IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3235 OF 2015

NANDED DISTRICT CENTRAL CO OPERATIVE BANK LTD, NANDED
VERSUS
BHOKAR TALUKA SAHAKARI KHAREDI VIKRI SANG LTD, NANDED
...
with

WRIT PETITION NO. 3236 OF 2015

NANDED DISTRICT CENTRAL CO OPERATIVE BANK LTD, NANDED
VERSUS
UMARI TALUKA SAHAKARI KHAREDI VIKRI SANGH LTD, NANDED
...
Advocate for Petitioners : Mr. Kamlakar J. Suryawanshi
Advocate for respondents: Mr. S.B. Ghatol.

CORAM : S.V. GANGAPURWALA
& K.K. SONAWANE, JJ.
DATE :12TH JULY , 2016.

PER COURT:

Present writ petitions are filed against the orders passed by the Presiding Officer, Debt Recovery Tribunal, Aurangabad thereby rejecting the applications filed by the petitioners so also allowing the application Exh.15 filed by the present respondent seeking No Dues Certificate.

2] Mr. Suryawanshi, learned counsel for the petitioners submits that the respondents have only deposited the principal amount and have not deposited the interest amount. The petitioners had clarified in their say. However, as No Say Order was passed and the Court did not set aside the No Say Order, the say filed by the petitioners is not considered. The proceedings are still pending and in the midst of the proceedings, the

Presiding Officer, DRT, has directed the petitioners to issue No Dues certificate to the respondent. Same is erroneous. Without receiving the entire dues, the No Dues certificate could not have been directed to be issued.

3] Mr. Ghatol, learned counsel for the respondents submits that ample opportunity was given to the petitioners to file say. The lawyer for the bank made a statement that he is not receiving any instructions from the bank and thereafter, the Court proceeded to pass No say order. The respondents have made payment of the entire amount including interest, charges and costs. The Presiding Officer, after having been convinced with the factual matrix, rightly passed the order directing the petitioners to issue NO Dues Certificate.

4] We have considered the submissions. It appears that the petitioners were granted ample opportunity to file say to the application at Exhibit 15, but did not file their say. The advocate for the petitioners made a statement that the bank was not giving instructions and documents to him to file the say to Exhibit 15. It is submitted that alongwith the application Exhibit 18, say to Exhibit 15 was also filed. Considering the said aspect, the Presiding Officer could have taken a liberal approach by accepting the say. It could have imposed certain conditions upon the petitioners by way of costs or otherwise.

5] The proceedings, it appears, are pending and the impugned order is passed. It would have been appropriate if the factual aspects would have been considered. Only on the ground that no say has been filed by the petitioners/bank to the application at Exhibit 15, the impugned orders have been passed. Considering the nature of dispute, we deem it appropriate to grant one more opportunity to the petitioners/bank, however, the petitioners also deserve to be mulct with costs.

6] In the result, we pass the following order :-

[a] The impugned orders passed below Exhibits 15 and 18 in M.A. No. 38 of 2013, so also, the orders below Exhibit 18 and 21 in S.A. No. 75 of 2013, are quashed and set aside.

[b] The say filed by the petitioners to the application filed by the respondents for issuing No Dues Certificate shall be read and recorded, on condition that the petitioners pay costs of Rs. 10,000/- in each matter, to the present respondents, within a period of 4 weeks from today.

[c] The parties shall appear on the date, which is already fixed by the Debt Recovery Tribunal.

[d] Writ petitions are accordingly disposed of. No costs.

[K.K. SONAWANE]
JUDGE

[S.V. GANGAPURWALA]
JUDGE.

grt/-