

kps

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.1175 OF 2015

Prabhakar Eknath Mahajan.

..Petitioner

-Versus-

The Jalgaon Janata Sahakari Bank
and others.

..Respondents

.....
Mr.Vijay B. Patil, Advocate for the Petitioner.

.....

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 06th February, 2015

Per Court:

1 The Petitioner is aggrieved by the impugned judgment and order dated 13.10.2014 passed by the Maharashtra State Cooperative Appellate Court, Mumbai Bench at Aurangabad in Appeal No.2/2013.

2 I have heard the learned counsel appearing for the Petitioner for quite sometime.

3 The issue is as regards the registered Deed of Mortgage dated 12.12.1988 wherein the Petitioner has mortgaged his properties so as to enable the Respondent No.2 (M/s Sudhir Textiles) to obtain different loans totaling Rs.11,35,000/- from the Respondent No.1 Bank.

4 The controversy was dealt with by the Cooperative Court which delivered its judgment dated 23.10.2012 in Dispute No.457/2000. On account of the said judgment, the Respondent No.1 Bank was permitted to recover the amount outstanding from the Opponent Nos.1 to 3 therein. The dispute was dismissed as against the Opponent Nos.4 to 6. Admittedly, the Petitioner was the Opponent No.6 before the Cooperative Court and the Opponent No.5 before the Cooperative Appellate Court.

5 The contention of Mr.Patil, learned counsel appearing for the Petitioner is that a xerox copy of the registered Mortgage Deed was placed before the Cooperative Court. Though evidence was led by the parties, the Cooperative Court disbelieved the said document since it was a xerox copy. The Respondent No.1 Bank did not produce the original registered Deed of Mortgage.

6 Mr.Patil further submits that the Petitioner is neither a borrower nor a guarantor. He is not a partner in the partnership firm M/s Sudhir Textiles. The loan was disbursed on 14.12.1988. Mr.Patil submits that the Petitioner denies of having executed the mortgage deed or having signed it. He also denies of the registration of the said mortgage deed and claims that he is in no way concerned with the same.

7 The Respondent No.1 Bank filed Appeal No.2/2013 before the Maharashtra State Cooperative Appellate Court. The Petitioner was the Opponent No.5 in the said Appeal.

8 After considering the record and proceedings and the appeal memo, the Appellate Court came to a conclusion that because the original registered Deed of Mortgage was not produced before the Cooperative Court, that the said Court had disbelieved the said document. The Appellate Court, therefore, considered the said position and arrived at a conclusion that for not producing the original registered Deed of Mortgage, the Petitioner had escaped his liability. The original Deed of Mortgage needs to be placed before the Cooperative Court so as to go into its probative value and to decide as to whether, it would impact the outcome of the proceedings. In such circumstances, the Appellate Court remanded back the matter to the Cooperative Court for further hearing.

9 The Petitioner has relied upon the judgment of this Court in the case of *Balkrishna Dattatraya Butte and others v/s Dattatraya Shankar Mohite and others* reported in **1998 (2) All MR 740**. The submission is that unless the Court comes to a conclusion that the order under challenge

is not based on evidence, the Appellate Court ought not to have remanded the matter. It appears from the facts of the said case that the Appellate Court had not considered the matter on its merits and had simply remanded the matter without any justifiable ground by imposing costs. This Court, therefore, viewed that the Appellate Court ought to have heard and disposed of the Appeal on merits on the available material.

10 In the instant case, the Appellate Court has noticed that though a xerox copy was filed before the Cooperative Court, the purported liability as regards the Petitioner had escaped. The Appellate Court, therefore, realized that the registered Deed of Mortgage was required to be brought on record since that was the foundation of the claim of the Bank. The Petitioner is said to have mortgaged the property mentioned in the registered Deed of Mortgage and for the reason of non production of the original document as recorded by the Appellate Court, the claim against the Petitioner was negatived. I, therefore, do not find that the ratio laid down in Balkrishna Butte judgment (supra) would be attracted in the present case.

11 The Petitioner has also relied upon the judgment of this Court in the case of *Rameshkumar Balubhai Sukhadia and another v/s Kumwardevi w/o Shamlal Rathor* reported in **2010 (6) All MR 888**. The

submission is that only when the adjudication of the original proceedings have suffered on account of such an aspect involved in the matter and that the matter requires a remand for recording evidence, then alone can a remand be ordered. In Rameshkumar's case (supra), this Court has noted that the evidence was led pursuant to the framing of issues and the legal aspects were not considered by the lower Court. Placing reliance upon the reported judgments, this Court concluded that an error committed by the Trial Court cannot be a ground for remand. The Appellate Court cannot shirk its duties. In these circumstances, this Court had directed the Appellate Court to consider the material before it.

12 I find from the instant case that the Appellate Court has considered the entire evidence placed before the Cooperative Court and after considering the entire case with due circumspection the Appellate Court realized that whole issue turns on the original registered Deed of Mortgage and merely because the Bank did not file the original document, that the Cooperative Court had negated the claim of the Bank as against the Petitioner. On this premise, the Appellate Court imposed costs upon the Bank and has remanded the matter to the Cooperative Court so as to enable the Bank to place the original document on record.

13 It is apparent that the Petitioner is aggrieved by the impugned

order of the Appellate Court since the probative value of the registered Deed of Mortgage would be considered by the Cooperative Court. As observed above, the entire issue turns on the said registered Deed of Mortgage which is stated to have been signed and executed by the Petitioner. Nevertheless, the Court has to endeavour that justice is done and on account of a technical flaw in the trial before the Cooperative Court, no litigant can be put in a position so as to take advantage of the said flaw. When ends of justice are pitted against technical objections, the obligation of the Court is to ensure that a proper opportunity is given to the litigating sides and let truth prevail. The Petitioner would obviously be heard and will have an opportunity of refuting the said document.

14 In my view, merely because the Petitioner is now put to hardship of undergoing the trial before the Cooperative Court, cannot be a ground to term the impugned order as perverse or erroneous.

15 The Apex Court in the case of *Syed Yakoob v/s K.S. Radhakrishnan* reported in **AIR 1964 SC 477** has laid down the law as regards the scope of this Court in entertaining the petitions under its supervisory and writ jurisdiction. Paragraphs 7 and 8 of the said judgment are as under:-

“7. *The question about the limits of the jurisdiction of High*

Courts in issuing a writ of certiorari under Art. 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals; these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or in excess of it, or as a result of failure to exercise jurisdictions. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot

be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Courts under Art.226 to issue a writ of certiorari can be legitimately exercised (vide Hari Vishnu Kamath v. Ahmed Ishaque, 1955-1 SCR 1104: ((S) AIR 1955 SC 233); Nagendra Nath v. Commissioner of Hills Division, 1958 SCR 1240 : (AIR 1958 SC 398) and Kaushalya Devi v. Bachittar Singh, AIR 1960 SC 1168.

8. *It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected by a writ has to be an error of law; but it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious mis-interpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record. It may also be that in some cases. the impugned error of law may not be obvious or patent on the face of the record as such and the Court may need an argument to discover the said error; but there can be no doubt that what can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the record. If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior Court or Tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari. In our opinion, it is neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record. Whether or not an impugned*

error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of the legal provision which is alleged to have been misconstrued or contravened."

16 In the light of the above, I do not find that grave injustice is done to the Petitioner by the impugned order. The Writ Petition being devoid of merits is, therefore, dismissed.

17 At this juncture, Mr.Patil, learned counsel appearing for the Petitioner, makes a request that the Cooperative Court be directed that it shall not be influenced by the conclusions drawn by the Appellate Court in the impugned judgment as well as the observations of this Court. He further makes a request that the Cooperative Court should decide the said proceedings on it's own merits.

18 The said request of the Petitioner is accepted. The Cooperative Court shall naturally decide the proceedings before it on it's own merits and without being influenced by the observations made by the Appellate Court in the impugned order and the observations of this Court.

19 No order as to costs.

(RAVINDRA V. GHUGE, J.)