IN THE COURT OF JUDGE, CO-OPERATIVE COURT, NAGPUR.
(BEFORE SHRI. B. V. BURANDE, JUDGE)

Dispute No. 94/2021.

DISPUTANT : **The Bhandara Urban Co-op. Bank L. Bhandara.**

Versus

OPPONENT : **M/s. Vicky Kirana Stores through its proprietor Kanchan Darshanlal Malhotra and others.**

ORDER BELOW EXH. 15
(Passed on 6th October, 2023)

The disputant has filed the present application under section 95 (4) of Maharashtra Co-operative Societies Act, 1960 (for short M.C.S. Act) and Order 38 Rule 5 of Code of Civil Procedure, 1908 (for short C.P.C.) for the relief of attachment of rent during pendency of dispute in order to recover the loan amount.

2. The disputant has filed present dispute against the opponents for the relief of recovery of loan amount. The disputant bank is registered under the provisions of M.C.S. Act, 1960. The disputant bank doing business of banking as per own bye-laws and giving various loans to its members. The opponent is proprietor of M/s. Vicky Kirana Stores. The hypothecation loan of Rs.4,00,000/- was given to the opponent no.2 and it was increased to Rs.6,00,000/- from 1996. The said loan has been renewed time to time. The rate of interest was agreed @ 17% and 2% in case of default. The opponent nos.3 & 4 stood as surety to the loan. The opponents executed loan documents namely loan agreement, promissory note, letter of acceptance of terms and conditions, lien of set off, continuing security letter, letter of

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declaration by borrower for hypothecation of stock, surety bond, receipt. The opponents accepted liability to pay amount. The opponent was having ownership of commercial building which is lease out to the disputant society. The opponent made default in payment of loan amount and it became non performing asset (N.P.A.). The disputants issued several notices to the opponents. The bank took action under Section 101 of M.C.S. Act for recovery of loan amount. The amount of Rs.6,12,798.89/- was due towards principal and Rs.11,62,701/- towards interest. The amount of Rs.17,75,500/- was due from opponent. The opponent no.3 is politically influencing person and obstructing recovery of loan. Therefore it is necessary to attach the rent payable to opponent no.2 and adjust it towards payment of loan amount. Finally, disputant prayed to allow the application.

3. The opponents appeared in the matter and filed their reply below Exh.16. The opponents denied the entire allegation made in the application. The opponents submitted that granting of interim relief of attachment will amount to grant of final relief. The loan was sanctioned to M/s. Vicky Kirana Stores and dispute is filed for recovery of loan amount. The opponent raised issue of maintainability in his written statement. The disputant bank is situated in the premise of opponent no.2 and bank is under legal obligation to pay monthly rent as per agreement. The opponent no.2 filed R.C.S. No. 75/2022 before Civil Judge, Senior Division, Bhandara for recovery of rent of Rs.7,22,088/-. The disputant claimed set off in the said suit. Therefore present application is not maintainable. The disputant bank filed proposal for recovery of loan before A.R.C.S. under Section 101 and it was rejected. The revision was filed before Joint Registrar and it was also rejected. The opponent nos. 2 & 3 are owner of various properties. The building of opponent has been in possession of disputant. Hence, on these grounds the opponents prayed for rejection of the application with cost.

4. In view of the pleadings of the parties following points arise for my determination along with my findings thereon is as under.

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Points			Findings
1.	Whether the disputant has prove prima facie case ?	:	**In the Negative.**
2.	Whether the balance of convenience lies in favor of disputant ?	:	**In the Negative.**
3.	Whether the disputant would suffer irreparable loss if the relief as prayed in the application is refused ?	:	**In the Negative.**
4.	What order ?	:	**As per final order.**

Reasons :

As to points no. 1 to 4.

5. I have heard the advocates for both the sides. Perused; the contents made in the application and the reply filed by opponent below Exh.16. As well as also gone through the documents filed by the disputant along with list Exh.2 and the documents filed by opponent at Exh.12 & 18. The learned advocate Mr. N. L. Jaiswal for disputant argued that, the opponent obtained loan and made default in payment of loan amount. The amount of Rs.17,75,500/- was due from opponents. The opponents have property and they have leased it to the bank. The bank is liable to pay rent to the opponents. If said rent is adjusted towards loan installment, opponents will not suffer any loss. However, disputant bank will suffer loss. Therefore learned advocate has prayed to allow the application.

6. The learned advocate for opponent Mr. A. C. Pant argued that, the present dispute is not maintainable against opponents as they are not member of the disputant bank. It is not disputed that bank is situated in the premise owned by opponent. The disputant bank has filed set off along with written statement in the Civil Suit filed by opponent to recover amount of rent. The bank has filed proceeding under Section 101 of M.C.S. Act and it was rejected. In such circumstance, if interim relief is granted, it will amount to

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grant of final relief. The property of opponents has been in possession of disputant bank. Therefore relief can not be granted as claimed in interim application. Finally learned advocate has prayed to reject the application.

7. Here I would like to refer Section 95 (1) of M.C.S. Act which provides for attachment before award or orders and interlocutory orders as under :

1. Where a dispute has been referred to Co-operative Court under Section 91, 93 or 105 or whether the Registrar or the person authorized under Section 88 (hereinafter in this Section refer to the authorized officer) hears a person against whom charges are framed under that Section and the Co-operative Court, Registrar or authorized person as the case may be, is satisfied on enquiry or otherwise that a party to such dispute or the person against whom proceeding are pending under Section 88, with intent, to defeat, delay or obstruct the execution of any award or the carrying out any order that may be made –

(a) is about to dispose off the whole or any part of his property, or

(b) is about to remove the whole or any part of his property from its or his jurisdiction,

the court or the Registrar or the authorized officer as the case may be, may, unless adequate security is furnished, direct conditional attachment of said property and such attachment shall have the same effect as if made by a competent Civil Court.

8. Considering submissions made by both advocates, documents filed on record and provision which authorizes attachment of property, it is necessary to decide whether attachment of rent as prayed by the disputant can be ordered. In the present case, it is not disputed that the property of opponent no.2 has been in possession of disputant bank as per lease. The opponent filed R.C.S. No. 75/2022 against the bank for the recovery of loan amount before C.J.S.D. Bhandara. The opponent filed copy of written statement with set off filed by the bank in the said suit. The registered lease deed was executed and premise was given on lease to the bank by opponent no.2.

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Therefore disputant bank in the suit for recovery of rent asked for set off of loan amount. Now in the present case, disputant wants to attach rent. It is not case of the disputant that opponent is about to dispose off his property.

9. The disputant bank filed various loan documents on record. The loan application discloses that hypothecation loan of Rs.3,00,000/- was disbursed to opponent no.2 and she executed various loan documents. The said loan was increased to Rs.6,00,000/-. The opponent executed promissory note and agreed to pay interest @ 19% p.a. on the loan amount. The opponent executed deed of hypothecation and other loan documents in favour of disputant bank. It is alleged that the opponent made default in payment of loan amount, therefore notice was issued to the opponents. The account extract shows that amount of Rs.6,12,798.89/- was due towards capital and Rs.11,63,701/- was due towards interest. The disputant bank filed proceeding under Section 101 of M.C.S. Act before A.R.C.S. Bhandara. However, said application was rejected. Thereafter, the bank filed appeal before Joint Registrar and it was also rejected. The bank filed present dispute for recovery of loan amount of Rs. 17,75,500/- against the opponent and guarantors. In the present matter, issues are framed and matter was fixed for evidence. Thereafter, disputant bank moved this application for attachment of rent. The averment made in the application does not disclose what amount of rent was actually due from bank to the opponent. The opponent filed suit for recovery of amount and it is pending. So the amount of rent needs to be determined by the Civil Court. The bank filed written statement with the set of in the said suit. In such circumstance, the amount of loan can be adjusted after passing the decree in the Civil Court.

10. It has come on record, the property of opponent has been in possession of disputant bank. The opponent no.2 is having several properties at Bhandara. It is not case of disputant that opponent intending to dispose off her properties in order to delay execution of awards passed against her. The disputant has not sought any relief in respect of rent in the main dispute application. The grant of relief of recovery of amount of loan from rent

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payable by bank will amount to grant of final relief in favour of bank. In such circumstance, order of attachment of rent which is to be fixed after decree of Civil Court can not be passed.

11. Considering aforesaid discussion, the disputant has failed to make out prima facie case and balance of convenience in their favour. The disputant will not suffer with irreparable loss as compared to the opponents. The basic elements while deciding interlocutory application are not satisfied by the disputants in their favour. Therefore, the application for granting attachment of rent during pendency of the dispute is liable to be rejected. Hence, I answer point Nos.1 to 3 in the Negative. Resultantly, in answer to point No.4, I proceed to pass the following order :

-: ORDER :-

(i) The application at Exh.15 is rejected.
(ii) Cost in main cause.

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(Shri. B. V. Burande)
Judge,
Co-operative Court, Nagpur.

Nagpur.
Dated : 6/10/2023.