IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO. 1369 OF 2014

The Cosmos Co-operative Bank Ltd. ….. Petitioner

VERSUS

Mr.Manohar Kashinath Posture & Ors. ….. Respondents

AND

ARBITRATION PETITION NO. 1378 OF 2014

The Cosmos Co-operative Bank Ltd. ….. Petitioner

VERSUS

Shah Pankaj Kanchanlal & Ors. ….. Respondents

AND

ARBITRATION PETITION NO. 1379 OF 2014

The Cosmos Co-operative Bank Ltd. ….. Petitioner

VERSUS

Santosh Maruti Tamboli & Anr. ….. Respondents

AND

ARBITRATION PETITION NO. 1386 OF 2014

The Cosmos Co-operative Bank Ltd. ….. Petitioner

VERSUS

Bharat Dwarkadas Pokrne & Anr. ….. Respondents

AND

ARBITRATION PETITION NO. 1389 OF 2014

The Cosmos Co-operative Bank Ltd. ….. Petitioner

VERSUS

Bhagoji Pandurang Pimple & Anr. ….. Respondents

AND

ARBITRATION PETITION NO. 1504 OF 2014

The Cosmos Co-operative Bank Ltd. ….. Petitioner

VERSUS

Suresh Ramchandra Mohite & Anr. ….. Respondents

AND
ARBITRATION PETITION NO. 1384 OF 2014

The Cosmos Cooperative Bank Ltd. ….. Petitioner

VERSUS

Kishore Bhagwan Ranbhare & Ors. ….. Respondents

Ms.Nikita Trivedi for the Petitioner.
Mr.A.S.Peerzada for Respondent no.1.

CORAM : R.D. DHANUKA, J.

DATED : 27th JANUARY, 2015

P.C.

Arbitration Petition No.1384 of 2014 is not on board. By consent of parties, taken on board and is heard finally alongwith other petitions.

2. Admit. The learned counsel appearing for the respondents waive service. By consent of parties, all the aforesaid petitions are heard finally. Since the facts and the issues involved in the aforesaid petitions are identical, all the petitions were heard together and are being disposed of by consent of parties by a common judgment. By these petitions, the petitioners have impugned part of the arbitral awards in the aforesaid petitions refusing to award interest at the rate of 14% per annum or 3% per month to the petitioner but awarding interest only at the rate of 6% per annum.

3. Respondent nos. 1 and 2 were nominal members of the petitioner bank. The respondent no.1 had availed of staff housing loan under the staff housing scheme of the bank. The bank had sanctioned different amounts to the respondents in different petitions. It is not in dispute that the loan was given by the petitioner to the respondent no.1 by way of staff housing loan by creating registered mortgage

of security on the terms and conditions mentioned in the loan agreement. Dispute arose between the parties.

4. The services of the respondent were retrenched by the petitioner. There were defaults committed by the respondents in repayment of the loan according to the petitioner. The petitioner accordingly invoked provisions of arbitration under section 84 of the Multi State Co-operative Societies Act, 2002 against all the respondents.

5. Before the learned arbitrator, the petitioner made a claim for interest at the rate of 14% per annum alongwith principal amount. It was the case of the petitioner that since the account of the respondents had turned into NPA, the petitioner became entitled to claim interest at the rate of 14% per annum from the respondents.

6. The learned arbitrator framed four issues for consideration. By the impugned award, the learned arbitrator has allowed the entire principal amount as claimed by the petitioner. However as far as interest is concerned, the learned arbitrator has awarded interest at the rate of 6% per annum from the date of institution of the claim till payment and also awarded cost in each claim separately. It is not in dispute that in so far as claim of principal amount awarded by the learned arbitrator is concerned, the respondents have not impugned that part of the award.

7. The petitioner has however filed this petition only in so far as rate of interest awarded by the learned arbitrator at 6% per annum as against the claim of 14% per annum and 3% per month is concerned.

8. Ms.Trivedi, learned counsel appearing for the petitioner submits that under the loan agreement entered into between the parties, the respondents were liable to pay not only the interest at the rate of 6% per annum but also such interest as may be prescribed by the Reserve Bank of India from time to time in case of the default committed by the borrowers. In support of this submission, the learned counsel placed reliance on clause 6 of the agreement dated 29th April, 2000.

9. Learned counsel also placed reliance on the document termed as 'cash credit document' entered into between the parties. Reliance is placed on clauses 2, 4 and 6 of the agreement and it is submitted that the respondents had agreed to pay the petitioner the rate of interest in accordance with the bye-laws of the petitioner bank. It is submitted that according to the bye laws of the petitioner bank, the respondents were liable to pay interest at the rate of 3% per month in case of default. My attention is invited to the circular dated 31st January, 2012 issued by the petitioner. It is the case of the petitioner that the petitioner had informed about such circular and rate of interest verbally to the respondents at the time of sanction of loan.

10. It is submitted that since the respondents were liable to pay interest at the rate of 14% per annum, the learned arbitrator could not have gone into the issue of hardship of the respondents to pay the interest at the rate of 14% per annum or at the rate of 3% per month. It is submitted that the learned arbitrator has decided contrary to the terms of the contract and has reduced the claim of interest and therefore award should be set aside on that ground alone.

11. A perusal of the loan agreement entered into between the parties clearly indicates that the petitioner has sanctioned the loan by way of housing loan facility to its employees at the concessional rate of interest of 6% per annum. In so far as

reliance on clause 6 of the said agreement placed by the learned counsel for the purpose of making claim at the rate of 14% is concerned, a perusal of clause 6 indicates that there is a blank in so far as rate of interest as may be prescribed by Reserve Bank of India is concerned. It is clear that the parties had chosen to keep the said rate of interest blank as may be charged by the Reserve Bank of India in view of the housing loan provided to the employees by the petitioner is concerned. Learned counsel for the petitioner upon enquiry made by the court could not point out any evidence on record whether the petitioner had informed the respondents about any rate prescribed by the Reserve Bank of India in case of default. A perusal of the award clearly indicates that the learned arbitrator has rendered a finding that even if the circular of the Reserve Bank of India was binding, the bank was not justified to charge 14% interest due to retrenchment by the bank. No material was placed on record by the bank in respect of such directions issued by the Reserve Bank of India and therefore in absence of any such document, the learned arbitrator was justified in rejecting the claim for interest at the rate of 14% per annum.

12. In so far as claim for interest at the rate of 3% per annum made by the petitioner before the learned arbitrator as and by way of penal interest is concerned, the learned arbitrator has rejected the said claim on the ground that the loan sanctioned to the respondent was under staff loan facility for purchase of house and thus terms and conditions which are applicable to the case credit loan could was not applicable to such staff loan facility loan for purchase of house. Even otherwise the learned counsel for the petitioner could not produce any agreement between the parties or any bye laws of the bank under which the petitioner could claim such penal interest at the rate of 3% per annum.

13. In so far as circular dated 31st January, 2012 sought to be relied upon by the learned counsel for the petitioner is concerned, it is not in dispute that no such circular was placed on record before the learned arbitrator by the petitioner. In my view no such document can be permitted to be relied upon for the first time in this proceedings under section 34 of the Arbitration and Conciliation Act, 1996.

14. Be that as it may, learned counsel for the respondent is right in inviting my attention to clause 2 of the said circular dated 31st January 2012 which makes it clear that the rate of interest provided under the said circular would be applicable only to the new sanctions w.e.f. 1st February, 2012 and to the loan limits where disbursement was yet to be started. It is clear that in this case the loan granted to the respondents was much prior to 31st January, 2012 and thus no such circular even if it exist could have been attracted to the facts of this case.

15. It is not in dispute that the learned arbitrator has awarded interest at the rate of 6% per annum as shown in the agreement and the promissory note. In my view since the petitioner could not prove before the learned arbitrator that the petitioner was entitled to claim interest higher that 6%, the learned arbitrator has not acted contrary to the terms of the contract by allowing interest at the rate of 6% per annum. In my view, there is thus no merit in the submission of the learned counsel that the learned arbitrator has rendered the award contrary to the terms of the contract.

16. I do not find any infirmity with the impugned awards. All the aforesaid petitions are devoid of merits and are according dismissed. There shall be no order as to costs.

[R.D. DHANUKA, J.]