

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8809 OF 2015

CHANDRAKANT SHANKARRAO MULE DIED THROUGH LRS. SANGITA
CHANDRAKANT MULE
VERSUS
SOLAPUR JANTA SAHAKAIR BANK LTD THROUGH ITS AUTHORIZED
PERSON

...
Advocate for Petitioners : Mr. Venjane Tukaram M.
Advocate for Respondents : Mr. V.P. Golewar h/f Mr. A.R. Joshi
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CORAM : V. K. JADHAV, J.
DATED : 17th FEBRUARY, 2016

PER COURT:-

1. With consent of the parties, heard finally at admission stage.
2. The respondent bank filed a dispute bearing CCL No. 123 of 2014 (Old CCL No. 170 of 2013) under Section 91 of the Maharashtra Co-operative Societies Act 1960, in the Co-operative Court, Latur for recovery of loan amount from the petitioner and the guarantors. The petitioner appeared in the said dispute and filed her written statement and denied all contentions of the respondent Bank. The petitioner contends that her husband met with an accident and died on 10.8.2003. She had no knowledge about the loan transaction. Even respondent bank never inquired with her about the said loan transaction and also never demanded loan amount or issued any notice to the petitioner about loan amount. Thus, during

pendency of the said dispute, the petitioner preferred an application Exh.20 to frame preliminary issue on the point of limitation. It is the contention of the petitioner that the respondent Bank filed dispute in the month of August, 2013. Even though assuming that last installment was paid in the year 2006, the dispute is not raised within prescribed period of limitation. The respondent Bank has strongly resisted the said application by filing say. After hearing both the sides, learned Judge of the Co-operative Court, by impugned order dated 28.01.2015 rejected the application Exh.20 filed by the petitioner. Hence, this writ petition.

3. Learned counsel for the petitioner submits that the dispute is not raised within prescribed period of limitation. Even there is no specific pleading as to when the cause of action arises. For the first time, the respondent bank by way of filing say to the application Exh.20 stated that the demand notice dated 5.7.2009 was served on the petitioner and thus, from that date, the dispute is within limitation. Learned counsel submits that on this ground alone the learned Judge of the Co-operative court should have allowed the application Exh.20.

4. Learned counsel for the respondent Bank submits that the learned Judge of the Co-operative Court has rightly passed an order

below Exh.20 and no interference is called for. The writ petition is devoid of any merits and the same is liable to be dismissed.

5. The petitioner-original opponent No.1 has filed an application Exh.20 before the Co-operative court stating therein that her deceased husband Chandrakant Shanakarrao Mule died on 10.8.2003 and dispute was raised in the year 2013 which is beyond period of limitation. The respondent bank by way of reply to the said application contends that the petitioner-original opponent No.1 lastly paid an amount of Rs.10,000/- on 25.3.2006 and thereafter on 5.7.2009 outstanding amount was demanded. In spite of said demand notice, the petitioner-original opponent had failed to pay the amount and therefore, the bank raised dispute within six years, as prescribed.

6. The learned Judge of the Co-operative Court has considered the rival submissions of both the parties. The learned Judge has rightly observed that the issue of limitation involved, is not pure question of law and the same is mixed question of fact and law and that can be decided only after full-fledged trial of the dispute. Therefore, I do not find any error in the impugned order passed by the learned Judge, Co-operative Court, Latur. The point of limitation is already raised by the petitioner-original opponent No.1 in the

dispute. Needless to say that the learned Judge of the Co-operative Court would deal with the same during the course of conducting full fledged trial of dispute. Thus, the impugned order calls for no interference. The writ petition is devoid of any merits and liable to be dismissed. The writ petition is accordingly dismissed. No costs.

(V. K. JADHAV, J.)

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