

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

CIVIL APPLICATION NO. 14437 of 2013

IN

WRIT PETITION NO. 3209 OF 2008

Saraswati Co.op. Credit society Ltd., ... Applicant

VERSUS

Gagandas Pritamdas Basantani and others ... Respondents

.....

Mr. Mulkul S. Kulkarni, Advocate for applicant

Mr. V.D. Hon, Sr. Advocate holding for

Mr. A.V. Hon, Advocate for respondent Nos. 1, 2 & 4

Mr. U.H. Bhogle, A.G.P. for respondent No. 3

.....

WITH

CIVIL APPLICATION NO. 14438 of 2013

IN

WRIT PETITION NO. 3758 OF 2008

Saraswati Co.op. Credit society Ltd., ... Applicant

VERSUS

Prakash Gagandas Basantani and others ... Respondents

.....

Mr. Mulkul S. Kulkarni, Advocate for applicant

Mr. V.D. Hon, Sr. Advocate holding for

Mr. A.V. Hon, Advocate for respondent Nos. 1 to 4

Mr. U.H. Bhogle, A.G.P. for respondent No. 5

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CORAM : RAVINDRA V. GHUGE, J.

Date of Reserving Order :- 06-02-2015

Date of pronouncing Order :- 18-02-2015

ORDER:

1. This Court upon hearing the Advocates for the respective sides on 27-01-2015, has passed the following order :-

“ 1. In both the Writ Petitions, this Court had passed an order dated 12-06-2009. Ad-interim relief was granted to the petitioners subject to depositing 50% of the amount excluding the amount about which the counter claim was granted.

2. There are contradictory submissions of the litigating parties. The petitioner insists that 50% of the amount of the impugned order u/s 101 by excluding the counter claim granted has been deposited in this Court. Mr. Kulkarni, learned Advocate for the applicants/ society submits that the said order has not been complied with.

3. Mr. Hon, learned Sr. Advocate seeks short accommodation to point out the actual amount mentioned in the impugned certificate u/s 101, the counter claim of the petitioner allowed and depositing of 50% of the residual amount in deference to the order dated 12/06/2009.

3. Stand over to 06/02/2015. The original petitioner has filed affidavit in reply to indicate compliance of the order of this Court in C.A. No. 14438/2013. An affidavit shall be filed by the opponent/ original petitioner in C.A. No. 14437/2013 to meet the contentions of the applicants”

2. Upon hearing the learned Advocates for the respective sides, the issue turns upon the ad-interim order passed by this Court in both the above said Writ Petitions on 12-06-2009 which reads as under :-

“1. Heard leaned counsel for the parties.

2. It is pointed out that Revisional remedy U/s 154 of the Maharashtra Cooperative Society Act, 1960, is

*available. It appears that where there is lack of opportunity and the certificate is issued without following the relevant Rules, the Writ remedy may not be denied. The learned Advocate Mr. Hon, seeks to rely on **Khushal S/o Naryanrao Mundhe Vs. State of Maharashtra and otehrs, 2007 (4) Mh.L.J. 333.** The impugned order shows that the application of the petitioners was not considered. In view of peculiar circumstances obtained in the present case, I deem it proper to consider the petitions. Both the petitioner to be heard together.*

3. Rule.

4. Ad-Interim relief in terms of prayer clause (C) subject to deposit of Rs. 50% amount in the Court excluding the amount which the counter claim is granted."

3. Matter is as regards compliance of paragraph No. 4 of the order of this Court reproduced above dated 12-06-2009. Both the Civil Applications have been filed by the original respondent No. 2 society. Grievance is that paragraph 4 of the order dated 12-06-2009 has not been complied with by the original petitioners.

4. Shri Kulkarni, learned Advocate for the applicants has submitted his calculations as follows :-

A] Writ Petition No. 3758 of 2008

i] Amount recoverable as per impugned
Recovery Certificate = Rs. 1,03,54,282/-

ii] The Counter claim in favour
of the petitioners (CC) = Rs. 0,00,50,000/-

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iii Total Amount = Rs. 1,03,04,282/-

iv] 50% of the total amount = Rs. 0,51,52,141/-

B] Writ Petition No. 3209 of 2008

i] Amount recoverable as per impugned
Recovery Certificate = Rs. 1,91,87,176/-

ii] The Counter claim in favour
of the petitioners (CC) = Rs. 0,97,35,915/-

iii Total Amount Rs. 0,94,51,261/-

iv] 50% of the total amount Rs. 47,25,630.5/-

5. Shri Kulkarni, therefore, submits that due compliance of the order of this Court dated 12-06-2009 would necessitate that the original petitioners should have deposited an amount of Rs. 0,51,52,141/- + Rs. 47,25,630 = Rs. 98,77,771/-. He submits that the said order of this Court had granted protection to the petitioners subject to depositing 50% of the amount as stated in the recovery certificates by excluding the amount for which the counter claim is granted.

6. He, therefore, submits that the petitioners have abused the process of law by only enjoying the protection granted by this

Court by intentionally, willfully, and deliberately not depositing the said amount. Only Rs. 13,23,828/- was deposited on 28-03-2011.

7. Shri V.D. Hon, learned Sr. Advocate has filed an affidavit in reply. Contention is that the counter claim allowed by the competent Court had granted interest to the original petitioners @ of Rs. 12% from the date of order (23-02-2007) passed by the Cooperative Court till the date of actual payment.

8. Shri Hon has submitted his calculations as follows :-

**Writ Petition No. 3209 of 2008
Gagandas Pritamdas Basantani**

A] Recovery Certificate = Rs. 1,03,54,282/-

**Writ Petition No.3758 of 2008
Prakash Gagandas Basantani**

B] Recovery Certificate = Rs. 1,91,87,173/-

A + B Total = C = Rs. 2,95,41,455/-

D] Counter Claim (CC) = Rs. 0,00,50,000/-
Gagandas Pritamdas Basantani

E] Counter Claim (CC) = Rs. 1,33,96,900/-
Prakash Gagandas Basantani
(inclusive of interest)

**D + E (Counter Claim
= F) Rs. 1,34,46,900/-**

G]	50% of Recovery amount	= G	
	(without interest) (C)	=	Rs. 1,47,70,728/-
vi]	After deducting the said counter claim	=	Rs. 0,13,23,828/-
	[G – F]	=	

9. Shri Hon, therefore, submits that the amount of Rs. 13,23,828/- has been properly deposited in due compliance of the order dated 12-06-2009.

10. After considering all these calculations in the light of the protection granted by this Court and the condition imposed by order dated 12-06-2009, I find that the original petitioners have not only abused the process of law, but have attempted to play a trick on this Court.

11. The fallacy in the submissions of Shri Hon is two fold.

Firstly, the original petitioners have calculated the counter claim by applying interest @ 12% from 2007 onwards. Per contra, they have calculated the amount mentioned in the recovery certificate without applying the interest component. As such, while calculating the amount of counter claim, the original petitioners have inflated the counter claim amount by calculating interest @ of 12% which was granted by the Cooperative Court.

However, they have shrewdly avoided applying the interest component on the recovery certificate amounts. Either the component of interest needs to be applied in favour of the both the rival sides or it should not be applied to either of them. The petitioners have applied the interest component only to the amount granted by way of counter claim. This component is not applied to the amount mentioned in the recovery certificate thereby taking an advantage in calculating the amount deposited in this Court.

Secondly, the petitioners have shrewdly interpreted the order of this Court of depositing 50% of the total recovery certificate amounts by deducting the counter claim amount. As a consequence, the petitioners reduced the recovery certificate amounts to 50% and then deducted the entire counter claim with interest from the said amount thereby contending that Rs. 13,23,828/- have been rightly deposited in this Court.

12. While drawing my conclusions, I thought of testing the contentions of the petitioners with some abstract figures which are as follows :-

illustration-A

A]	Recovery Certificate amount	=	Rs.	1,000/-
	Counter claim allowed	=	Rs.	0400/-

Total after deducting CC = Rs. 0600/-

50% to be deposited = Rs. 0300/-

The above principle is applicable to this case.

Illustration-B

(as per the calculation of the petitioners)

A]	Recovery Certificate amount	=	Rs. 1,000/-
	50% to deposited	=	Rs. 0500/-
	Counter claim allowed	=	Rs. 0400/-
	Total after deducting Counter claim	=	Rs. 0100/-
	payable amount	=	Rs. 0100/-

13. In the above circumstances, I therefore, come to a conclusion that the original petitioners have dishonestly calculated the amounts while interpreting the order of this Court dated 12-06-2009.

14. After the submissions of the respective sides were concluded, Shri Hon stated that the petitioners are poor persons and are unable to deposit more amount as is calculated by the applicants Cooperative Society. He, however, submits that if some small amount is to be further deposited, the original petitioners are willing to deposit such small amount.

15. I am not inclined to accept the request of Shri Hon for the reasons recorded here-in-above which reflect on the conduct of the original petitioners.

16. In the light of the above, both the Civil Applications are allowed. Interim relief granted by this Court dated 12-06-2009 stands vacated.

(RAVINDRA V. GHUGE, J.)