

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION (STAMP) NO.12946 OF 2015

Raigad District Central Co-operative Bank Ltd.

and another

.. Petitioners

Versus

The Pen Co-operative Urban Bank Ltd.

and another

.. Respondents

Mr. C. G. Gavnekar, for the Petitioners.

**Mr. Kirit J. Hakani a/w Ms. Reena Rana and Mr. Chinmay Shah, for
the Respondent No.1.**

CORAM : R.M. SAVANT, J.

DATE : 29th JULY, 2015

PC.

1. The Writ Jurisdiction of this Court is invoked against the judgment and order dated 17.04.2015 passed by the Learned President, Maharashtra State Co-operative Appellate Court, Mumbai, by which order the Appeal filed by the Respondent No.1 herein came to be disposed of. However, in so far as the Petitioner is concerned, who is the Respondent No.1 in the said Appeal liberty was granted to it to take appropriate remedy for safeguarding its benefits as per law. It is in respect of the said direction that the Petitioner is aggrieved and has therefore filed the above Petition.

2. Having regard to the challenge raised in the above Petition, it is not necessary to burden this order with unnecessary details. Suffice it to state that the dispute filed by the Petitioner in the Co-operative Court at Raigad was decreed and an Award was passed in favour of the Petitioner in the sum of Rs.44,57,70,319.06 and the interest was awarded from the date of the filing of the dispute till the Award. The Respondent No.1 against whom the Award was passed aggrieved by the same filed an Appeal before the Co-operative Appellate Court. The said Appeal was numbered as Appeal No.36 of 2012 and it seems that the amount awarded by the Appellate Court was sought to be disputed on the ground that during pendency of the dispute the Petitioner had recovered amounts from the Respondent No.1 and therefore, the decree could not have been passed in respect of the total amount claimed in the dispute. In the said Appeal a contention was raised on behalf of the Petitioner herein who was the Respondent No.1 in the said Appeal that in terms of Section 34 of the Civil Procedure Code ("CPC" for short), it was within the discretion of the Learned Co-operative Court Judge to Award interest post the Award till the realization of the decretal amount. Hence, on behalf of the Petitioner at the hearing of the Appeal a contention was raised that the Award of the Co-operative Court be modified to the extent of granting interest to the Petitioner post the Award till payment. The said contention was not

entertained by the Appellate Court. The Appellate Court in paragraph 9 of the impugned order has observed that since the claim was not made before the Trial Court, the Respondent No.1 is free to take suitable remedies before the proper forum as per law to safeguard its monetary benefits, if any and thereafter has issued the direction which has been adverted to in the earlier part of this order. The challenge in the above Petition is therefore limited to the said aspect namely the refusal of the Appellate Court to entertain the contention urged on behalf of the Petitioner based on Section 34 of the CPC. During the course of the hearing of the above Petition, the Learned Counsel for the Petitioner once again reiterated the case of the Petitioner based on Section 34 of the CPC. The Learned Counsel would contend that though there is no prayer in the dispute for interest post the Award till the realization being awarded the Co-operative Court and the Appellate Court were within their right to correct the Award by providing for the said post Award interest. In support of the said contention reliance is sought to be placed on Division Bench judgment of this Court reported in 1996-MhLJ-1-567 in the matter of Satish Solvant Extractions Private Limited Vs. New India Assurance Company Limited. The Division Bench in the said case was concerned with the scope and ambit of Section 34 of the CPC. In my view, the reliance on Section 34 or the judgment in Satish Solvant's case (supra)

would not further the case of the Petitioner in so far as the instant matter is concerned. It is required to be noted that in the main substantive prayer in the dispute, there was no claim for grant of interest post the Award till realization and the interest claimed was only for the period of the pendency of the dispute. The Petitioner also did not file its own Appeal or did not file any cross objection in the Appeal filed by the Respondent No.1 herein. Hence, it is questionable whether the Petitioner could have sought the relief which is sought on the basis of Section 34 of the CPC in the Appeal filed by the Respondent No.1. It is in the said circumstances that the Co-operative Appellate Court deemed it appropriate to direct the Petitioner to adopt its own remedy. In my view, therefore, no fault can be found with the impugned order passed by the Lower Appellate Court in so far as the Petitioner is concerned. No case for interdiction in the Writ Jurisdiction of this Court is therefore made out. It would be open for the Petitioner to adopt the course of action as propounded by the Co-operative Appellate Court in the impugned order. With the aforesaid observations, the Writ Petition is disposed of.

[R.M. SAVANT, J]