



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.7051/2025

PETITIONER : Mr. Jitendra Kawarilal Kothari,
Aged 56 years, Occu – Agriculturist,
R/o Sahabanagar Kalamb, Tq. Kalamb,
Dist. Yavatmal.

...VERSUS...

RESPONDENTS :

1. State of Maharashtra, Ministry of
Co-operative Marketing and Textile
Industries, through its Chief Secretary,
Mantralaya, Mumbai.
2. The District Deputy Registrar,
Co-operative Societies, Yavatmal,
Dagadi Building Sahkar Bhawan,
Tahsil Chowk, Yavatmal – 445001.
3. The Divisional Joint Commissioner,
Money Lending and Co-operative
Societies, Amravati Division, Amravati.
4. The Registrar General/Commissioner
of Co-operative Societies, New Central
Building, 2nd Floor, B.J. Road, Pune – 411001.
5. Nana Ramrao Kate,
Aged about 70 years, Occu. Retired
Teacher, R/o Mawalni at Present
Sahkar Apartment, Near Hudkeshwar
Naka, Nagpur.

Mr. A.G. Baheti and Mr. R.M. Bhangde, Advocates for petitioner
Mr. H.D. Dubey, AGP for respondent Nos.1 to 4
Mr. A.M. Ghare and Mr. Pushkar Ghare, Advocates for respondent No.5

CORAM : ROHIT W. JOSHI, J.

DATE : 06/03/2026

ORAL JUDGMENT :

1. Heard. Rule. Rule made returnable forthwith. Heard finally with the consent the learned Advocates for the rival parties.

2. The present petition arises out of order passed under Section 18 of the Maharashtra Money Lending (Regulation) Act, 2014 (for short hereinafter referred to as “Money Lending Act”). The respondent No.5 had filed proceedings under Section 18 (2) of the Money Lending Act against the present petitioner, *inter alia* alleging that the petitioner is a money-lender, who is engaged in money lending business, although he does not have licence of money lending under the said Act. It is alleged that the father of petitioner is his agent. The respondent No.5 stated that he was in need of money of Rs.20,000/- as loan for educational purpose of his son and therefore, he had approached the father of petitioner and obtained loan of Rs.20,000/- from the petitioner. He states that the loan was agreed to be repaid with interest @ 10% per month. He has stated that the petitioner had imposed condition for execution of sale-deed/earnest-note with respect to agricultural land of respondent No.5 towards security of loan amount. He has stated that in such circumstances he was compelled to execute a nominal sale-deed dated 21/04/2003 in favour of the

petitioner. The respondent No.5 contended that although he has refunded the amount along with interest, the petitioner did not return the sale-deed to him and rather tried to get the suit property mutated in his name.

3. On the aforesaid complaint lodged by the respondent No.5, the respondents-authorities conducted enquiry and arrived at conclusion that the petitioner had entered into 35 transactions of money lending under the guise of sale transaction from the year 2003 to 2004. Based on the aforesaid report and other evidence on record, the respondent No.2 passed order dated 02/11/2018, holding that petitioner was engaged in business of money lending without holding appropriate licence and that the sale transaction in question was a money lending transaction. The respondent No.2 accordingly declared the sale-deed dated 21/04/2003 to be illegal and passed an order for return of the said immovable property to respondent No.5. Aggrieved by the said order, the petitioner preferred an appeal before the respondent No.3, which was partly allowed vide order dated 29/06/2020. The order dated 02/11/2018, passed by the respondent No.2 was quashed and set aside and the proceeding was remanded to the respondent No.2 for deciding the same afresh by granting opportunity to both sides to lead evidence, conduct cross-examination of witnesses and advance arguments in the matter. After the remand, the respondent No.2 once

again passed order dated 23/06/2022, confirming the earlier order dated 02/11/2018, thereby declaring the sale-deed dated 21/04/2003 as illegal and directing the petitioner to return the property to the respondent No.5. Appeal preferred by the petitioner came to be dismissed by the respondent No.3 vide order dated 09/11/2022. The petitioner thereafter preferred revision before the respondent No.4, which came to be dismissed vide order dated 31/05/2024 on the ground that the same was not maintainable.

4. It will be pertinent to mention that initially the petitioner had filed a petition before this Court being Writ Petition No.7501/2024. However, there was mistake in the prayer clause in the said petition. As a consequence of this, the petitioner made a motion to withdraw the said petition with liberty to file a fresh petition. Vide order dated 29/09/2025, the petitioner was permitted to withdraw the said petition with liberty to file a fresh petition on the same cause of action. Accordingly, the present petition is filed, challenging the aforesaid orders.

5. Mr. Baheti, learned Advocate for the petitioner contends that petitioner had filed a civil suit being Regular Civil Suit No.69/2008 against the respondent No.5, seeking a decree of perpetual injunction, restraining him from disturbing his possession over the suit property. The learned Advocate contends that the said suit was filed claiming

ownership over the suit property on the basis of sale-deed dated 21/04/2003. It is contended that in the said suit the respondent No.5 raised a defence that the sale-deed was a sham document, which was created only in order to get security for the alleged loan amount. Learned Advocate for the petitioner contends that the said contention was rejected and in view of the sale-deed, the learned Civil Court has granted decree of perpetual injunction in favour of the present petitioner. The learned Advocate contends that the authorities under the Act cannot pass any order in contravention of adjudication of the issue by a Civil Court of competent jurisdiction. In support of his contention, learned Advocate has placed reliance on the judgment of this Court in the case of *Bhanudas @ Suryabhan s/o Ramchandra Shinde Vs. State of Maharashtra and others*, reported in *2023 (2) Mh.L.J. 555*. Learned Advocate also draws attention to the order dated 16/12/2009, passed by the respondent No.2 on a complaint made by the respondent No.5 with respect to the same sale-deed. He points out that the respondent No.2 had then arrived at a conclusion that the respondent No.5 had failed to establish his allegation of the sale transaction being a money lending transaction and accordingly, his complaint was rejected vide order dated 16/12/2009. Learned Advocate for the petitioner contends that the impugned order is in contravention of the earlier order, dated 16/12/2009 and therefore, unsustainable.

6. Apart from this, on merits, the learned Advocate contends that perusal of complaint will demonstrate that the respondent No.5 stated that sale-deed dated 21/04/2003 came to be executed in order to offer security for alleged loan amount of Rs.20,000/-, however, there is no explanation by the respondent No.5 with respect to earlier registered agreement of sale dated 14/03/2002, pursuant to which sale-deed dated 21/04/20203 is executed.

7. Another contention raised by the learned Advocate for the petitioner is that in the written statement filed in the civil suit, the respondent No.5 has not stated that the amount was allegedly borrowed on interest. He contends that improvisation is made in the complaint filed before the respondent No.5 and for the first time, after a period of around 13 years from the date of execution of the sale-deed, it is stated that amount of Rs.20,000/- was borrowed against interest @ 10% per month.

8. Mr. Ghare, learned Advocate for the respondent No.5 opposed the petition contending that the respondent Nos.2 and 3 have concurrently held that the transaction in question was a money lending. He draws attention to the order and points out that during the year 2003-2004, 35 similar transactions have been noticed by the authorities and as such, conclusion drawn by the authorities that the sale-deed in question is also in essence an outcome of money lending transaction is

just and proper. He argues that this Court should not take another view of the matter, since the findings are supported by voluminous material.

9. As regards the judgment and decree, passed by the learned Civil Court, the contention is that the suit was not a suit for declaration of ownership but a suit simplicitor for injunction, in which question of ownership was not directly and substantially in issue and as such, jurisdiction of the authorities under the Act to rule on the nature of transaction will not be ousted, in view of the decree passed in the aforesaid civil suit and further that the findings recorded in the said suit will not operate as *res judicata*. Mr. Ghare places reliance on the judgment of this Court in the case of *Parbata Jija Pote Died through Lrs. and others Vs. State of Maharashtra, Through its Principal Secretary, Co-operative, Marketing and Textile Department and others with connected petitions*, reported in *2024 SCC OnLine Bom 5408*, particularly paragraph 11 thereof, in support of his contention. Apart from this, he also places reliance on the judgment of the Hon'ble Supreme Court in the case of *Anathula Sudhakar Vs. P. Buchi Reddy (Dead) by Lrs. and others*, reported in *(2008) 4 Supreme Court Cases 594*.

10. With respect to the order dated 16/12/2009, passed by the respondent No.2, the contention of Mr. Ghare is that the said order is passed under the erstwhile Bombay Money-Lenders Act, 1946, which is

repealed by the Maharashtra Money Lending (Regulation) Act, 2014. His submission is that under the said Act, the respondent No.2 was not vested with authority to cancel or set aside any sale-deed with respect to immovable property. He contends that the said order will therefore not be an impediment for holding enquiry into the nature of sale-deed in question under the New Act.

11. In reply, Mr. Baheti seeks to distinguish the judgment of this Court in the case of *Parbata Jija Pote* (supra) by drawing attention to the fact that in the said case, the civil suit for injunction was pending and therefore, question of binding efficacy of judgment, delivered by the Civil Court, did not arise for consideration. As regards judgment in the case of *Anathula Sudhakar* (supra), Mr. Baheti draws attention to paragraph 18 and contends that the question of title was directly and substantially in issue in the aforesaid civil suit, although the prayer in the civil suit between the parties is only for injunction.

12. In view of the law laid down in *Bhanudas @ Suryabhan* (supra), there cannot be any quarrel with the legal proposition that when a Civil Court determines the nature of transaction, the judgment and decree passed by the Civil Court will prevail over any finding recorded by the authorities, exercising jurisdiction under the Money Lending Act. It must also be held that once the issue is set at rest by competent Civil Court, the authorities under the Act cannot pass any

order or record any finding to the contrary. Adjudication by a Civil Court will be fully binding on the parties as also authorities under the Act. It will be appropriate to refer to relevant observations of this court in the aforesaid judgment, which read thus :-

“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.”

13. It will also be appropriate to refer to the judgment delivered by the learned Civil Court in the suit filed by the petitioner. The petitioner has sought injunction based on title, in view of sale-deed in his favour. The respondent No.5/defendant raised a contention that the sale transaction was not only a camouflage and a security for loan. Said contention is expressly rejected by the learned Civil Court.

Relevant observation of the learned Civil Court in paragraph 11 is quoted herein below for reference :-

“Therefore, it is proved to my satisfaction that the plaintiff is the sole owner of the suit land under registered sale-deed Exhibit- 45.”

14. In view of the aforesaid express findings and law laid down in the case of ***Bhanudas @ Suryabhan*** (supra), in the considered opinion of this Court, the order passed by the respondent No.2, declaring the sale-deed in question to be a money lending transaction as also the order passed by the respondent No.3, dismissing the appeal arising out of the said order, cannot be sustained.

15. The judgment in the case of ***Parbata Jija Pote*** (supra) cannot be followed in the present case, since the suit in the present case is already decided on merits. It will be pertinent to state that in the said case, a civil suit for injunction filed by the alleged money-lender was pending and the issue was as to whether during the pendency of the said suit, enquiry under Section 18 of the Money Lending Act could be allowed to continue. This Court has merely held that despite pendency of civil suit for injunction by the alleged money-lender, enquiry under Section 18 of the Money Lending Act can independently continue. The said judgment does not lay down any proposition that judgment by Civil Court will not be binding on the authorities functioning under the Act

or that the authorities functioning under the Act can record findings contrary to those recorded by a Civil Court.

16. I am also in agreement with contention of Mr. Baheti that the question of title was directly and substantially an issue in the civil suit between the parties. The plaintiff/petitioner claimed decree of injunction on the basis of title and the prayer was opposed, contending that the transaction was a money lending transaction. In the case of **Anathula Sudhakar** (supra) the Hon'ble Supreme Court, in paragraph No.18, has observed thus : -

“18. On the other hand, in Sulochana Amma v. Narayanan Nair, this Court observed that a finding as to title given in an earlier injunction suit, can operate as res judicata in a subsequent suit for declaration of title. This was on the premises that in some suits for injunction where a finding on possession solely depended upon a finding on the issue of title, it could be said that the issue of title directly and substantially arose for consideration; and when the same issue regarding title is put in issue, in a subsequent title suit between the parties, the decision in the earlier suit for injunction may operate as res judicata. This Court observed :

"9. Shri Sukumaran further contended that the remedy of injunction is an equitable relief and in equity, the doctrine of res judicata cannot be extended to a decree of a court of limited pecuniary jurisdiction. We find no force in the contention. It is settled law that in a suit for injunction when title is in issue for the purpose of granting injunction, the issue directly and substantially

arises in that suit between the parties. When the same issue is put in issue in a later suit based on title between the same parties or their privies in a subsequent suit the decree in the injunction suit equally operates as res judicata."

The findings with respect to nature of transaction recorded by the learned Civil Court will operate as *res judicata* and will be finally binding between the parties. The authorities under the Act cannot record any finding to the contrary. However, the authorities have not taken into consideration the judgment delivered by the learned Civil Court despite the fact that the same was heavily relied upon by the petitioner during the course of hearing.

17. Apart from this, perusal of the application, filed by the respondent No.5 indicates that he had approached the petitioner through his father in order to borrow amount of Rs.20,000/- and that the petitioner obtained the sale-deed in question from him as a security for the aforesaid loan amount.

18. Perusal of application is completely silent with respect to earlier agreement of sale dated 14/03/2002. The sale-deed dated 21/04/2003 is executed, pursuant to the said agreement dated 14/03/2002. The agreement of sale dated 14/03/2002 is a registered document. Perusal of the agreement will further demonstrate that out of

the total consideration of Rs.52,000/-, a sum of Rs.45,000/- was paid by the petitioner to the respondent No.5 on the date of execution of agreement itself. The contention of the respondent No.5 that he had borrowed amount of Rs.20,000/- from the petitioner somewhere around April, 2003 and the petitioner got the sale-deed executed from him towards security of the loan amount is difficult to accept, in view of the fact that there is no explanation whatsoever with respect to the earlier registered agreement dated 14/03/2002. It must also be stated that sale-deed dated 21/04/2003 is executed after a period of over 13 months from the date of execution of registered agreement of sale dated 14/03/2002.

19. It will also be pertinent to state that in the written statement filed in the civil suit, the respondent No.5 has not come up with a contention that amount of Rs.20,000/- was borrowed against payment of interest. The learned Civil Court has disbelieved the case of defendant/respondent No.5 that the sale-deed in question was a loan transaction on the ground that his pleadings and evidence were silent with respect to interest. After a period of around 13 years from the date of sale-deed, the respondent No.5 stated in his application before the respondent No.2 that amount of Rs.20,000/- was borrowed on interest @ 10% per month. This statement is also not believable. Rate of interest pleaded by the respondent No.5 is an astronomical rate. It is difficult to

believe that the respondent No.5 missed out to plead about the same in the written statement and also did not lead any evidence in this regard in the civil suit.

20. Having regard to the aforesaid, in the considered opinion of this Court, the version of respondent No.5 with respect to the transaction being a loan transaction cannot be accepted.

21. The question of interest has a material bearing on the matter. Section 18 of the Money Lending Act confers jurisdiction on the District Registrar to pass an order of return of immovable property by declaring a sale-deed to be invalid, in case where it is found that a money-lender has obtained possession of immovable property as security for loan advanced by him during the course of money lending. Thus, an order declaring sale transaction invalid and delivery of possession can be passed only when the transaction is one of money lending transaction. In this regard it will be appropriate to refer to the definitions of the terms “money-lender”, “loan”, “interest” and “business of money-lending”, as defined under Sections 2 (14); 2 (13); 2 (9) and 2 (3) of the Money Lending Act respectively.

22. The term “money-lender” is defined to mean any individual or other entity, who carries on, ‘business of money lending’. The term “business of money lending” is defined under Section 2 (3) to mean business of advancing ‘loan’. “Loan” is also a term defined to mean an

advance of money at 'interest'. The term "interest" is defined under Section 2 (9) as any sum claimed by money-lender over and above the principal amount lent to a borrower. A person can be said to be money-lender only if he conducts 'business of money lending'. Business of money lending essentially involves advancement of loan. Any money advanced without interest does not fall under the definition of term "loan". Therefore, unless a lender charges interest from a borrower, he will not fall within the definition of a term "money-lender" under Section 2 (14) of the Money Lending Act. Perusal of Section 18 will demonstrate that order of declaration of sale transaction being invalid and restoration of possession of property sold can be passed only against a money-lender. Therefore, unless money is advanced by lender against interest, order under Section 18 of the Money Lending Act cannot be passed against him.

23. As recorded above, the case of interest set up by the respondent No.5 is clearly by way of an afterthought and therefore, unbelievable. In that view of the matter, in the considered opinion of this Court, the case of interest, which is set up by the respondent No.5 cannot be accepted. If the case of respondent No.5 with respect of payment of interest is discarded, the order of declaring the sale-deed invalid and directing delivery of possession to the respondent No.5 will be without jurisdiction.

24. Even if it is assumed that the petitioner is involved in business of money lending, as is stated in the report furnished by the authorities and held by the respondent Nos.2 and 3 in the impugned orders, it cannot be said that the present transaction is a money lending transaction since the case of respondent No.5 with respect to stipulation of interest is unbelievable.

25. As stated above, unless money is advanced against interest, the transaction cannot be termed to be a money lending transaction and therefore, order of cancellation of sale transaction and delivery of possession cannot be passed, even if it is held that the petitioner is otherwise dealing money lending transactions.

26. The impugned orders passed by other respondent No.2 and 3 are therefore liable to be quashed and set aside, in view of earlier adjudication to the contrary by the learned Civil Court, the respondent No.5 has failed to establish that the amount was advanced against interest and also because the respondent No.5 is completely silent with respect to execution of registered agreement of sale dated 14/03/2002, pursuant to which, sale-deed dated 21/04/2003 is executed.

27. It will be pertinent to mention that the learned Advocate for the respondent No.5 had raised a preliminary objection with respect to alternate remedy. It is his contention that the petitioner must be

relegated to alternate remedy of filing revision under Section 9 of the Money Lending Act.

28. The contention with respect to alternate remedy was rejected since the order passed by the respondent No.2 is without jurisdiction and also contrary to express adjudication of the issue involved by a competence Civil Court. It will be pertinent to state that objection with respect to alternate remedy was also raised in the case of ***Bhanudas @ Suryabhan*** (supra), which was rejected for the following reasons, recorded in paragraph Nos.26 and 27 :-

“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.”

29. This Court is in complete agreement with the view expressed in the said judgment. Preliminary objection with respect to alternate remedy is, therefore, rejected.

30. In view of the above, Writ Petition is allowed in the following terms :-

Order dated 31/05/2024, passed by the Registrar General/Commissioner of Cooperative Societies, respondent No. 4 in Revision Petition No.74/2022; order dated 09/11/2022, passed by the Divisional Joint Commissionaire, Money Lending and Co-operative Societies, Amravati Division, Amravati, respondent No.3 in Appeal No.11/2022 and order dated 23/06/2022, passed by the District Deputy Registrar, Co-operative Societies, Yavatmal, respondent No.2 in

Application No.30/2016 are quashed and set aside.

31. Rule is made absolute in the aforesaid terms. No order as to costs.

(ROHIT W. JOSHI, J.)

Wadkar