

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2705 OF 2015**

Balaji Homogenizers Ltd & Ors

..Petitioners

Vs.

The Kolhapur Urban Co-op Bank Ltd. & Ors.

..Respondents

**WITH
WRIT PETITION NO.2706 OF 2015**

Balaji Homogenizers Ltd & Ors

..Petitioners

Vs.

The Kolhapur Urban Co-op Bank Ltd. & Ors.

..Respondents

Mr. Sandeep Koregave for the Petitioners

CORAM : R. M. SAVANT, J.

DATE : 5th AUGUST, 2015

P.C.

1 The above Petitions take exception to virtually identical orders passed by the Maharashtra State Co-operative Appellate Court, both dated 29-11-2014. By the said orders, the Appeals filed by the Petitioners above named being Appeal Nos.133 of 2014 and 134 of 2014, came to be allowed and resultantly the Judgment and Award dated 12-8-2012 in Appeal No.133 of 2014 and dated 24-9-2012 in Appeal No.134 of 2014, came to be set aside and the matter came to be remanded back to the Co-operative Court on payment of Rs.10,00,000/- each by the Petitioners to the Respondent No.1 Bank.

2 The Respondent No.1 herein has filed the dispute in question for

recovery of the two loans amount due from the Petitioners. The said disputes were Dispute No.111 of 2011 and Dispute No.112 of 2011. The said disputes came to be decreed exparte as the Petitioners were not represented though the partners of the Petitioners were served. The Petitioners initially filed Misc Applications for setting aside the said Judgment and Award, however, thereafter filed the instant Appeals being No.133 of 2014 and 134 of 2014. In view of the filing of the Appeals, the Petitioners withdrew the said Misc Applications filed before the Trial Court i.e. the Co-operative Court. In support of its contentions that the Appeals be allowed and the exparte Awards passed by the Co-operative Court be set aside, the principal contention of the Petitioner firm was that the Petitioner firm was not a member though its partners were members and therefore no dispute under Section 91 could be filed against it. It was also the contention of the Petitioner that the Petitioner firm was not served with the notice of the proceedings. The Co-operative Appellate Court considered the said contentions urged on behalf of the Petitioners. In so far as the first contention is concerned, the Co-operative Appellate Court held that it is the assertion of the Respondent No.1 Bank that the Petitioners are the members which contention could have been controverted by the Petitioners by participating in the proceedings by leading evidence etc., that being not done the contention urged on behalf of the Petitioners could not be accepted at the said stage. In so far as the service on the Petitioner firm is concerned, the Appellate Court held that the partners of

the Petitioner firm were served and therefore the parties cannot be heard to say that the firm was not served as the firm's name is only a compendious way of describing the partners. However, in view of the fact that the Petitioners should be given an opportunity to assert their case before the Co-operative Court, the Appellate Court has set aside the order and as and by way of balancing the equities has directed the Petitioners to deposit an amount of Rs.10,00,000/- in each of the disputes, for the disputes in question to be heard denovo. The said figure of Rs.10,00,000/- has been arrived at by the Appellate Court having regard to the outstanding amount due from the Petitioners under the Awards passed by the Co-operative Court.

3 In my view, having regard to the reasons mentioned by the Appellate Court in its impugned orders, the same cannot be taken exception to. The Appellate Court has whilst setting aside the Awards which were passed in favour of the Respondent No.1 and to balance the equities has rightly directed the Petitioners to make the deposit of the amount of Rs.10,00,000/-, in each of the disputes. Hence no case for interference in the Writ Jurisdiction of this Court is made out. The Writ Petitions are accordingly dismissed.

[R.M.SAVANT, J]