



ORDER BELOW EXH. 8

M/s. Nashik Gramin Shishkan Prasarak Mandal and others

V/s

Abhyudaya Co-op. Bank Ltd. and others

1. Perused application. Heard Ld. Advocate for the petitioner.
2. The present application has been filed by the petitioner contending therein that, the present petition has been filed being aggrieved by the arbitration award passed by the Hon'ble Sole Arbitrator in Arbitration Case No. ARB/ACB/VNL/2010 of 2019 on 19/12/2020. They have also filed an interim application in the present proceeding to stay the award passed by Hon'ble Sole arbitrator. According to the petitioners. Due to the Covid-19 pandemic, the surge in the number of the infected people and considering the various restrictions imposed by the Government, they were hopeful that the respondents would not initiate any legal action for the recovery of the amount according to the above award. Due to the restrictions on the day to day functioning of the Courts, they did not press the interim application. On or about 29/04/2021, the petitioners have received a demand notice dated 19/04/2021, issued by the recovery officer under Section 97 of the Multi-State Co-operative Societies Act, 2002 (MSCS ACT) for recovery of Rs. 15,98,47,513.78. The petitions have been called upon to pay the amount on or before 05/05/2021, failing which the respondents will recover the dues by filing execution proceedings against the petitioners. They have contended that,

the mode of recovery of the dues is absolutely illegal and void as the award has been passed under the Arbitration and Conciliation Act and it is illegal to initiate recovery process by invoking the provision of the MSCS Act, 2002. Irreparable loss will be caused to the petitioners and the very purpose of filing the present case will be frustrated if the award is not stayed and taking advantage of the present situation, the respondent gets the award executed and recovers the dues.

3. The petitioners have relied upon the following Judgment of the Hon'ble Bombay High Court in Narendra Kantilal Shah V/s Joint Registrar, Co-operative Societies (Appeal), Bombay and others 2004 (1) Mh.L.J. 704 it has been held that,

“On and from the date on which the Debts Recovery Tribunal was constituted under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, the courts and authorities under the Maharashtra Co-operative Societies Act, 1960 as also the Multi State Co-operative Societies Act, 2002 cease to have jurisdiction to entertain the applications submitted by the Co-operative Banks for recovery of their dues”.

Ld. Advocate for the petitioners submitted that, the award passed by the Hon'ble Sole Arbitrator may be stayed till the appearance of the respondents.

4. On perusal of the record, it is seen that, the award was passed on 19/12/2020. The petitioners have challenged the said award on various grounds. Somewhere around 29/04/2021 the petitioner have received a demand notice dated 19/04/2021 issued by the recovery

officer authorised under Section 97 of the MSCS Act. On perusal of the said notice, it is seen that, the petitioners have been called upon to repay a huge amount of Rs. 15,98,47,513.78/- on or before 05/05/2021 and it has been mentioned therein that, if the petitioners fail to repay the said amount, further action for attachment and sale of movable and immovable properties of the petitioners would be initiated. The petitioners have challenged the validity of the award. They submitted that, respondent No. 1 i.e. Abhyudaya Co-operative Bank does not have the power to initiate recovery proceedings. After the constitution of the Debts Recovery Tribunal, the Courts, The authorities under the Multi-State Co-operative Societies Act, 2002 or the Maharashtra Co-operative Societies Act, 1960 will cease to have jurisdiction to entertain the applications submitted by Co-operative Banks for recovery of their Dues.

5. On perusal of the Full Bench Judgment of the Hon'ble Bombay High Court Narendra Kantilal Shah V/s Joint Registrar, Co-operative Societies (Appeal), Bombay and others 2004 (1) Mh.L.J. 704 it is seen that, the Hon'ble Bombay High Court has observed that, in terms of the provisions contained in Clause 91) of Article 246 and clause (3) of Article 246, the moment the Parliament enacted the 1993 Act covering specifically the field of recoveries to be made by the banks, the provisions in 1960 Act on that aspect in so far as they relate to banks will get displaced. It has been held that,

“On and from the date on which the Debts Recovery Tribunal was constituted under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, the courts and authorities under the Maharashtra Co-operative Societies Act, 1960 as also the Multi State Co-operative Societies Act, 2002 cease to have jurisdiction to

entertain the applications submitted by the Co-operative Banks for recovery of their dues”.

6. Considering the above position, at present, it appears the action/notice initiated by the respondent No. 1 is incorrect/arbitrary. The respondents are yet to be served. There is a possibility that, respondent No. 1 may take action according to the notice dated 19/04/2021. If the action is taken, the purpose of this arbitration case will be frustrated. It is necessary to stay the said proceeding till the next date. Considering the above, I proceed to pass the following order :-

ORDER

The award passed in the Arbitration Case No. ARB/ACB/VNL/2010 of 2019 on 19/12/2020 is hereby stayed till the next date.

The petitioners shall get the respondents served Exeditiously.

Date : 13/05/2021

Sd/-xxx
(S. N. Bhalerao)
Ad hoc District Judge-1 and
Assistant Sessions Judge, Nashik