IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3519 OF 2015

Nandkishor Vasudeo Namade,
Died through L.Rs. :-

1. Chaya w/o. Nandkishor Nemade,
   Age 29 years, Occu. Household,

2. Sau. Puja Mandar Bharambe,
   Age 24 years, Occu. Housewife,
   R/o. P. No.23, Kashiram Nagar, Khalwadi,
   Satara, Taluka Bhusawal, District Jalgaon

3. Kum. Swati d/o. Nandkishor Nemade,
   Age 22 years, Occu. Student,

4. Durgesh s/o. Nandkishor Nemade,
   Age 19 years, Occu. Student,
   1,2,3 R/o. Plot No.11-A, Vikas Housing Society's
   Jamner Road, Taluka Bhusawal, District Jalgaon .. Petitioners

Versus

1. The State of Maharashtra
   Through its Secretary's
   Co-operation Department
   Mantralaya Mumbai – 32

2. The Divisional Joint Registrar
   Co-operative Societies, Nashik
   Division Nashik

3. The Assistant Registrar
   Co-operative Societies
   Bhusawal, Taluka Bhusawal
   District Jalgaon

4. Saraswati Co-operative Credit
   Society Ltd., Bhusawal,
   Taluka Bhusawal and District Jalgaon
   Through its Manager

5. Special Recovery Officer,
   Saraswati Co-operative Credit Society Ltd.,
   Bhusawal, Taluka and District Jalgaon

6. Murlidhar Vasudeo Nemade,
   Age 47 years, Occu. Business

7. Madhukar Vasudeo Nemade,
Age 41 years, Occu. Business

8. Smt. Anusaya Vasudeo Nemade,
Age 77 years, Occu. Household

Respondents No.6 to 8 R/o. Vikas
Housing Society Jamner Road,
Bhusawal, District Jalgaon

9. Mr. Jitendra Mulchand Phalak,
Age 45 years, Occu. Business,
R/o. C/o. Mr. Mulchand Yadav Phalak,
Shri. Siddhi Vyankatesh Trading Company
Grain Market and General Commission Agent,
Shop No.5(A), Near Hotel Trimurti, Market Yard,
Jalgaon, Taluka and District Jalgaon .. Respondents

Mr. Ajay G. Talhar, Advocate for Petitioners;
Mr. V. M. Jaware, A.G.P. for Respondents No.1 to 3;
Mr. V. D. Hon, Senior Advocate i/b. Mr. A. V. Hon, Advocate for Respondents No.4 and 5;
Mr. K. B. Jadhav, Advocate for Respondent No.9

CORAM : SACHIN S. DESHMUKH, J.

DATE : 06-10-2026

JUDGMENT:-

1. Rule. Rule made returnable forthwith. With the consent of the learned counsel for the respective parties, the petition is taken up for final hearing.

2. The petitioners assail the judgment and order dated 12.02.2015 rendered by respondent No.2 in Revision Application No. R-105/2011, dismissing the revision as *infructuous,* resultantly endorsing the recovery certificate dated 01.09.2006 issued under Section 101 of the Maharashtra Co-operative Societies Act, 1960 (for short, "the MCS Act"), the consequential recovery, attachment, auction and sale proceedings initiated pursuant thereto.

3. The petitioner, a member, had availed a loan from respondent No.4-Society in the year 2001. The said loan was repaid on 27.12.2002 and a no dues certificate acknowledging such repayment was also issued.

4. Thereafter, respondent No.4 asserted a further liability against the petitioner. The petitioner disputed the existence of any such subsequent loan liability and contended that the documents relied upon by the Society related to the earlier loan transaction, which had already been discharged and certificate of no dues is also issued.

5. The petitioner issued notice dated 14.02.2005 to the Society asserting that the earlier loan had been repaid and requesting that the cheques and other documents obtained at the time of the earlier transaction should not be misused. The Society issued notice dated 18.03.2005, which was replied by the petitioner on 28.03.2005, denying the alleged liability.

6. Respondent No.4 also initiated proceedings under Section 138 of the Negotiable Instruments Act, 1881 by filing Summary Criminal Case Nos.2664 of 2005 and 2665 of 2005. The learned Judicial Magistrate First Class, Bhusawal, by judgment and order dated 11.08.2006, acquitted the petitioner. The petitioner has relying on the said judgment as material bearing upon the disputed transaction and the cheques relied upon by the Society.

7. In the *interregnum*, respondent No.4 initiated the proceedings under Section 101 of the MCS Act. Notice dated 19.04.2005 was issued to the petitioner. The petitioner appeared on 10.05.2005 and sought the copies of the alleged loan proposal and other relevant documents so as to effectively meet the claim of the Society.

8. The petitioner, thereafter, made further applications seeking production of the relevant documents. By communication dated 19.03.2006, respondent No.3 directed respondent No.4 to furnish the documents sought by the petitioner and to submit a compliance report.

9. Respondent No.4 instead of complying with the said direction and the initial proceedings dated 10.05.2005 under Section 101 were thereafter withdrawn. The petitioner contends that the withdrawal of those proceedings did not resolve the dispute regarding the documents or the alleged subsequent loan liability.

10. Subsequently, fresh proceedings dated 11.07.2006 under Section 101 were initiated by respondent No.4. Notice dated 11.07.2006 was served to the petitioner. The petitioner appeared through counsel on 01.08.2006 and again sought production of the relevant loan documents by applications dated 03.08.2006 and 24.08.2006. The petitioner also brought to the notice of respondent No.3 the earlier proceedings and the direction dated 19.03.2006.

11. Ignoring the objections and requests for production of documents, respondent No.3 issued the recovery certificate dated 01.09.2006 under Section 101 of the MCS Act for recovery of Rs.3,20,073/- in favour of respondent No.4-Society.

12. The petitioner challenged the said recovery certificate by filing a revision under Section 154 of the MCS Act. By order dated 19.10.2006, respondent No.2 directed the petitioner to deposit 50% of the outstanding amount as contemplated under Section 154(2A) of the Act.

13. Thereafter, recovery proceedings commenced. An order dated 29.01.2007 was passed under Rule 107(10) of the Maharashtra Co-operative Societies Rules, 1961 (for short, "the MCS Rules"), attaching the petitioner's residential property situated at 119/1A/1+2/Plot No.11, admeasuring 278.74 square meters, at Bhusawal, District Jalgaon.

14. On 26.02.2009, respondent No.5 published a public auction notice proposing to auction the said property on 01.04.2009. The petitioner, thereafter, approached this Court by presenting Writ Petition No.3624 of 2009 challenging the recovery certificate and the consequential recovery proceedings.

15. During the pendency of the said writ petition, this Court directed the petitioner to deposit Rs.2,50,000/-, which the petitioner deposited. This Court, pursuant to order dated

03.10.2011, further directed the petitioner to deposit an amount of Rs.1,00,000/- with the Society and directed the revisional authority to decide the revision on its own merits upon compliance with the said condition.

16. As the petitioner could not deposit the further amount within the stipulated period, Civil Application No.13244 of 2011 was presented. Vide order dated 08.11.2011, the period was extended and the petitioner complied with order.

17. In the *interregnum*, further proceedings were taken in respect of the attached property. The District Deputy Registrar, Co-operative Societies, Jalgaon, passed an order dated 21.01.2010 concerning transfer of the property in favour of the Society. Thereafter, the property was auctioned and a sale certificate dated 06.07.2010 came to be issued in favour of respondent No.9.

18. Immediately after revealing the sale, the petitioner sought amendment of the revision so as to raise challenge the auction and sale proceedings and also sought impleadment of respondent No.9, the auction purchaser. The amendment was allowed by order dated 07.08.2012.

19. The petitioner prosecuted Revision Application No. R-105/2011 and raised objections concerning the alleged loan transaction, non-production of documents, issuance of the recovery certificate and the consequential auction and sale

proceedings.

20. Respondent No.2, by judgment and order dated 12.02.2015, dismissed the revision as *infructuous*. The grievance of the petitioner is that, after the revision was amended and respondent No.9 was impleaded, the revisional authority could not have disposed of the revision merely on the ground that the property had already been sold, without adjudicating the substantive challenge to the recovery certificate and the consequential proceedings.

21. Mr. Talhar, learned counsel for the petitioner submits the following grounds;

(i) The earlier loan transaction was admittedly discharged and no dues certificate was issued and the petitioner consistently sought production of the documents relating to the alleged subsequent loan.

(ii) The petitioner repeatedly sought the loan proposal, sanction documents, disbursement documents and other material relied upon by the Society. In the earlier proceedings, respondent No.3 had specifically directed the Society, by communication dated 19.03.2006, to furnish the documents and submit a compliance report. The said direction was not complied with.

(iii) The procedure contemplated by the circular dated 03.03.2001 issued by the concerned Department was also

not followed. The said circular contemplates scrutiny of the application, production and inspection of relevant documents, hearing of the parties and, thereafter, passing of a reasoned order before issuance of a certificate under Section 101.

(iv) The petitioner's case does not depend upon retrospective application of Rules 86-A to 86-F of the MCS Rules, which came into force on 18.05.2007. The procedure applicable to the Section 101 proceedings in the year 2006, including the requirements indicated in the circular dated 03.03.2001 and the specific direction dated 19.03.2006, was not followed.

(v) Relying upon the judgment dated 11.08.2006 in Summary Criminal Case Nos.2664 of 2005 and 2665 of 2005, learned counsel submitted that although the acquittal may not, by itself, determine the liability under the MCS Act, the findings recorded therein concerning the disputed cheques and transaction were relevant circumstances which ought to have been considered.

(vi) As regards the auction proceedings, the learned counsel submits that the challenge is not confined to an irregularity at the stage of auction. The very foundation of the recovery certificate is under challenge. Therefore, recourse to Rule 107(14)(i) of the MCS Rules cannot, by itself, defeat the challenge to the recovery certificate.

(vii) This Court, while deciding Writ Petition No.3624 of 2009, had directed the revisional authority to decide the revision on its own merits upon compliance with the condition regarding deposit. After the revision was amended and the auction purchaser was impleaded, the revisional authority should have adjudicated the controversy instead of dismissing the revision as *infructuous*. Hence, prayed to allow the petition.

22. Conversely, Mr. Hon, learned senior counsel appearing for respondent Nos.4 and 5 supports the order under challenge and submitted as under;

(i) Recovery certificate dated 01.09.2006 was issued after notice and hearing and in accordance with the procedure then applicable. The petitioner had participated in the proceedings and the documents sought were made available.

(ii) The recovery certificate had already been put into execution and the property was ultimately put in auction. In view of the concluded sale in favour of respondent No.9, the revisional authority was justified in treating the revision as *infructuous*.

(iii) The petition suffers from delay and laches. It is submitted that the recovery certificate was issued on 01.09.2006 and that the petitioner prosecuted the subsequent proceedings after considerable lapse of time.

(iv) Rules 86-A to 86-F of the MCS Rules came into force on 18.05.2007 and, therefore, cannot be relied upon to

invalidate the recovery certificate dated 01.09.2006.

(v) Reliance is also placed upon Rule 107(14)(i) of the MCS Rules and the judgment of the Hon'ble Supreme Court in ***Deendayal Nagari Sahakari Bank Limited and another versus Munjaji and others, 2022 DGLS (SC) 183***. It is submitted that in the absence of an objection to auction sale at the appropriate stage of the recovery proceedings, interference with the completed sale is not warranted. Hence, prayed to dismiss the petition.

23. Learned A.G.P. appearing for respondent Nos.1 to 3 supports the impugned order and adopts the submissions advanced by the learned senior counsel for respondent No.4 and 5.

24. Learned counsel for respondent No.9 submits that he is an auction purchaser for consideration. Respondent No.9 participated in the auction, emerged as the highest bidder and offered Rs.6,00,000/- for the property and deposited Rs.90,000/- towards 15% of the bid amount on 05.06.2010 and the balance amount of Rs.5,10,000/- on 18.06.2010. The sale certificate was issued in favour of respondent No.9 on 06.07.2010 and the sale was subsequently confirmed by the Assistant Registrar vide order dated 29.04.2011. Respondent No.9, therefore, submits that the auction and sale stood completed and confirmed before the revision was finally considered.

25. Having considered the rival submissions and upon perusal of the material placed on record, the controversy involved in the present petition falls for consideration principally on three aspects: *firstly*, whether the recovery certificate dated 01.09.2006 was issued under Section 101 of the MCS Act after following the procedure applicable to such proceedings and after affording the petitioner an effective opportunity to meet the claim of the Society; *secondly*, whether the subsequent recovery, auction and sale could, by themselves, render the pending revision infructuous; and *thirdly*, whether the revisional authority acted in accordance with the direction issued by this Court to decide the revision on its own merits.

26. There is no serious dispute that the petitioner had availed a loan from respondent No.4-Society in the year 2001 and that, according to the petitioner, the same was completely repaid on 27.12.2002. The petitioner relies upon receipts and a certificate issued by the Society in support of such repayment. The Society, thereafter, asserted a further liability, which the petitioner has consistently disputed.

27. What assumes significance is that the petitioner did not raise such objection for the first time before this Court. From the inception of the proceedings under Section 101, the petitioner sought production of the documents upon which the alleged subsequent liability was founded. The request was repeatedly

made and was specifically considered by respondent No.3.

28. Respondent No.3, by communication dated 19.03.2006, directed respondent No.4-Society to furnish the documents sought by the petitioner and to submit a compliance report. The material placed before this Court does not satisfactorily establish that the said direction was complied with. On the contrary, when the fresh proceedings under Section 101 were initiated in the year 2006, the petitioner reiterated its request of production of the relevant documents.

29. Section 32 of the MCS Act confers upon a member the right to inspect the records and documents of the Society. In the present case, the request for inspection and production of documents was directly concerning the petitioner's defence to the claim made by the Society under Section 101. The request, therefore, could not have been treated as an irrelevant or technical objection.

30. The procedure prescribed by the circular dated 03.03.2001 also assumes significance. The said circular contemplates scrutiny of the application, production of relevant documents, inspection thereof, hearing of the parties and thereafter passing of a reasoned order before issuance of the certificate.

31. The liability is disputed and the person proceeded against specifically seeks the primary documents forming the basis of the claim, the authority exercising jurisdiction under Section 101 is

required to consider such request in accordance with the procedure applicable to the proceedings. Record does not demonstrate compliance with procedure as contemplated under circular, dated 03.03.2001.

32. In these circumstances, the authority was required to consider the effect of non-production of the documents before determining the liability. If the documents forming the basis of the claim were in the possession or control of the Society and had been specifically sought by the petitioner, and the competent authority had already directed their production, failure to produce such documents or satisfactorily account for their non-production was a material circumstance warranting consideration.

33. The question whether an adverse inference ought to have been drawn against the Society would depend upon the material placed before the competent authority. However, the authority could not have ignored the circumstance altogether. The petitioner's defence touches the very root of the claim and was not merely a dispute regarding the quantum of dues.

34. The respondents have also relied upon Rules 86-A to 86-F of the MCS Rules. Those provisions were introduced on the statute book on 18.05.2007, whereas the recovery certificate was issued on 01.09.2006. The petitioner, however, does not seek to apply those provisions retrospectively. The grievance of the petitioner is

founded upon the procedure applicable to the Section 101 proceedings at the relevant time, including circular dated 03.03.2001 and the specific direction dated 19.03.2006. The objection, therefore, cannot be rejected merely by referring to the subsequent amendment to the Rules.

35. The reliance placed by learned Senior Counsel for respondent Nos.4 and 5 upon the case of ***Deendayal Nagari Sahakari Bank Limited*** (supra), in the context of Rule 107(14)(i) of the MCS Rules, also requires consideration in the backdrop of the nature of the challenge raised in the present petition.

36. The judgment of ***Deendayal*** *(supra)* may have relevance where the objection concerning the manner in which the recovery or auction proceedings were conducted. However, it does not dispense with the necessity of examining whether the statutory authority, while issuing the recovery certificate, considered the petitioner's specific defence and the material documents which were repeatedly sought and whose production had earlier been directed and respondent-society repeatedly withheld the relevant record.

37. Further, the effect of the order of this Court in Writ Petition No.3624 of 2009 is concerned, by order dated 03.10.2011, this Court issued two fold directions, (i) the petitioner to deposit the specified amount and further directed the revisional authority to

decide the revision on its own merits upon compliance with the condition regarding deposit, and (ii) The petitioner, thereafter, complied with the deposit requirement as directed by this Court, where as the later part was not complied by revisional authority.

38. The petitioner, after receipt of knowledge of the auction and sale, sought amendment of the revision so as to challenge the consequential proceedings and also sought impleadment of respondent No.9, the auction purchaser. The amendment was allowed by order dated 07.08.2012.

39. Once the revision was amended and respondent No.9 was impleaded, the controversy before the revisional authority was not confined merely to the original recovery certificate. The legality of the procedural compliance while issuing recovery certificate, auction and sale proceedings also became matters requiring adjudication, in the dint of order of Court in Writ Petition No.3624 of 2009 directing that the revision be decided on its own merits and the revision had thereafter been amended to bring the auction and sale proceedings within its scope.

40. In such circumstances, the revisional authority could not have disposed of the revision mechanically by describing it as *infructuous* merely because the property had already been sold. The validity of the subsequent proceedings rests entirely on the contest in relation to the recovery certificate, the record to support

the claim, and the procedure and eventual.

41. The rights claimed by respondent No.9 also require consideration. The record indicates that respondent No.9 claims to have participated in the auction and emerged as the highest bidder, paid the consideration and obtained a sale certificate, which was subsequently confirmed. These circumstances cannot be ignored.

42. At the same time, the rights of respondent No.9 cannot be finally adjudicated in isolation from the legality of the proceedings pursuant to which the property was brought to sale. Since the revisional authority has not adjudicated the petitioner's substantive challenge, it would not be appropriate for this Court to record any final finding either upholding or invalidating the rights claimed by respondent No.9.

43. The scope of jurisdiction under Article 227 of the Constitution of India is supervisory. This Court does not substitute its own factual determination for that of the statutory authority merely because another view may be possible. However, where the statutory authority fails to consider material evidence, ignores a relevant procedural requirement and further fails to deal with a pertinent direction issued to the competent authority, or declines to adjudicate a controversy on an erroneous assumption that the proceedings have become *infructuous*, interference in exercise of

supervisory jurisdiction would be warranted.

44. In the present case, the challenge raised by the petitioner concerned the procedure adhered and the issuance of the recovery certificate. The material placed before this Court indicates repeated requests for production of the documents forming the basis of the alleged liability, a specific direction dated 19.03.2006 requiring the Society to furnish those documents and submit a compliance report, and a subsequent Section 101 proceeding in which the same grievance was reiterated.

45. It would not be appropriate, at this stage, to record a finding that the Society had committed fraud or deliberately suppressed documents. Such allegations are disputed and are required to be considered by the competent authority on the basis of the record. Nevertheless, the non-production or non-consideration of documents which were specifically sought by the petitioner and in respect of which a direction had earlier been issued is a material procedural circumstance.

46. The observations of the Hon'ble Supreme Court, in the case of ***K.D.Sharma vs Steel Authorities Of India Ltd.& Ors, (2008) 12 SCC 481,*** relied upon by the petitioner, concerning the effect of suppression of material facts, also emphasize the necessity of placing material facts before the authority concerned. Paragraph Nos.34, 35 and 36 are reproduced as under;

"34. The jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary. Prerogative writs mentioned therein are issued for doing substantial justice. It is, therefore, of utmost necessity that the petitioner approaching the Writ Court must come with clean hands, put forward all the facts before the Court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the Court, his petition may be dismissed at the threshold without considering the merits of the claim.

35. The underlying object has been succinctly stated by Scrutton, L.J., in the leading case of R. v. Kensington Income Tax Commissioners (1917) 1 KB 486 : 86 LJ KB 257 : 116 LT 136 in the following words:

> *"It has been for many years the rule of the Court, and one which it is of the greatest importance to maintain, that when an applicant comes to the Court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts- it says facts, not law. He must not misstate the law if he can help it; the Court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts; and the penalty by which the Court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it the Court will set aside any action which it has taken on the faith of the imperfect statement."*
>
> *(emphasis supplied)*

36. A prerogative remedy is not a matter of course. While exercising extraordinary power a Writ Court would certainly bear in mind the conduct of the party who invokes the jurisdiction of the Court. If the applicant makes a false statement or suppresses material fact or attempts to mislead the Court, the Court may dismiss the action on that ground alone and may refuse to enter into the merits of the case by stating "We will not listen to your application because of what you have done". The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of Court by deceiving it."

47. In the present case, the competent authority was required to examine the effect of the non-production of the documents upon which the Society's claim was founded.

48. The order under challenge, however, does not undertake such examination. It also does not adjudicate the substantive challenge to the recovery certificate or the consequential proceedings after the revision was amended. The direction of this Court to decide the revision on its own merits is not complied in its latter effect.

49. In the facts and circumstances of the present case, therefore, the order dated 12.02.2015 dismissing Revision Application No. R-105/2011 as *infructuous* cannot be sustained. The matter requires reconsideration by the competent revisional authority on merits, after considering the material documents, the petitioner's objections, the procedure followed in the Section 101 prevailing at the relevant time and the consequential recovery, auction and sale proceedings.

50. It is made clear that this Court has not finally adjudicated on any of the questions. All such questions are kept open for consideration by the revisional authority in accordance with law.

51. The exercise of jurisdiction under Article 227 is, therefore, warranted ensuring that the statutory proceedings are adjudicated by the competent authority after considering the relevant material and after affording an effective opportunity of hearing to all concerned parties.

52. Resultantly, the order;

ORDER

(i) The writ petition is allowed.

(ii) The judgment and order dated 12.02.2015 rendered by respondent No.2 in Revision Application No. R-105/2011, dismissing the revision as *infructuous*, is hereby quashed and set aside.

(iii) Revision Application No. R-105/2011 is remitted to the competent revisional authority for fresh consideration on its own merits and in accordance with law.

(iv) The competent authority shall endeavour to decide the proceedings expeditiously and preferably within a period of six months from the date of receipt of a copy of the writ of this order.

(v) Needless to state, the competent authority shall decide the matter independently and uninfluenced by the observations made herein, except to the extent expressly directed by this order.

(vi) The parties shall appear before the competent authority without awaiting any separate notice.

(vii) The *interim* relief, if any operating as on date, shall continue until the decision of the competent authority.

(viii) Rule is made absolute in the above terms.

(ix) There shall be no order as to costs.

(x) Pending application(s), if any, shall stand disposed of.

[SACHIN S. DESHMUKH]
JUDGE

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