii) Mrs. Nilima Vishwanath Potdar, Hirwe galli, Nalegaon, Ahmednagar.

xviii) Mukund Ramchandra Ghaisas (diseased) Plot no 10, Bhagyoday housing society rbehind raosaheb patwardhan smarak, professor colony, savedi Ahmednagar.

xix) Balasaheb Vitthalrao Raut, plot no 84, Vitthal parvati, smarak, professor colony, Savedi, Ahmednagar.

5. The opponent bank(in counter claim) the disputant filed reply to the application at Ex.167 and submitted that the application is not tenable. The co-operative suits are governed U/s 91 of the Mah. Co-op. Society Act and separate procedure is prescribed under the Act which is to be followed in conducting the suits, under these circumstance applicability of provision of order I rule 10 of CPC and section 151 of CPC is not applicable.

6. The counter claim filed by the original opponent seems to have been filed under order 8 rule 6A of CPC, but there is no provision of filing any counter claim under provision of Mah. Co-op Society Act and if the original opponents want to claim relief against the disputant bank, the only remedy is to file separate suit under section 91 of the Act. The disputant bank denied that no loan amount is disbursed to the applicants (opponents). The bank stated that loan sanction and disbursed to the applicant and has been utilized by these opponents and the amount has been credited in their personal account. The bank denied the collusion of directors of bank with the Dr. Nilesh Shelke. It is admitted that the offence was registered under section mention in the application.

7. The bank submitted that the bank sanction loan amount and disbursed after scrutiny of the documents and the amount has been paid to the dealer of the medical equipments. The report given by the forensic is not a conclusive proof. The disputant bank has legal entity and have filed dispute for the recovery of amount, under these circumstances directors and the staffs of the bank have no direct or indirect concern and they can not be held liable as the counter claim itself is not tenable and hence propose parties shown in the application are not necessary parties.

In view of the rival contention of the parties following point arise for my determination and my finding with reason as follows.

POINT	FINDING
1. Whether directors and officials of the bank named in the application are required to impleaded in counter claim as opponents?	Negative
2. What order?	As per final order

REASONS

8. The opponents in the dispute filed by the disputant bank filed counter claim against the bank and now by filing this application U/o 1 Rule 10 R/w 151 of C. P. C. pray *" The board of directors and the officers of the Ahmednagar Shahar Sahakari Bank Ltd. my be impleded as party respondents in the noted counter claim and filed their written statement and the counter claim be thereafter adjudicated by court in accordance with law".* As per pleading of the applicants the directors and the officers of the said bank committed illegality and misappropriated huge loan amount and therefore they are equally liable for the fraud and misappropriated. The contention of the disputant bank that the application is not tenable. The loan is sanction and disbursed to the applicants(opponents) by the bank and the disputant has right to file dispute against the applicants (opponents). The counter claim itself is not tenable.

9. The issue arise for the consideration whether the propose persons name above are necessary parties to the counter claim of the applicants(original opponents). The counsel of the disputant Shri. Deshpande firstly raise objection that the counter filed by the opponents is not tenable and point out the Order 8 Rule 6A OF C.P.C. and also submitted that the provision of the civil procedure code is not applicable to the proceeding filed under section 91 of the MCS Act.

Shri. Deshpande relied on *Communidade of Pirla Vs. Government of Goa by forest department 2010(3) Bom.C.R.548 and 2006 DGLS(SC)862 Rohit Singh and others Vs. State of Bihar(Now state of Jharkahnd).* The opponents/applicants counsel submitted that after filing of the counter claim by the opponents in the dispute, the disputant bank filed written statement to the counter claim without any objection.

10. It is fact that the disputant bank filed dispute against the opponents/applicants for the recovery of the loan amount and in the dispute the these applicants who are the opponents in the dispute filed counter claim against the bank at Ex.117 along with the written statement filed at Ex.115. The dispute filed under section 91 of MCS Act which is special law enacted by the legislature. The nature of the disputes filed under the this Act are the civil nature. There is no specific provision under the MCS Act to filed counter claim to the dispute filed under section 91 of the Act. Then what would be the remedy to the opponents against whom dispute filed, to filed the counter claim against the disputant. It is settle law that in case of any specific provision in the MCS Act, the provision of the CPC are applicable to the proceeding filed under section 91 of the Act. It is also required to mention here that civil manual is applicable to the co-operative court. The counter claim is nothing but the cross suit. but it is required to filed along with the written statement. The provision referred above order 8 Rule 6A relating to the counter claim is applicable. There is no barred to availed remedy under provision of the CPC. The civil procedure code is procedure law applicable to the suit, dispute, or other proceeding filed under respective law unless expressly barred. The ruling on which the Shri. Deshpande counsel of the disputant bank relied in the matter with due respect is not applicable for the reason that in the above matter it is held by their lordship that " *counter claim necessarily to be directed against the plaintiff in the suit, though incidentally or along with it ,it may also be claim relief against co-defendants in the suit, but a counter claim directed solely against the co defendant can not be maintained".* In the matter at hand the disputant filed dispute for the recovery of

amount against the opponents and the opponents filed written statement and counter claim against disputant bank and not against the co-defendant/opponents and the disputant also filed written statement to the counter claim. whether counter liable to allowed or not is part of the merit of the case and to that effect issue is frame. The counsel of the disputant has not point out any specific provision of CPC of MCS Act under which opponents to the dispute filed under section 91 of the Act prohibited to filed counter claim. The object of the provision of counter claim is to avoid the multiplicity of the proceeding. In order to make adverse claim against party who claim relief, must have right in the same suit/dispute without filing separate suit/dispute. therefore the counter claim made by the opponents in the dispute is tenable.

11. The next material aspect for which application filed about the addition of the proposed parties in the counter claim. Firstly the it is required to see the role of the these proposed parties in the transaction shown in the dispute and whether their presence in the matter is necessary. The counsel of the opponents(applicants) Shri. Pande submitted that all the transaction is done by the opponent no.1 and the offence is registered at the instance of the complaint filed by the opponent no.1 and proposed parties are involved in the criminal case. The opponent no.1 only applied for the loan , but the loan amount is used by the opponent no.2 and there is collusion with these proposed parties and thence they are necessary parties to the dispute. The counsel of the opponents relied on the judgment of *Hon'ble Madras High court dated 12/09/2019 in parties A.V.Murugan Vs. K.Maheswari and others.* Per contra, Shri deshpande the counsel of the disputant bank submitted that application is not tenable. The dispute is between the opponent no.1 and proposed parties , the bank has no concerned as the loan is sanction by the bank nad disbursed to the opponent no.1 and point out the clause mention in the mortgage deed to show that the sanction loan amount given to the dealer. Shri Deshpande counsel of the disputant bank also relied on *AIR 2018 SC 682 Kanaklata Das and others Vs. Naba Kumar*

Das and others, 2014(1) ALL MR 189 Adarsh water park and resorts Pvt.Ltd. Vs. Abdul Rashid Abdul Rehman Yusuf and another,2003(6) Bom. C.R. 153 Murlidhar Datoba Nimanka Vs. Harish Balkrushna Latane and others and writ petition no.10102/2019 Raj systems Pvt. Ltd. and others Vs. Mahanagar Co-op. Bank Ltd. and others.

12. In order to examined the correctness in the submission of the respective counsels, I have gone through the dispute and the counter claim filed by these opponents. The disputant bank filed dispute for the recovery of the loan amount against the opponents present applicants and the opponents with written statement filed counter claim pray that " *It may be held that plaintiffs had never secured any loan amount from the defendant no.1 bank and therefore the defendant no.1 is not entitled to recover any amount from the plaintiffs".* and also pray that mortgage deed is not enforceable against the applicant/opponent no.1.

13. In context of the prayer made by the applicant/opponents in the counter claim whether these propose parties are necessary parties to the counter claim. The disputant bank point that the person shown in the application as proposed parties some of them that is Sunil Phale,Satish Adgatala ,Machchindra Kshetre and Ad.Laxman Vadekar expired, The applicant already shown in application the dead person Raosaheb Anbhule and Mukund Ghaisas which was primarily illegal to show them as addition of party who are already dead. The present application filed U/o I Rule 10 of CPC which dealt with the provision of the addition of the parties. The contention of the disputant counsel that such application under CPC is not tenable as the provision of the CPC is not application to the proceeding filed under section 91 of the MCS Act. But I have made cleared hereinbefore that the provision of the CPC are application unless expressly barred. Apart from it is required to mention here that there is specific provision in the MCS Act and that is section 94(c) of the Act which also dealt with the provision of addition of the parties similar to the provision of order I Rule 10 of the CPC. According to the provision (c) the co-operative court may in order to effectually and completely

to adjudicate upon and settle all questions involved in the dispute, be added. The material and crucial point while considering such application is that to adjudicate the dispute effectually and completely the proposed parties are necessary.

14. According to the disputant these proposed parties and the opponent no.2 in collusion used the amount and they misappropriated the said alleged loan amount, no loan amount disbursed to the opponent no.1/applicant. The opponent/applicant mention that offence is registered against them and also point out the report of the forensic. Firstly the name of the proposed parties appeared in the F.I.R. and offence is register against them can not be ground to add them in the matter. The civil and the criminal proceeding are different and the ingredient to established the case are different and hence merely their name reflected in the charge sheet, the opponent /applicant is not entitled to claim that they be added in the counter claim. The applicant /opponents is required to show that their presence as opponents in the counter claim are necessary. As per the contention of the applicant/opponent they were directors of the disputant bank.

15. No doubt they were directors of the disputant bank but their role only to sanction the loan on behalf of the bank who is separate legal entity. The question whether they misappropriated alleged loan in collusion with the opponent no.2 is part of the criminal matter which is pending. The proposed parties are not sanction loan in their personal capacity. The counter claim of the applicant /opponents loan amount is not received to him is against the disputant bank and all material contention is made in the written statement and the counterclaim. The applicant/opponents in the counter claim has opportunity to established its counter claim through the evidence.

16. The disputant bank against whom counter claim is made is sufficient party and as contended by Shri. Deshapande counsel of the disputant bank, the real

dispute is between the opponents them self. The disputant bank is required to established whether loan is disbursed to the opponent no.1 and whether opponent no.1 executed loan documents or not and opponent no.1is not availed loan facility of the bank is to established by the opponent no.1/applicant through counter claim. The proposed parties have no concerned as the bank is already party. The judgment of Hon'ble High court on which opponent/applicant counsel relied is applicable to the extent of addition of parties as defendant in the counter claim. Means in the counter claim filed defendant/opponent, the application for addition of parties as defendant is tenable. However in the above case the subject matter was different, it was partition suit and therefore therein held proposed party are necessary parties.

17. The Ruling mention above on which Shri. Deshpande counsel of the bank *AIR 2018 SC 682 Kanaklata Das and others Vs. Naba Kumar Das and others,* with due respect is not applicable for the reason that in above case subject matter was eviction suit the application was filed addition of the party as he is co-owner, but Hon'ble court held that in eviction suit proposed party is not necessary party. further in *2014(1) ALL MR 189 Adarsh water park and resorts Pvt.Ltd. Vs. Abdul Rashid Abdul Rehman Yusuf and another,* it is held by their lordship that " respondent no.10 was not necessary party for the determination of the guniness of the agreement of sale which said to have been entered in to between the petitioner and respondent no.1. The fact in the matter hand is totally different, hence with due respect same is not applicable. Then in case of *2003(6) Bom. C.R. 153 Murlidhar Datoba Nimanka Vs. Harish Balkrushna Latane and others*. This ruling is totally different as it is not on point of addition of the parties. Therein is observed by their lordship that co-operative court has not power under order 38 and 39 of CPC. and lastly in *writ petition no.10102/2019 Raj systems Pvt. Ltd. and others Vs. Mahanagar Co-op. Bank Ltd. and others.* There the issue was staying the proceeding under section 101 of the MCS Act as petitioner filed

application under section 10 of the CPC. The point of addition of parties was not that case hence with due respect both ruling are not applicable.

18. It is required to mention here that whether presence of the proposed parties in the suit/dispute or in other proceeding is necessary is depend on the nature of the subject matter. In the matter the opponent/ applicant filed counter claim against the disputant bank and the proposed parties are Ex directors of the disputant bank, their presence in tye matter are not necessary as the counter claim against the bank is sufficient as per section 36 of the MCS Act as the counter claim is nothing but the cross suit. The grievance of the opponent no.1 against the opponent no.2 and the Ex directors and employees proposed parties can not decide in the matter.

Considering the above reasons I came to conclusion that the application has not merit and deserved to be dismiss and accordingly proceed to pass following order.

ORDER

1. The application is hereby Rejected.
2. No order as to cost.

(B.S.Lakhote)
Judge
Co-op. court, Ahmednagar

Place : Ahmednagar
Dated : 06/11/2023