

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION STAMP NO.9315 OF 2016

Abbasbhai Akbarally Motiwalla and anr. : Petitioners.
Versus
The Rupee Co-operative Bank Ltd. and ors. : Respondents.

Mr. S S Kanetkar for the Petitioners.

CORAM : R. M. SAVANT, J.
DATE : 30th March 2016

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 10/02/2016 passed by the learned Member of the Maharashtra State Co-operative Appellate Court (Mumbai) Bench, Pune by which order the Revision Application being No.56 of 2015 came to be partly allowed and the order dated 31/03/2015 passed by the learned Judge of the Co-operative Court No.2, Pune was set aside to the extent mentioned in the operative part of the impugned order.

2 The Petitioners herein are the Opponent Nos. 2 and 3 in the Dispute being No.391 of 2001 filed by the Respondent No.1 – Bank for the recovery of the amount of Rs.16,01,963/- along with interest at 19% per annum from the Petitioners who are the Directors of Respondent No.2 herein i.e. M/s. Vijaya Paints Pvt. Ltd. who is undisputedly the borrower. It seems that the said Dispute came to be allowed by the Co-operative Court No.2, Pune by

the judgment and order dated 10/08/2007 and an Award came to be passed in terms of the claim made in the said Dispute. The Petitioners herein and the Respondent Nos.2 to 4 herein who are the Opponents to the said Dispute did not participate in the proceedings after the Dispute was restored to file, after it was initially dismissed for non-prosecution. The Petitioners filed Misc. Application being No.78 of 2007 for setting aside the Award dated 10/08/2007 passed by the Trial Court i.e. the Co-operative Court, Pune on the ground that the said Award was an *exparte* Award. After permitting the parties to lead evidence, the Trial Court i.e. the Co-operative Court adjudicated upon the said Misc. Application No.78 of 2007 and by its order 31/03/2015 allowed the said Misc. Application on the terms and conditions mentioned in the operative part of its order. The operative part of the said order dated 31/03/2015 for the sake of ready reference is reproduced herein under :-

- “1] Misc. application is allowed on the following terms :-
- 2] *Exparte* judgment and award passed in dispute No.391/2001 dt. 10/8/2007 is hereby set aside subject to condition that the applicants should deposit Rs.50,000/- each in the Court jointly and severally within a period of 2 months from this order and the same be invested in any nationalized bank. Such deposit is without prejudice to the defence of the applicants and the successful party to the dispute would be entitled to this amount.
- 3] If the applicants failed to comply clause No.2 of this order within stipulated period previous condition will prevail.
- 4] After the compliance of clause No.2 of this order the dispute being No.391/2001 is restored and will fixed for cross of the witness of the bank by the opponents.”

3 The Respondent No.1 Bank herein aggrieved by the said order dated 31/03/2015 passed by the Trial Court i.e. the Co-operative Court and principally aggrieved by the condition that the applicants i.e. the Petitioners herein were asked to deposit only Rs.50,000/- each in the Court jointly and severally, filed an Appeal being No.106 of 2015 which was converted into Revision Application No.56 of 2015. The Co-operative Appellate Court has partly allowed the said Revision Application by setting aside the condition on the basis of which the application was allowed and substituted the condition by a fresh condition which finds a mention in clause 2(I) of the operative part of the impugned order dated 10/02/2016 which for the sake of ready reference is reproduced herein order :-

“2. The order dated 31/03/2015 passed “Below Misc. Application No.78 of 2007” by the learned Judge, Co-op. Court No.2, Pune is hereby set aside and modified as under ;

(I) The Misc. Application bearing No.78/2007 filed by the applicant is allowed subject to part payment of Rs.25 Lakhs by the applicants (respondent No.1 & 2) upon the disputant (applicant bank) on or before 31/03/2016”

The said amount is to be deposited latest by 31/03/2016. The rationale for imposing the said condition has been mentioned in the impugned order and finds a place in paragraphs 22 and 24 of the impugned order. The learned Member of the Co-operative Appellate Court has adverted to the fact that there

was an Award passed by the Trial Court i.e. the Co-operative Court for an amount of Rs.16,01,963/- along with interest @ 19% p.a. on 10/08/2007. The Co-operative Appellate Court has also adverted to the fact that the Respondent No.2 herein i.e. the Company was given C.C. Loan of Rs.15 Lakhs in the year 2000 which fact is an undisputed fact. The Co-operative Appellate Court has also adverted to the fact that if the said amount is calculated with interest then the amount due from the Petitioners and the Respondent No.2 to 5 herein goes to more than Rs.50 Lakhs and odd as on date, and in such circumstances, the Co-operative Appellate Court observed that the Petitioners and the Respondent Nos.2 to 4 herein are required to be directed to deposit at least 50% of the said amount i.e. Rs.25 Lakhs on or before 31/03/2016. The Co-operative Appellate Court, as indicated above, has partly allowed the said Revision Application and vide clause 2(I) of the operative part of the impugned order directed to pay part payment of Rs.25 Lakhs on or before 31/03/2016.

4 There can be no dispute about the fact that the Trial Court i.e. the Co-operative Court whilst allowing the said Misc. Application which is akin to an application under Order IX Rule 13 of the Code of Civil Procedure was within its powers to impose such condition as it deems fit. In the instant case, there is no dispute about the fact that the Respondent No.2 herein – Company had availed of the loan from the Respondent No.1 Bank, for the recovery of which the Respondent No.1 – Bank had filed Dispute in the Co-operative Court

in which Dispute an Award came to be passed on 10/08/2007. The Co-operative Court has deemed it fit to accept the case of the Petitioners herein for setting aside the exparte Judgment and Award however, has imposed the condition that the Applicants in the said Misc. Application No.78 of 2007 i.e. the Petitioners herein should deposit Rs.50,000/- each in the Court jointly and severally. The said condition has been found fault with by the Co-operative Appellate Court having regard to the fact that the loan availed of was Rs.15 Lakhs in the year 2000 and if considered alongwith interest as agreed, the figure goes to more than Rs.50 Lakhs at the time of the consideration of the Revision Application.

5 The learned counsel appearing on behalf of the Petitioners Shri Kanetkar seeks to question the direction in so far as deposit of Rs.25 Lakhs is concerned. The learned counsel for the Petitioners would contend that the said amount is excessive and would amount to pre-judging the Dispute in question, as the earlier Award passed by the Co-operative Court has been set aside. The learned counsel for the Petitioners seeks to place reliance on the judgment of the Apex Court reported in (2002) 5 SCC 30 in the matter of Vijay Kumar Madan and others v/s. R N Gupta Technical Education Society and others.

6 In my view it is not possible to accept the contentions urged on behalf of the Petitioners. As indicated above, there is no dispute about the fact

that the Respondent No.2 herein – Company had availed of the loan of Rs.15 Lakhs in the year 2000. The Co-operative Appellate Court has therefore on the said basis calculated the amount which goes to more than Rs.50 Lakhs on the date which it decided the Revision Application and has therefore directed the Petitioners herein to deposit Rs.25 Lakhs as a condition for setting aside of the Award and thereby substituted the condition imposed by the Trial Court i.e. the Co-operative Court. In my view, the judgment in *Vijay Kumar Madan's* case (supra) does not further the case of the Petitioners, firstly in view of the fact that the said judgment is in the context of the application made under Order IX Rule 7 of the Code of Civil Procedure and not under Order IX Rule 13 of the Code and especially having regard to the facts of the present case wherein an Award had already been passed in favour of the Respondent No.1 Bank decreeing the Dispute in favour of the Respondent No.1 Bank. The Co-operative Appellate Court was therefore entitled to balance the equities between the parties, which it has done by directing the Petitioners to deposit a sum of Rs.25 Lakhs with the Respondent No.1 Bank. In my view, therefore, no case for interference in the writ jurisdiction of this Court is made out. The above Writ Petition is accordingly dismissed. However, time to deposit the said amount of Rs.25 Lakhs is extended up to 07/04/2016.

[R.M.SAVANT, J]