

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH

WRIT PETITION NO. 117 OF 1993
AND
WRIT PETITION NO. 182 OF 1993

WRIT PETITION NO. 117 OF 1993

1. Ghanshyamdas Madanlal Chaudhary,
aged about 66 years, r/o Ward No.21,
Chikhali, Tq. Chikhali, Dist. Buldana.
2. M/s. Ghanshyamdas Madanlal
Chaudhari, alleged firm,
Near S.T. Stand, Chikhali,
Tq. Chikhali, District – Buldana. ... PETITIONERS

Versus

1. The Chikhali Urban Coop. Bank Ltd.
Chikhali, Tq. Chikhali,
District – Buldana.
2. Purushottam Madanlal Chaudhari,
r/o Chikhali, Tq. Chikhali,
District – Buldana.
3. Parasmal Sheshmal Shisodiya,
Gandhi Nagar, Chikhali,
Tq. Chikhali, District – Buldana.
4. State of Maharashtra,
through the Secretary,
Cooperative & Textile Department,
Mantralaya, Bombay – 32. ... RESPONDENTS

WRIT PETITION NO. 182 OF 1993

Banwarilal Ghanshyamdas Chaudhari,
aged about 36 years,
r/o Ward No.21, Chikhali,
Tq. Chikhali, Dist. Buldana. ... PETITIONERS

Versus

1. The Chikhali Urban Coop. Bank Ltd.
Chikhali, Tq. Chikhali,
District – Buldana.
2. Dharamchand s/o Sheshmal Sisodiya,
Dukan Chikhali, Tq. Chikhali,
District – Buldana.
3. Baldeo s/o Tarachand Chaudhari,
c/o Nirmal Stores Ltd.,
Chikhali, Tq. Chikhali,
District – Buldana.
4. State of Maharashtra,
through the Secretary,
Cooperative & Textile Department,
Mantralaya, Bombay – 32. ... RESPONDENTS

Shri B.N. Mohta, Advocate holding for Shri G.B. Lohiya, Advocate for the
petitioners in both writ petitions.
S/Shri D.P. Thakare & T.R. Kankale, AGP for respondents No. 4 in
respective writ petitions.

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CORAM : B.P. DHARMADHIKARI, J.
JANUARY 10, 2007.

ORAL JUDGMENT :

The challenge raised by the petitioners in both the petitions is
identical and both the matters are directed to be heard together. The

petitioners contend that unamended provisions of Section 44-A and Section 96 of the Maharashtra Cooperative Societies Act, 1960, (hereinafter referred to as the Act) will govern the determination of their liability.

2. In Writ Petition No. 117 of 1993, the petitioner borrowed loan of Rs.15,000/- sometimes in the year 1977. On 1.7.1981, Respondent No.1 Cooperative Society filed dispute before the Cooperative Court under Section 91 of the Act for recovery of amount of Rs.24,346.96 along with interest as per its Bye laws. This dispute which came to be registered as Dispute No.724/1982-83 was opposed by the present petitioner who amongst other defence also contended that calculation of interest and principal amount which in fact doubled the actual amount borrowed by him from Bank was contrary to law. The Cooperative Court has delivered the judgment on 6.1.1992 and it allowed the recovery as claimed with interest at 15% per annum on Rs.17,919.02 ps. from 16.12.1991 till its realisation. This judgment was challenged by the petitioners by filing Appeal No.62 of 1992 before the Cooperative Appellate Court under Section 97 of the Act. The said appeal has been dismissed by the Cooperative Appellate Court on 25.9.1992. However, the appellate Court has increased rate of interest from 15% to 16.5%

and allowed said increase in favour of Respondent No.1 – Society. Therefore, appellate Court has stated that appeal is partly allowed.

3. In Writ Petition No.182 of 1993, the dispute under Section 91 of the Act was filed by Respondent No.1 – Bank against the petitioner therein on 10.12.1981 for recovery of Rs.16,207.80 ps. with interest. The petitioner opposed the dispute and he also raised defence of Dam Duppat. The judgment came to be delivered by the Cooperative Court on 14.5.1992 and Cooperative Court allowed said dispute. It also granted interest at 15% on amount of Rs.12,744.16 ps. from the date of dispute till its realisation. The petitioner filed appeal under Section 97 of the Act before the Cooperative Appellate Court which came to be registered as Appeal No.63 of 1992 and Cooperative Appellate Court has vide its judgment dated 25.9.1992 negatived all contentions of the appellant. However, it granted increase in rate of interest from 15% to 16.5% in favour of Respondent No.1 – Bank and it has therefore declared that appeal is partly allowed. It is both these orders passed by the Cooperative Court and Cooperative Appellate Court which form subject matter of present writ petitions.

4. Initially, in Writ Petitions, provisions of Section 44-A of the Act

were also challenged and prayer was made to declare amendment to Section 44-A by Maharashtra Amendment Act No.20 of 1986 as ultra vires. However, when the matter was placed before the Division Bench on 27.11.2006, the challenge to validity was given up and therefore the matter has been listed before this Court for final hearing.

5. I have heard Shri Mohta, learned counsel holding for Shri Lohiya, learned counsel for the petitioners in both the petitions. S/Shri Thakare & Kankale, learned AGP have appeared for respondents No. 4 in respective writ petitions. Nobody has appeared for respondents No. 1 to 3. Actually the matter was heard partly on 9.1.2007 and nobody had appeared for these respondents even on that date.

6. Shri Mohta, learned counsel has contended that loan is taken in 1977 and dispute for its recovery has been filed in 1981. He contends that provisions of Section 44-A of the Act as they stood in statute book on the date of filing of dispute or on the date of taking of loan by the petitioners would govern the further proceedings in said suit. In short his contention is that the provisions of Section 44-A and provisions of Section 96 of the Act as amended by Maharashtra Amendment Act No. 20 of 1986 will not be applicable and Cooperative Court as also Cooperative

Appellate Court have acted without jurisdiction in relying upon amended provisions in this respect. He contends that by amending Section 44-A of the Act, certain limitations have been introduced in order to attract rule of Damdupat but there were no limitations in old Section 44-A of the Act and therefore said Section 44-A would squarely govern the case of the petitioners. He contends that when original loan was Rs.15,000/- in one case and Rs.10,000/- in another case, the recovery of amount double than these amounts could not have been ordered. He has further invited attention to unamended provisions of Section 96 of the Act to urge that the Cooperative Court did not possess power to grant future interest i.e. interest from the date of institution of the suit till recovery of amount as per said provision. He states that said power has been given to Cooperative Court for the first time by introducing amendment in Section 96 in 1986 and hence Cooperative Court in present disputes which are filed in 1981 could not have taken recourse to amended Section 96 of the Act and could not have granted interest for the period after the institution of disputes by Respondent No.1 – Bank. He has further invited attention to disputes as filed to point out that Respondent No.1 has prepared a proforma for preferring disputes before the Cooperative Court and said proforma requires it to specify the amount of loan i.e. principal amount separately and interest charged upon such principal amount

separately. He states that in both the disputes no such separate figures are shown by Respondent No.1. He contends that this requirement was on account of unamended provisions of Section 44-A of the Act. In this respect, he has also invited attention to Statements of Accounts filed by Respondent No.1 in both the matters to point out that even said application of mind is not apparent from statements of accounts. He contends that one cannot ascertain what is interest factor charged by Respondent No.1 from those statements of accounts. He has lastly contended that the amount claimed in dispute, as filed, do not show the principal loan amount as also interest factor thereof. The Cooperative Court has instead of granting interest only on principal amount, granted interest on entire amount claimed before it. In other words, he contends that interest has been granted even on interest. He contends that the Cooperative Court does not possess such power. He lastly argues that in any case as contemplated by Section 34 of Civil Procedure Code, Cooperative Court could not have granted interest in excess of 6% on the amounts claimed before it for the period after filing of dispute. His last two arguments are in the alternative and without prejudice to his rights and contentions in relation to Section 96 of the Act. He has invited attention to the judgment of the Hon'ble Apex Court in the case of Central Bank of India vs. Ravindra, reported at AIR 2001 SC 3095, to

substantiate his stand. The respective AGPs have stated that Respondent No.4 was joined as party respondent because of challenge to validity of Maharashtra Amendment Act No. 20 of 1986. They state that as said challenge is given up, the Assistant Government Pleader is not required to say anything in dispute which is essentially between Respondent No.1 and the petitioners. However, the attention has been invited to the Division Bench judgment of this Court in the case of N.N. Bankar vs. A.P.V.K.S.S. Society Ltd., reported at 1994 (1) Mh.LR 477, to point out that provisions of Section 44-A of the Act as amended have been upheld by said Division Bench.

7. Section 44-A of the Act as it stood before its amendment in 1986 Amendment reads as under :

“44-A. Notwithstanding anything contained in any agreement or any law for the time being in force, a Society (other than a land development bank) shall not for any loan given by it to any member for a period not exceeding 15 years whether the loan was given before or is given after the commencement of the Maharashtra Cooperative Societies (Third Amendment Act, 1973) charge, on account of interest, a sum greater than the principal of the loan.”

While said provision after it is amended by Maharashtra

Amendment Act No. 20 of 1986 reads as under :

“44-A. Notwithstanding anything contained in any agreement or any law for the time being in force, a Society (including a Cooperative Bank but excluding a land development bank) shall not for any loan (including rehabilitation loan but excluding long-term loan for irrigation or agricultural development purposes or loan exceeding rupees three thousand for non-agricultural or commercial purposes) given by it to any member-including a member-Society) for a period not exceeding 15 years, whether the loan was given before or is given after the commencement of the Maharashtra Co-operative Societies (Second Amendment) Act, 1985, recover, in any manner whatsoever, on account of interest, a sum greater than the amount of the principal of the loan.”

It is apparent that the amended provision clearly stipulates that it is not applicable to long-term loans for irrigation or agricultural development purposes or loan exceeding rupees three thousand for non-agricultural or commercial purposes. There was no such exclusion in unamended Section 44-A of the Act. It included all types of loans and stipulated that the creditor society shall not on account of interest, charge a sum greater than the amount of the principal of the loan. By amendment, though this principle has been maintained, the Legislature has specified that it would not apply to non agricultural or commercial

loans, if amount borrowed is in excess of Rs.3,000/-. Language of section 44-A before amendment clearly stated that it was attracted whether the loan was given before or is given after the commencement of Maharashtra Cooperative Societies (Third Amendment) Act, 1973. Thus, the date on which loan was given was not held to be relevant by the Legislature for application of even unamended Section 44-A. It is, therefore, apparent that the Legislature enacted this provision in the interest of borrowers and against the wish of creditors and made it mandatory. The same intention is revealed even in amended provision of Section 44-A. The said language is maintained and the Legislature has specified that even if loan was given before or is given after the commencement of the Maharashtra Co-operative Societies (Second Amendment) Act, 1985, the borrower will not be required to pay interest more than the amount of principal of the loan. It is, therefore, clear that the date on which the present petitioners have received loan from Respondent No.1 is not at all relevant in the matter. The Legislature wants that provision to apply to all loans whether disbursed before or after the commencement of the Act.

8. Though old Section 44-A of the Act did not exclude any loan, it only exempted those loans which were given to members for a period

exceeding 15 years. This exemption portion of Section 44-A has been widened further by 1986 Amendment which stipulates that long term loans for irrigation and agricultural development purposes or loans exceeding Rs.3,000/- for non-agricultural or commercial purposes shall not be subject to provisions of section 44-A. Thus, when old Section 44-A is read along with the amended provision thereof, it is apparent that even though a loan for irrigation or agricultural development purposes or loan exceeding Rs.3,000/- for non agricultural or commercial purposes was under the protective umbrella of Section 44-A prior to 1986 after 1986, it ceases to enjoy the said protection. It is, therefore, apparent that merely because dispute is filed in 1981 and provisions of Section 44-A have been amended thereafter, that cannot be the reason to contend that old Section 44-A would govern the rights of the parties in the matter.

9. At this stage, Shri Mohta, learned counsel for the petitioners has invited attention to Division Bench judgment in the case of Nivrutti vs. A.P.V.K. Seva Sahakari Society Ltd., reported at AIR 1985 Bom. 131, to contend that in the facts of present case, the loan amount is crystalized in the year 1981 itself when dispute was filed and hence the provisions of old Section 44-A alone will be applicable. The perusal of said judgment reveals that the Hon'ble Division Bench there found that in

unamended Section 44-A, legislature in its wisdom used the expression “charge” which means demand. The Division Bench found that expression used was not “recover”. The Division Bench in this background observed that said expression cannot be confused with the recovery of the amount after it has been crystalized either in an Award or order of a competent authority. In the facts of said case, the Division Bench found that on the date on which the society moved an application under Section 101, the amount of interest charged by it was much less than the principal amount and therefore Section 44-A was not applicable. However, in relation to amended provision of Section 44-A, this controversy is rendered redundant because amended provision of Section 44-A does not use the word charge and it used the word recover. I, therefore, find that this Division Bench judgment is not helpful to present petitioners.

10. Section 44-A exempts commercial loans exceeding Rs.3,000/- from its fold. As already stated above, amount of loan in both these matters is more than Rs.3,000/-. The present petitioners in their written statement before the Cooperative Court have stated that the dispute as filed was not maintainable because it was filed against firm without joining partners or proprietors thereof as parties. The Cooperative Court

has considered these findings and has negated it. In the process, the Cooperative Court found that loan was obtained by the present petitioners for business purposes and he avoided to pay loan dishonestly. As already held above, the amended provisions of Section 44-A would apply in the matter and as the loan has not been shown to have been obtained for purposes other than non-agricultural purposes and in view of the findings raised by the petitioners in their written statements, it will have to be held that the petitioners have obtained loan for commercial purposes. Hence, even on this count, the said challenge insofar as Writ Petition No.117 of 1993 is concerned, is bound to fail.

11. Coming to the second argument about the provisions of Section 96 of the Act, the amended provision of Section 96 reads as under :

“When a dispute is referred to arbitration, the Cooperative Court may, after giving a reasonable opportunity to the parties to be heard, made an award on the dispute, on the expenses incurred by the parties to the dispute in connection with the proceedings, and fees and expenses payable to the Co-operative Court. In case of money claim preferred by society against a member, the amount of award representing the interest shall not be less than the amount of interest accrued thereon in accordance with the

contractual rate of interest but where such money claim relates to any loan referred to in section 44-A, the provisions of that section shall apply to such money claim as they apply to loan under section 44-A.”

The said provision as amended by Amendment Act No. 20 of 1986 insofar as portion relevant for present consideration is concerned, it stipulates that the Cooperative Court cannot in a claim preferred by a society against a member, award interest less than the amount of loan in accordance with contractual rate of interest. Here, there is no dispute about the fact that contractual rate was 16.5%. However, the argument advanced is that under unamended provision of Section 96, Cooperative Court did not possess any such powers. The unamended provisions of Section 96 reads as under :

“When a dispute is referred to arbitration, the Registrar (or the Co-operative Court may, after giving a reasonable opportunity to the parties to the dispute to be heard, make an award on the dispute, on the expenses incurred by the parties to the dispute in connection with the proceedings, and fees and expenses payable to the Registrar (or the Co-operative Court, as the case may be,) Such an award shall not be invalid merely on the ground that it was made after the expiry of the period fixed for deciding the dispute by the Registrar, and shall, subject to appeal or review or revision, be binding on the parties to

the dispute.”

12. It is, therefore, clear that unamended provision of Section 96 does not speak of any interest at all. It is further clear that if the arguments of petitioners are accepted then the provisions of Amendment Act also cannot be read as enabling Cooperative Court to award future interest. When the provisions of Section 96 (unamended) are read with amended provisions of Section 96 of the Act, it is apparent that by Amendment Act No.20 of 1986, legislature has put an obligation upon the Cooperative Court not to award interest at a rate lesser than contractual rate of interest. By this amending provision, it is clear that the legislature was aware that the Cooperative Court possessed power to award future interest and hence it has taken precaution by amending said provision in Section 96 of the Act by requiring the Cooperative Court to award interest at contractual rate only. Thus, the arguments of the petitioners are without any substance even on this count.

13. The learned counsel for the petitioners has contended that in view of the judgment of the Hon'ble Apex Court in Central Bank of India vs. Ravindra, (supra), particularly paragraph 55, clause 8 thereof, the Court has got discretion in the matter of grant of interest pendente lite

and post-decree interest. However, in view of the provisions incorporated in Section 96 by Amendment Act No. 20 of 1986, which mandates Cooperative Court to award interest at a rate not less than contractual rate of interest, I find that this ruling again has no application in the facts of present case. The learned counsel has contended that the Cooperative Court has awarded interest on interest and in view of the provisions of Section 34 of CPC, in any case such future interest could not have been in excess of 6%. In view of the specific provision made by Amendment Act No. 20 of 1986, in Section 96 of the Act, I find that Section 34 of Civil Procedure Code will have no application here. Similarly, perusal of disputes as filed by Respondent No.1 reveal that they have claimed interest as mentioned in their Bye laws. The said interest also appears to have been at 16.5%. The Cooperative court has granted interest at 15% while delivering the awards on 6.1.1992 and 14.5.1991 respectively. It is apparent that the interest has been granted in accordance with the provisions of agreement between the parties and also in accordance with provisions of Bye laws. Therefore, I find that the arguments of the petitioners about grant of interest on interest are without any merit in the facts of both these writ petitions. The Cooperative Court has, however, overlooked the mandate of Section 96 of the Act and has granted interest at a rate which was lesser than the

contractual rate of interest between the parties. The Cooperative Appellate Court has corrected that error and has granted interest at agreed rate to Respondent No.1. Such use of discretion by the appellate Court is in accordance with Section 96 of the Act and therefore not illegal. The petitioners cannot take advantage of apparent error committed by the Cooperative Court by ignoring mandate of Section 96 of the Act. I, therefore, find no substance even in arguments of learned counsel for the petitioners that the Cooperative Appellate Court has given relief to Respondent No.1 though Respondent No.1 did not file appeal under Section 97 of the Act before it.

14. In the result, I find that there is no merit in any of the petitions and both writ petitions are accordingly dismissed. However, in the circumstances of the case, there shall be no order as to costs.

15. At this stage, Shri Mohta, learned counsel for the petitioners states that as per orders of this Court passed in present matters, the petitioners have already deposited the amount equal to double the loan amount with Respondent No.1 – Bank in 1993 itself. He states that such an amount along with interest accrued thereon should be taken into consideration by Respondent No.1 - Bank while finalizing the amount, if

any, outstanding against the petitioners. He states that he is making this request without prejudice to the rights of the petitioners to file appeal against the orders passed by this Court today.

16. Under the circumstances, Respondent No.1 – Bank shall take into account the amounts deposited by the petitioners with it along with interest, if any accrued upon it while working out for finalizing the accounts of the petitioners in the matter.

JUDGE

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