IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.591 OF 2015

Anand Grape Growers Co-Operative	]	
Society Ltd.,	]	
Through Manager Deepak Shantaram Pingle.	]	… Petitioner

Versus

Nashik Zilla Madhyawarti Sahakari Bank	]	
Ltd. and Ors.	]	… Respondents

Mr. P. N. Joshi for Petitioner.
Mr. Sachin Gite for Respondent No.1.

CORAM :- M. S. SONAK, J.
DATE :- DECEMBER 09, 2015

P. C. :-

1. This Court, by order dated 28/07/2014, had already put parties to notice that this petition will be disposed of finally at the stage of admission. Accordingly, Rule.

2. At the request of and at the learned Counsel for respondent no.1, Rule is made returnable forthwith.

3. On 28/07/2014, this Court ordered issuance of notice to respondents and directed that no further steps be taken pursuant to the attachment notice dated 30/06/2014 on the condition that

petitioner deposits 50% of the amount of the award, which was to the tune of Rs.86,27,646/- in this Court, prior to the returnable date. In the said order, it was made clear that the said amount is referable to Rule 107(12) of the Maharashtra Co-Operative Societies Rules, 1961. It was also made clear that if the amount is not deposited before the returnable date, the ad-interim relief will stand vacated.

4. The petitioner chose not to deposit 50% of the amount of the award which would come to approximately Rs.43 lacs, prior to the returnable date which was 27/08/2014. Therefore, as per the self operative order dated 28/07/29014, ad-interim relief in favour of the petitioner stood vacated.

5. On the next date, there is record of respondent no.1 being represented by an Advocate. On the said date, the petitioner applied for an adjournment on the ground that possibilities of an amicable settlement were being explored. The matter was stood over to 09/09/2014.

6. Thereafter on 24/12/2014, the matter was produced before Dhanuka, J. at 3.00 p.m. by the petitioner. A case of an extreme urgency was sought to be made out and on that ground, request was made to hear the matter even without notice to the respondents. On this date, this Court was persuaded to grant interim relief restraining the respondent-bank from taking any further steps pursuant to the order of attachment and pursuant to the public notice

issued on 23/12/2014 till 14/01/2015. By this order, the petitioner was directed to deposit a sum of Rs.20 lacs with the respondent-bank without prejudice to the rights and contentions of both the parties, within a period of one week from the said date.

7. There was really no justification for not serving a notice upon the respondents when production was applied for and order dated 24/12/2014 was obtained. However, considering the urgency, even if some indulgence is to be shown to the petitioner for default in the matter of service of notice, no indulgence whatsoever is due to the petitioner for having suppressed the earlier order dated 28/07/2014. It is more than apparent that the earlier order dated 28/07/2014 was not brought to the notice of Dhanuka, J. when production was applied for and the order dated 24/12/2014 was obtained. There is absolutely no reference to the earlier order dated 28/07/2014 in terms of which, similar interim relief was obtained by the petitioner subject to deposit of 50% of the award amount which would come to approximately Rs.43 lacs. The condition of deposit was not complied with and the interim order had already stood vacated. Therefore, it was the duty of the petitioner to have disclosed this order and the circumstance that there was default on the part of the petitioner to deposit 50% of the award amount. Such suppression is clearly serious. Based upon such suppression, the petitioner has unduly protracted the execution proceedings. In fact, public notice had been issued on 23/12/2014 to proceed with auction. On account of the order obtained by the petitioner on 24/12/2014 by practicing

deliberate suppression, such auction could not proceed. The petitioner has, by means, which can never be styled as 'fair', stalled the execution proceedings, without complying with the direction for deposit of 50% of the amount. The circumstance that the petitioner has paid an amount of Rs.20 lacs as per the directions contained in the order dated 24/12/2014, is hardly any solace, considering the gross facts and circumstances reflecting upon the conduct of the petitioner.

8. In fact, considering the conduct of the petitioner, the petitioner does not deserve any relief in this petition.

9. However, the order impugned in this petition challenges the condition for deposit of 50% of the amount imposed by the Co-Operative Appellate Court, Mumbai, as a pre-condition for condonation of delay in the institution of appeal. The delay in the present case was of hardly 30 days or thereabout. Mr. P. N. Joshi, learned Counsel for petitioner, is right in his submission that a direction for deposit of 50% of the award amount is too excessive, particularly when the same is imposed as a pre-condition for condonation of delay. At the stage of condonation of delay, the Court is required to examine whether sufficient cause has been disclosed. No doubt, the Court is entitled to impose costs in order to compensate the opposite party for the breach which might occasion the opposite party on account of entertainment of the appeal beyond the prescribed period of limitation. However at that stage, imposition of a condition

that the petitioner/appellant to deposit 50% of the award amount does appear to be excessive. As a result of this condition, it is possible that the petitioner/appellant is deprived of the statutory right to appeal against the award made by the Co-Operative Court. This was not a case where the Co-Operative Court was considering an application for stay of the execution of the award. At that stage, perhaps, this being a money award, a condition could have always been imposed with regard to deposit of the award amount or any portion thereof, considering the facts and circumstances of the case. However, imposition of such a condition as a pre-condition for condonation of delay of 30 days in institution of appeal cannot be sustained. Mr. Joshi has made a statement that the petitioner will have no objection to the respondent no.1-bank adjusting the amount of Rs.20 lacs towards the award amount. In the facts and circumstances of this case therefore, the delay in institution of appeal stands condoned in view of the payment of Rs.20 lacs by the petitioner to the respondent no.1-bank, which amount is to be adjusted against the award amount and/or the dues payable by the petitioner to the respondent no.1-bank. The impugned condition in the matter dated 11/06/2014 is therefore set aside and the same is substituted with the condition with regard to payment of the amount of Rs.20 lacs which condition has already been complied with by the petitioner. In effect, therefore, the delay in institution of the appeal stands condoned.

10. It is, however, made clear that in case the petitioner desires to obtain a stay on the execution of the award, the petitioner shall have to apply for the same before the Co-Operative Appellate Court. The Maharashtra Co-Operative Appellate Court to consider such application on its own merits and in accordance with law. It is made clear that none of the observations in this order are to be construed as any disapproval for imposition of condition for deposit of either the entire award amount or any portion thereof, as a pre-condition for grant of stay on the execution of the award. In fact, considering that this is a money award, it would be appropriate if appropriate conditions with regard to deposit or security are imposed upon the petitioner, should the petitioner choose to seek any stay upon the execution of the award. It is also clarified that the interim order made on 24/12/2014, though obtained by suppression, was to operate only up to 14/01/2015 and not thereafter. In fact, the interim relief granted in favour of the petitioner in the present petition stood vacated on 27/08/2014, as, the petitioner failed to deposit in this Court 50% of the award amount. Accordingly, it is clarified that at present, there is no interim relief restraining the respondent no.1-bank from executing the award in accordance with law.

11. Although relief is being granted to the petitioner in the present petition, this is a fit case where the petitioner is required to be saddled with costs. Such costs are necessary to be imposed considering the conduct of the petitioner in the matter of suppression of order dated 28/07/2014 at the time of obtaining the order dated

24/12/2014. Accordingly, the petitioner to pay costs of Rs.25,000/- (Rupees Twenty Five Thousand Only) to the respondent no.1-bank within a period of four weeks from today. The Co-Operative Appellate Court to ensure that such costs are in fact paid by the petitioner to the respondent no.1-bank within the said period.

12. Rule is made absolute to the aforesaid extent with costs as aforesaid.

13. All concerned to act on basis of authenticated copy of this order.

(M. S. SONAK, J.)