IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 251 OF 2015

Shri Narayan M. Morajkar,
Major of age,
H. No.104, Cotto,
Sanguem, Goa. …... Petitioner.

V e r s u s

1. Asst. Registrar of Co-operative Societies,
   (HQ-II) Camp Court,
   Margao, Goa.

2. The Managing Director,
   The Madgaum Urban Co-operative Bank Ltd.
   Head Office, Aquem,
   Margao, Goa. …... Respondents..

Mr. A. D'Silva, Advocate for the Petitioner.

Mrs. S. Linhares, Addl. Government Advocate for Respondent no.1.

Mr. R. G. Ramani, Advocate for Respondent no.2.

CORAM: C. V. BHADANG, J.
DATE: 30TH MARCH, 2016.

ORAL JUDGMENT:

Rule. Rule made returnable forthwith. Learned counsel for the respective respondents waive service. Heard finally by consent of the parties.

2. By this petition, the petitioner is challenging the order dated

11/2/2014 passed by the learned Assistant Registrar of Cooperative Societies, Margao, by which the deduction from the salary of the petitioner has been enhanced to Rs.3700/- per month from Rs.700/- per month.

3. The petitioner was one of the sureties in respect of a loan granted to Basha Hussain Sahib Shaikh, who was the principal borrower. The loan sanctioned was of Rs.50,000/-. Indisputably, the second respondent had initiated recovery proceedings in respect of the loan and by a judgment and award dated 2/5/2000 passed by the Assistant Registrar of Cooperative Societies a final award was made, which was confirmed in Cooperative Appeal No.27/2004 by an order dated 21/8/2012. It further appears that from out of the salary of the petitioner, an amount of Rs.700/- p.m. was being deducted. Subsequently, the second respondent again approached the Assistant Registrar of Cooperative Societies stating that the outstanding in the loan account of Smt. Basha H. Shaikh was Rs.2,39,327/-, as on 31/1/2012 and sought enhancement of the attachment and deduction from the salary of the petitioner, as the deduction of Rs.700/- p.m. was not sufficient to cover up the outstanding amount. It was also informed to the learned Assistant Registrar of Cooperative Societies that the total drawings/emoluments of the petitioner was Rs.24,979/- per month. In such circumstances, the learned Assistant Registrar of Cooperative Societies by the impugned order dated 11/2/2014 has

enhanced the monthly deduction to Rs.3700/- from February 2014.

4. The only contention raised on behalf of the petitioner is that the petitioner was not granted opportunity of hearing while modifying the monthly deduction. However, the reply filed by the first respondent would go to show that in fact the petitioner was noticed and had remained present before the Assistant Registrar of Cooperative Societies on 12/7/2013 and had filed an application stating that the address of principal borrower was not known and also asked the authorities to refer the matter to the police. The reply in para 8 also discloses that the petitioner had again remained present before the Asst. Registrar on 31/7/2013. Thus, the contention about the breach of principles of natural justice cannot obviously be accepted.

5. The learned counsel for the first and the second respondent have pointed out, on the basis of a salary certificate of the petitioner issued on 23/1/2014, that after the statutory and other deductions, the net salary of the petitioner is Rs.16,639/-. The impugned order shows that the amount of deduction has been fixed in context of the provisions of section 60 of the C.P.C., which would be applicable in the present case (see **1999 (2) Goa Law Times 263**, in the case of "**The Goa Urban Co-operative Bank Ltd. Vs. The Merces English High School and others**") It will be necessary to note here that under section 60 the permissible deduction can be to the extent of one third of the salary,

excluding the first Rs.1000/-. Even considering the net salary of Rs.16,639/-, the amount after the deduction of Rs.1000/- would be Rs.15,539/-. The attachment and deduction can be to the extent of one third of this amount. I find that the amount of Rs.3700/- is less than one third and would be clearly permissible under section 60 of the C.P.C.

6. The learned counsel for the second respondent has also pointed out that by virtue of the proviso to section 60 of C.P.C, such deduction can be for a total period of 24 months, after which the salary is finally exempt from attachment in execution of the decree. Indisputably, out of the 24 months, the installments for 15 months have already been deducted. Considering the overall circumstances, I do not find that any case for interference is made out in exercise of the extraordinary jurisdiction of this Court.

7. In the result, the writ petition is hereby dismissed. Rule is discharged with no order as to costs.

C. V. BHADANG, J.

AP/-