IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6581 OF 2022

Bhanudas @ Suryabhan S/o Ramchandra Shinde,
Age: 70 years, Occu.: Agril,
R/o. Shiplapur, Tq. Sangamner,
Dist. Ahmednagar. ..Petitioner

Versus

1. The State of Maharashtra
Through it's
The Principal Secretary,
Co-operative Department,
Mantralaya, Mumbai.

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

3. The District Registrar (Money Lending) and
District Sub Registrar, Co-operative Society,
(Sanstha), Ahmednagar,
Tal & Dist. Ahemadnagar.

4. The Deputy Registrar,
Co-operative Societies, Sangamner,
Tq. Sangamner, Dist. Ahmednagar.

5. Haribhau s/o Kisan Thorat,
Age: 54 years, Occ. Agril,
R/o. Shiplapur, Tal. Sangamner,
Dist. Ahmednagar. ..Respondents

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Mr. K. N. Shermale, Advocate for the Petitioners.
Mr. S. S. Dande, AGP for Respondents-State.
Mr. S. K. Shinde, Advocate for Respondent No.5.

…

CORAM : SANDEEP V. MARNE, J.

RESERVED ON : 10.11.2022.
PRONOUNCED ON : 15.11.2022.

JUDGMENT:-

1. Rule. Rule made returnable forthwith. With the consent of parties, matter is taken up for final hearing at the admission stage.

THE CHALLENGE

2. A somewhat unique issue arises in the present petition. Whether an authority exercising powers under the provisions of the Maharashtra Money Lending (Regulation) Act, 2014 (for short 'the Act of 2014) can pass an order contrary to a decree passed by a Civil Court? The issue arises in the light of challenge set out up by Petitioner to the order dated 30.03.2022 passed by the Divisional Joint Registrar, Co-operative Societies passed in Second Appeal No.8/2008 thereby confirming the order dated 14.06.2018 passed by the District Registrar (Money Lending) and District Sub Registrar Co-operative Societies, Ahemadnagar in Appeal No.69/2017.

FACTUAL MATRIX

3. Shorn of unnecessary details, facts of the case are that two sale deeds came to be executed by respondent no.5 in favour of petitioner on 13.11.2009 transferring the right, tittle and interest in respect of lands admeasuring 80R each in Gut No.135/4 for consideration of Rs.3,00,000/- each (total consideration of Rs.6,00,000/-). There is a difference of opinion between petitioner and

respondent no.5 as to the nature of transaction. While the petitioner has considered the transaction as a sale deed, respondent no.5 assumes the same as mortgage by conditional sale.

4. It is a case of respondent no.5 that he was in need of money and petitioner, acting as an unauthorized money lender, advanced loan of Rs.6,00,000/- to respondent no.5 and took the land as a security towards the said loan. Despite respondent no.5 willing to return the amount of Rs.6,00,000/-, petitioner failed to reconvey the lands. This led to making of a representation by respondent no.5 to the Minister for Agriculture and Marketing on 03.04.2013 alleging that petitioner has been acting an unauthorized money lender and transferring in his name lands of poor farmers.

5. It is the case of petitioner that on account of respondent no.5 approaching the Minister, the District Registrar (Money Lending) initiated proceedings against him under the provisions of the Act of 2014, despite the fact that respondent no.5 had already instituted Special Civil Suit No.20/2012 in the Court of 2nd Joint Civil Judge, Senior Division, Sangamner seeking reconveyance the lands and a declaration that the transaction was in the nature of mortgage by conditional sale.

6. Searches were conducted at the residence of petitioner and certain documents, on the basis of which, prima facie doubt was raised that he was indulging in moneylending activities. In the proceedings initiated before the District Registrar (Money Lending), initially an order of remand was passed on 30.05.2016 directing Sub Registrar, Co-operative Societies, Sangamner to conduct *de novo* enquiry and submit a report. Accordingly, upon conducting a de novo enquiry, the Sub Registrar, Co-operative Societies, Sangamner submitted report dated 10.08.2017 *prima facie* opining that there was a possibility of petitioner engaging in money lending transactions. The District Registrar (Money Lending) and District Deputy Registrar, Co-operative Societies, Ahemadnagar passed order dated 14.06.2018 under the provisions of Section 18(2) of the Act of 2014 declaring that the sale deeds dated 13.11.2009 executed by respondent no.5 in favour of petitioner was void and restored the ownership of the lands in the name of respondent no.5.

7. An Appeal came to be preferred by petitioner before the Divisional Joint Registrar, Co-operative Societies, Nashik bearing Appeal No.8/2018. By order dated 30.03.2022, the Appeal has been rejected.

8. In the meantime, Special Civil Suit No.20/2012 instituted by Respondent No. 5 came to be dismissed by the 2nd Joint Civil Judge, Senior

Division, Sangamner vide judgment and order dated 30.10.2015 holding that the transaction that took place between petitioner and respondent no.5 was that of sale and not of mortgage by conditional sale. The prayer of respondent no.5 for reconveyance the lands was accordingly rejected.

SUBMISSIONS

9. Appearing for the petitioner Mr. Shermale, the learned counsel would submit that the proceedings initiated by respondent no.5 under the Act of 2014 were not maintainable in the light of pending Civil Suit relating to same cause of action. He would further submit that the authorities exercising powers under the Act of 2014 were left with no option but to decide the matter in favour of respondent no.5 on account of directives issued by the Minister on 03.04.2013. He would further submit that after the Civil Court dismissed the suit of respondent no.5, the District Registrar (Money Lending) could not have recorded contrary findings about the nature of the documents in question. He would further submit that both the authorities have been erroneously ignored the judgment and order passed by the Civil Court while passing their respective orders.

10. *Per contra*, Mr. Shinde, the learned counsel appearing for respondent no.5 as well as Mr. Dande, the learned AGP appearing for the State raise a preliminary objection about the

maintainability of the present petition in the light of availability of alternate and equally efficacious remedy of filing revision before the Registrar General under the provisions of Section 9 of the Act of 2014. They would submit that all the contentions presently raised by the petitioner can also be raised in the revision before the Registrar General. They would otherwise support the order passed by the authorities on merits, submitting that enough material was seized from residence of Petitioner demonstrating that he was indulging in business of moneylending. They pray for dismissal of the petition.

11. In rejoinder Mr. Shermale would urge this Court to entertain the present petition by ignoring the alternate remedy owing to the peculiar facts and circumstances of the case where contradictory findings are recorded by Civil Court and authorities exercising powers under the Act of 2014.

PRELIMINARY OBJECTION OF ALTERNATE REMEDY

12. It is common ground that under Section 9 of the Act, 2014 the Registrar General enjoys revisionary power to call for and examine the record of any enquiry or proceedings of any matter in which no further appeal lies and to modify, annul or reverse any such order. Section 9 provides thus:

> *"9. The Registrar General may, suo motu or on an application, call for and examine*

the record of any enquiry or proceedings of any matter where the order has been passed or decision has been given by an officer subordinate to him, and no appeal lies against such decision or order for the purpose of satisfying himself as to the legality and propriety of the decision or order and as to the regularity of the proceedings. If during the course of such inquiry, the Registrar General is satisfied that the decision or order so called for should be modified, annulled or reversed, he may, after giving a person likely to be affected thereby an opportunity of being heard, pass such order thereon as he may seem just."

13. Petitioner has chosen not to file revision before the Registrar General and has instead approached this Court by filing the present petition under the provisions of Article 226 and 227 of the Constitution of India setting up a challenge to the orders passed by the Divisional Joint Registrar and District Registrar (Money Lending). Obviously, a preliminary objection is raised by the State Government as well as respondent no.5 to the maintainability of the petition in the light of the availability of alternate and equally efficacious remedy of filing Revision under Section 9 of the Act, 2014.

14. Ordinarily this Court would be loath in entertaining the petition under Article 226 or 227 of the Constitution of India where alternate and equally efficacious remedy is available to a petitioner. However, it has been contended on

behalf of petitioner that the facts of the case are so unique and the illegalities committed by the authorities are so glaring that this Court would be justified in entertaining the present petition, rather relegating him to the remedy of Revision under Section 9 of the Act, 2014.

15. The Apex Court has outlined the scope of exercise of jurisdiction under Article 226 in the light of availability of alternate remedy in catena of judgments. I may refer to few of them. In **Radha Krishan Industries Vs. State of Himachal Pradesh and Others, (2021) 6 SCC 771** the Apex Court has laid down following principles on the issue of maintainability of a writ petition in the light of availability of alternate remedy:

> "27. The principles of law which emerge are that:
> 27.1. The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well.
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> 27.2. The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person.
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> 27.3. Exceptions to the rule of alternate remedy arise where: (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction, or (d) the vires of a legislation is challenged.

27.4. An alternate remedy is itself does not divest the High Court or its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law.

27.5. When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion.

27.6. In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.

28. These principles have been consistently upheld by this Court in *Chand Ratan v. Durga Prasad, Babubhai Muljibhai Patel v. Nandlal Khodidas Barot* and *Rajasthan SEB v. Union of India* among other decisions."

16. In **Maharashtra Chess Assn. v. Union of India, (2020) 13 SCC 285**, the Apex Court has observed as under:

13. The role of the High Court under the Constitution is crucial to ensuring the rule of law throughout its territorial jurisdiction. In order to achieve these transcendental goals, the powers of the High Court under its writ jurisdiction are necessarily broad. They are conferred in aid of justice. This Court has repeatedly held that no limitation can be placed on the powers

of the High Court in exercise of its writ jurisdiction. In A.V. Venkateswaran v. Ramchand Sobhraj Wadhwani [A.V. Venkateswaran v. Ramchand Sobhraj Wadhwani, (1962) 1 SCR 753 : AIR 1961 SC 1506] a Constitution Bench of this Court held that the nature of power exercised by the High Court under its writ jurisdiction is inherently dependent on the threat to the rule of law arising in the case before it: (AIR p. 1510, para 10)

> "10. … We need only add that the broad lines of the general principles on which the court should act having been clearly laid down, their application to the facts of each particular case must necessarily be dependent on a variety of individual facts which must govern the proper exercise of the discretion of the Court, and that in a matter which is thus pre-eminently one of discretion, it is not possible or even if it were, it would not be desirable to lay down inflexible rules which should be applied with rigidity in every case which comes up before the court."

The powers of the High Court in exercise of its writ jurisdiction cannot be circumscribed by strict legal principles so as to hobble the High Court in fulfilling its mandate to uphold the rule of law.

14. While the powers the High Court may exercise under its writ jurisdiction are not subject to strict legal principles, two clear principles emerge with respect to when a High Court's writ jurisdiction may be engaged. First, the decision of the High Court to entertain or not entertain a particular action under its writ jurisdiction is fundamentally discretionary. Secondly, limitations placed on the court's decision to exercise or refuse to exercise its writ jurisdiction are self-imposed. It is a well-settled principle that the writ jurisdiction of a High Court cannot be completely excluded by statute. If a High Court is tasked with being the final recourse

> to upholding the rule of law within its territorial jurisdiction, it must necessarily have the power to examine any case before it and make a determination of whether or not its writ jurisdiction is engaged. Judicial review under Article 226 is an intrinsic feature of the basic structure of the Constitution. [Minerva Mills Ltd. v. Union of India, (1980) 3 SCC 625; L. Chandra Kumar v. Union of India, (1997) 3 SCC 261 : 1997 SCC (L&S) 577]

17. In **Kalpraj Dharamshi v. Kotak Investment Advisors Ltd., (2021) 10 SCC 401**, the Apex Court has reiterated the principle that non-exercise of writ jurisdiction by High Court in the light of alternate remedy is a self-imposed restriction and that the same is not a hard-and-fast rule. The Court has held as under:

> **73.** By now, it is a settled principle of law, that non-exercise of jurisdiction by the High Court under Article 226 of the Constitution is not a hard-and-fast rule, but a rule of self-restraint. As early as in 1969, in Baburam Prakash Chandra Maheshwari [Baburam Prakash Chandra Maheshwari v. Zila Parishad, (1969) 1 SCR 518 : AIR 1969 SC 556] , this Court observed thus : (AIR p. 558, para 3)
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> > "3. It is a well-established proposition of law that when an alternative and equally efficacious remedy is open to a litigant he should be required to pursue that remedy and not to invoke the special jurisdiction of the High Court to issue a prerogative writ. It is true that the existence of a statutory remedy does not affect the jurisdiction of the High Court to issue a writ. But, as observed by this

> Court in Rashid Ahmed v. Municipal Board, Kairana [Rashid Ahmed v. Municipal Board, Kairana, 1950 SCC 221 : 1950 SCR 566] , 'the existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writs' and where such a remedy exists it will be a sound exercise of discretion to refuse to interfere in a writ petition unless there are good grounds therefore. But it should be remembered that the rule of exhaustion of statutory remedies before a writ is granted is a rule of self-imposed limitation, a rule of policy, and discretion rather than a rule of law and the court may therefore in exceptional cases issue a writ such as a writ of certiorari notwithstanding the fact that the statutory remedies have not been exhausted."

74. This Court further laid down two well-recognised exceptions to the doctrine with regard to the exhaustion of statutory remedies, which reads thus : (Baburam Prakash Chandra Maheshwari case [Baburam Prakash Chandra Maheshwari v. Zila Parishad, (1969) 1 SCR 518 : AIR 1969 SC 556] , AIR p. 559, para 3)

> "3. … There are at least two well-recognised exceptions to the doctrine with regard to the exhaustion of statutory remedies. In the first place, it is well settled that where proceedings are taken before a Tribunal under a provision of law, which is ultra vires, it is open to a party aggrieved thereby to move the High Court under Article 226 for issuing appropriate writs for quashing them on the ground that they are incompetent, without his being obliged to wait until those proceedings run their full course.—(See the decisions of this Court in Carl Still GmbH v. State of Bihar [Carl Still GmbH v. State of Bihar, AIR 1961 SC 1615] and Bengal Immunity Co. Ltd. v. State of Bihar [Bengal Immunity Co. Ltd. v. State

> of Bihar, (1955) 2 SCR 603 : AIR 1955 SC 661] .) In the second place, the doctrine has no application in a case where the impugned order has been made in violation of the principles of natural justice. (See State of U.P. v. Mohd. Nooh [State of U.P. v. Mohd. Nooh, 1958 SCR 595 : AIR 1958 SC 86] .)"

75. It has been clearly held, that when the proceedings invoked before a statutory authority are dehors the jurisdiction or when they are in breach of principles of natural justice, the party would be entitled to invoke the jurisdiction of the High Court under Article 226 of the Constitution.

76. Referring to earlier judgments, this Court in Whirlpool Corpn. [Whirlpool Corpn. v. Registrar of Trade Marks, (1998) 8 SCC 1] observed thus : (SCC pp. 9-10, para 15)

> "15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the fundamental rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field."

18. Thus it is now a well established law that if the proceedings before statutory authority are *de horse* jurisdiction, this Court would be justified in entertaining writ petition under Article 226 of Constitution of India even if alternate remedy is available.

19. I therefore proceed to determine whether the authorities exercising powers under the Act of 2014 could have entertained and or decided the application/complaint of Respondent No. 5 in the light of pendency/decision of Civil Suit arising out of same cause of action. In ordinary circumstances, the District Registrar (Money Lending) has jurisdiction to hold an enquiry and pass order for restoration of land under Section 18 of the Act, which reads thus:

> **18.** (1) If, on the basis of facts disclosed, during verification under section 16 or inspection under section 17, or by an application from a debtor or otherwise, the District Registrar has reason to believe that any immovable property, which has come in possession of the money-lender by way of sale, mortgage, lease, exchange or otherwise, within a period of 1[fifteen years] from the date of verification or the inspection or the date of receipt of application from debtor, in the nature of the property offered by the debtor to the money- lender as a security for loan advanced by the money-lender in course of money-lending, the District Registrar may, himself or through an inquiry officer, to be appointed for the purpose, in the manner prescribed, hold further inquiry into the nature of the transaction.

> (2) If upon holding the inquiry as per sub-section (1), the District Registrar is satisfied that the immovable property came in possession of the money-lender as a security for loan advanced by the money-lender during the course of money-lending, the District Registrar may, notwithstanding anything contained in any other law for the time being in force, after recording the reasons, declare the instrument or conveyance as invalid and may order restoration of possession of the property to the debtor who has executed the instrument or conveyance as a security or to his heir or successor, as the case may be.
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> (3) Before passing an order or giving decision as per sub- section (2), the District Registrar shall give an opportunity to the person concerned to state his objections, if any, within fifteen days from the date of receipt of notice by him and may also give personal hearing, if he so desires.

20. In the present case, cognizance is taken by the District Registrar (Money Lending) of a complaint filed by Respondent No. 5. Whether Respondent No. 5 could have filed such a complaint is the moot question. He had already invoked jurisdiction of Civil Court seeking adjudication of the nature of transaction and his Suit was pending. Firstly, he therefore could not have simultaneously invoked jurisdiction of District Registrar (Money Lending) under the Act of 2014 for same cause of action. He did so by suppressing filing of Civil Suit, which fact was brought on record by Petitioner. In my opinion therefore the District Registrar (Money Lending) could not have entertained the complaint of Respondent No. 5 once his attention was invited to pendency of Civil Suit arising out of same cause

of action. Secondly and more importantly, by the time the proceedings came up for final decision before the District Registrar (Money Lending), the Civil Suit was decided holding that the transaction was that of sale. Therefore the District Registrar (Money Lending)could not have assumed the transaction as that of mortgage. Unless District Registrar (Money Lending) comes to a conclusion that the property came in possession of a moneylender by way of security for loan, he cannot exercise power of restoration of property under Section 18(2). One the transaction was declared as a sale by the Civil Court, District Registrar (Money Lending)could not have exercised jurisdiction under Section 18 of the Act of 2014. This is because unless transaction is treated as a mortgage and unless a satisfaction is recorded that property was offered as a security towards loan, District Registrar (Money Lending)cannot undertake proceedings for restoration. In my view therefore, the order passed by the District Registrar (Money Lending) is wholly without jurisdiction.

21. Apart from absence of jurisdiction, it is also necessary to examine the situation that has arisen on account of simultaneous invocation of jurisdiction of Civil Court and District Registrar (Money Lending). In the present case diagonally opposite views are expressed about the nature of the documents by the Civil Court and by the authorities exercising powers under the Act of

2014. As observed hereinabove the Civil Court has arrived at a conclusion that the deed executed by respondent no.5 in favour of the petitioner on 13.11.2009 is a 'sale deed' and that the same is not a transaction of 'mortgage by conditional sale'. The following findings of the Civil Court are relevant in this regard:

> "18. Apart from the above facts, in the cross-examination, plaintiff admitted that after the completion of prescribed period of mortgage, he has reconveyed the title in his own name from the defendant No.3 and 4. It is further admitted by the plaintiff that now he has no concern with defendant Nos.3 and 4. Moreover, about the sale-deeds dated 13/11/2009 executed in favour of defendant No.1 and 2, plaintiff categorically stated that he has executed both the sale-deeds on 13/11/2009 in favour of defendant No.1 and 2 are absolute sale transaction and transferred the title of the suit property 1A and 1B in favour of defendant No.1 and 2. The sanctioned mutation entries No.2456, 2457, 2463 and 2464 till the filing of suit, plaintiff not made any complaint to the concerned office. As I have already stated about the contents of both sale-deeds and in this regard, plaintiff clearly admitted that it is not mentioned in the sale-deeds about mortgage by conditional sale and no such any other document is executed. **Besides this material admissions, plaintiff stated in his cross-examination that to take revenge of filing of R.C.S. No.560/2012, he has filed this suit against the defendants and further he has desire of getting back the suit property from defendant No.3 and 4. Hence, taking into consideration, the admissions of plaintiff, no one can say that the sale-deeds Dtd. 13/11/2009 executed in favour of defendant No.1 and 2 are the transactions of mortgage by conditional sale and it is not absolute sale.**

> Thus, taking into consideration, the discussion of evidence, admissions given by the plaintiff and improvement made in respect of oral agreement of mortgage by conditional sale, **I come to the conclusion that the sale-deeds executed by the plaintiff in favour of defendant No.1 and 2 of the suit property 1A and 1B are the out right sale and not the transaction of mortgage by conditional sale.** Further, there is no cogent evidence on record to conclude that defendant No.1 and 2 fraudulently get executed the disputed sale-deeds in their favour. Hence, no question arise about the entitlement of plaintiff for reconveyance of sale-deed of suit property 1A and 1B from the defendant No.1 to 4 as asked. In the result of this discussion, I have given my negative findings to the issues No.1 to 3.

22. Perusal of the prayers made by respondent no.5 in Special Civil Suit No.20/2012 shows that he sought the relief of reconveyance of the lands after return of the amount of Rs.3,00,000/- + Rs.3,00,000/-. He further sought declaration to the effect that deed dated 13.11.2009 executed by him was in the nature of mortgage by conditional sale. These prayers sought for by the petitioner have been rejected by the Civil Court by recording aforestated findings.

23. As against the aforestated findings recorded by the Civil Court, the District Registrar (Money Lending) has treated transaction as that of a loan and has proceeded to declare the sale deeds as void under provisions of Section 18(2) of the Act of 2014. Thus the District Registrar (Money

Lending) has proceed to treat the document as mortgage. An order under Section 18(2) of the Act of 2014 cannot be passed unless the District Registrar is satisfied that the money lender has come in possession of the property as a security for loan advanced by him during the course of money lending. Though I do not find any specific findings being recorded by the District Registrar (Money Lending) to the effect that the property in question was obtained by the petitioner as a security for loan advanced to respondent no.5, since the order is passed under the provisions of Section 18(2) of the Act of 2014, it is required to presumed that the District Registrar had reached a satisfaction that a loan was advanced and the property was transferred by way of security for such loan. In short, the District Registrar (Money Lending) had refused to accept the defence of the petitioner that the document executed on 13.11.2009 was a 'sale deed'.

24. This is how completely contradictory findings are recorded by the Civil Court and by the District Registrar (Money Lending) with regard to the nature of the same transaction. The order of the District Registrar (Money Lending) has been upheld by the Divisional Joint Registrar, Co-operative Societies.

25. To make things worse, the District Registrar (Money Lending) has not at all dealt with

the aspect of the Civil Court dismissing the suit of respondent no.5 by treating the transaction as that of sale. Only a faint reference is made by the District Registrar (Money Lending) in his order dated 18.06.2018 about the judgment and order of the Civil Court dated 30.10.2015 stating that the suit was not filed under the provisions of the Act of 2014. Despite the attention of the Divisional Joint Registrar, Co-operative Societies being invited to the judgment and order passed by the Civil Court, he has also unfortunately proceeded to ignore the same while passing order dated 30.10.2022.

26. A unique situation is thus created in the present case where the officers exercising powers under the Act of 2014 have effectively sought to ignore the order passed by the Civil Court deciding the very same issue. There are two findings about nature of same document, which would lead to utter confusion. Provisions of Section 10 (stay of suit) and 11 (res judicata) of the Code of Civil Procedure are aimed at avoiding conflicting decisions by two courts. Though said provisions may not strictly apply to the present situation, the spirit behind those provisions are required to be borne in mind. A party to a litigation cannot be permitted to simultaneously exercise parallel remedies before two courts/authorities by suppressing filing of earlier proceedings. This Court cannot be a mute spectator to the abuse of

process of law by Respondent No. 5 and turn a blind eye to his deplorable conduct on the ground that an alternate remedy of revision is available.

27. Therefore both for the reasons of lack of jurisdiction and incongruous situation created on account of conflicting orders, interference by this Court in exercise of jurisdiction under Article 226 and 227 of the Constitution of India would be warranted to set the things right and to prevent a confusion being created on account of contradictory orders being passed by the Civil Court and a statutory authorities. In such circumstances, in my opinion, this would be a fit case to entertain the present petition, rather than relegating the petitioner to the remedy of filing Revision before the Registrar General under the provisions of Section 9 of the Act of 2014. Accordingly, I reject the preliminary objection raised on behalf of the State Government as well as respondent no.5.

Discussion on Merits

28. Coming to the merits of the matter, I find the conduct of respondent no.5 in exercising two remedies parallel in respect of the same cause of action to be objectionable. He first filed Special Civil Suit No.20/2012 on 29.06.2012 for reconveyance of the land by refund of the consideration of Rs.6,00,000/- and for a declaration that the transaction was that of mortgage by way of conditional sale. While the suit

was pending he directly approached the Minister on 03.04.2013 making a complaint against petitioner to the effect that he is the money lender. In his complaint, respondent no.5 made a general request for return of all the lands of various farmers in the nearby villages by petitioner. On the same day i.e. on 03.04.2013, the Minister directed the Collector, Ahmednagar to conduct an enquiry under the provisions of the Act of 2014 and submit a report. Even though, petitioner has alleged that the District Registrar (Money Lending) acted on dictum of the Minister and was not left with any choice but to pass an order against petitioner, I am unable to agree with such contention. The Minister had not issued any direction to take any particular decision in the matter either in favour of respondent no.5 or against petitioner. He had merely called for a report into the complaint made by respondent no.5. The letter of the Minister dated 03.04.2013 cannot be construed as if the same was a direction to the authorities to decide the matter in favour of respondent no.5. The contention in that regard is therefore rejected.

29. Coming back to the conduct of respondent no.5, he did not disclose the factum of filing Special Civil Suit No.20/2012 in his complaint made to the Minister on 03.04.2013. He chose to suppress the same. The suppression continued throughout the proceedings viz. while recording his statement on 02.08.2014 during enquiry and in the written

submissions before the District Registrar (Money Lending) on 21.11.2015. True it is that filing of said suit was brought to the notice of the District Registrar (Money Lending) by petitioner in his reply dated 06.10.2015. However the fact remains that respondent no.5 initiated parallel proceedings for the same cause of action under the Act of 2014 by suppressing the fact that he had already filed Special Civil Suit No.20/2012.

30. Also of relevance is the fact that respondent no.5 has succeeded in restoration of ownership of the lands in his favour in proceedings initiated under the Act of 2014 without refunding the consideration amount of Rs.6,00,000/-. As against this, in the Special Civil Suit No.20/2012 instituted at prior point of time, he was willing to and had prayed for return of the consideration amount of Rs.6,00,000/-. One can therefore safely draw an inference that respondent no.5 instituted parallel proceedings under the Act of 2014 subsequently with a view to avoid refund of the consideration amount.

31. As observed hereinabove, even though respondent no.5 continued suppressing factum of filing of Special Civil Suit No.20/2012 in the proceedings initiated under the Act of 2014, that fact was brought to the knowledge of the District Registrar (Money Lending) by petitioner. Before conclusion of the proceedings initiated before the

District Registrar (Money Lending), Special Civil Suit No.20/2012 came to be finally decided by judgment and order dated 30.10.2022. The judgment was produced before the District Registrar (Money Lending). Let us now see the manner in which the District Registrar (Money Lending) has dealt with the judgment and order passed by the Civil Court. Perusal of the order dated 14.06.2018 would indicate that the District Registrar (Money Lending) has refused to take cognizance of the judgment and order passed by the Civil Court on the ground that the suit was not filed under the provisions of the Act of 2014. This in my opinion a gross error is committed by the District Registrar (Money Lending). He ought to have considered the prayers made by respondent no.5 in the suit and the findings recorded by the Civil Court. This was necessary because District Registrar (Money Lending) was deciding the very same issue about nature of the transaction which was already decided by the Civil Court. The District Registrar (Money Lending) ought to have appreciated that he was recording a diagonally opposite opinion on the nature of the transaction, leading to utter confusion. However, with a view to avoid dealing with the findings recorded by the Civil Court, the District Registrar (Money Lending) apparently chose to ignore the judgment on a specious pretext that suit was not filed under the provisions of the Act of 2014. The Appellate Authority i.e. Divisional Joint Registrar added a

premium to the illegality by not even referring to the judgment and order passed by the Civil Court.

32. The Appellate Authority has made an attempt to determine the nature of the transaction by referring to the provisions of Section 54 of the Transfer of Property Act, 1882. However, while doing so, it lost sight of the fact that the nature of the transaction was already determined by the Civil Court way back on 30.10.2015.

33. In my view, serious illegalities have crept in on account of the authorities exercising jurisdiction under the Act of 2014 in ignoring the judgment and order delivered by the Civil Court delivered at a prior point of time. The respondent no.5 was not right in instituting two parallel proceedings in respect of the same cause of action. He continues to pursue his remedy before the Civil Court, as he has reportedly filed an Appeal before the District Court challenging the judgment and order passed by the Civil Court.

34. Since the Civil Court has already determined the nature of the transaction, the order passed by the Civil Court would prevail over the findings recorded by the authorities exercising powers under the Act of 2014. The said authorities may come to an independent conclusion as to whether the petitioner is engaged in the business of money lending or not. However, once the nature of the document is determined by the Civil Court and the

same is held to a transaction of absolute sale, it is no longer open for such authorities to record a contradictory opinion to the effect that the transaction was a mortgage and the land was offered by way of security. The orders passed by the authorities exercising powers under the Act of 2014 must therefore yield to the judgment and order delivered by the Civil Court. Consequently, the orders passed by those authorities are rendered illegal and deserve to be set aside. Even though, the orders passed by the authorities exercising powers under the Act of 2014 are being set aside, respondent no.5 is not entirely remediless. As observed hereinabove, he has already filed an Appeal in the District Court challenging the judgment and order dated 30.10.2015 passed in Special Civil Suit No.20/2012. He will be entitled to pursue the said remedy. In the event, respondent no.5 succeeds in the appeal and the transaction is held to mortgage by way of conditional sale, he would obviously be entitled to the relief of reconveyance of the land in his favour. All questions in that regard are left open. It is specifically clarified that, I have not gone into the merits of issue as to the nature of transaction in question and the District Court would be free to arrive at its own conclusion without being influenced, in any manner, by any of the observations made in the present order. Consequently, I proceed to pass the following order:

ORDER

A. The orders passed by the District Registrar (Money Lending) and District Deputy Registrar, Co-operative Societies, Ahmednagar on 14.06.2018 as well as the order passed by Divisional Joint Registrar, Co-operative Societies, Nashik Division on 30.03.2022 are quashed and set aside. Necessary consequences to follow.

B. There shall be no orders as to cost.

C. Rule is made absolute in above terms.

(SANDEEP V. MARNE)
JUDGE

LATER ON:

35. After pronouncement of judgment, Mr. Shinde, the learned counsel for respondent no.5 prays for stay to the operation of this order for a period of eight weeks. The prayer is opposed by Mr. Shrmale, the learned counsel appearing for the petitioner.

36. Considering the fact that, respondent no.5 claims to be in possession of the property since the year 2018, the operation of this order is stayed for a period of eight weeks from today.

(SANDEEP V. MARNE)
JUDGE

Devendra/November-2022