

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

WRIT PETITION NO.4576 OF 2016

M/s. Boolani Engineering Corporation

.. Petitioners

Versus

Janakalyan Sahakari Bank Ltd. and others

.. Respondents

Mr. S. C. Mangle, for the Petitioners.

CORAM : R.M. SAVANT, J.

DATE : 25th APRIL 2016

PC.

1. The order dated 22.03.2016 passed by the President of the Maharashtra State Co-operative Appellate Court, Mumbai, is taken exception to by way of the above Petition. By the said order, the Appeal filed by the Petitioners came to be dismissed and resultantly, the order dated 31.10.2015 passed by the Learned Judge of the Co-operative Court No.I, Mumbai, came to be confirmed.

2. The Petitioners herein are the original Respondent Nos.1 to 4 to the dispute in question being Dispute No.CC/I/179 of 2012. The said dispute has been filed by the Disputant i.e. Respondent No.1 herein claiming an amount of Rs.1,19,44,447. In the said dispute the disputant Bank filed an application for amendment of the said dispute so as to array

the Respondent Nos.2 and 3 herein i.e. The Dombivali Nagari Sahakari Bank Limited and The Special Recovery and Sales Officer of the Dombivali Nagari Sahakari Bank Ltd. as party Respondents to the dispute. The said amendment was sought on the ground that pursuant to sale carried by the Respondent No.2, it has made recovery of the amount which was due to it, but however there is a surplus in the sale proceeds which are lying with the Respondent No.2. It was therefore contended that if the surplus is allowed to be taken away, then prejudice would be caused to the disputant Bank, if the dispute filed for recovery of the loan amount is allowed then there would be an hurdle to effect recovery though the dispute is decreed. The Trial Court i.e. the Learned Judge of the Co-operative Court deemed it fit to allow the said application by its order dated 31.10.2015. The Trial Court observed that in the facts and circumstances of the case as above the proposed amendment in respect of the auction and the surplus sale proceeds is required to be brought on record for the the finalization of the dispute.

3. The said order dated 31.10.2015 was taken exception to by the Petitioners by filing an Appeal in the Co-operative Appellate Court being Appeal No.71 of 2015. The Appellate Court confirmed the finding recorded by the Trial Court and accordingly dismissed the Appeal. The Appellate Court observed that in terms of Section 94(3)(a) of the

Maharashtra Co-operative Societies Act even a non-member of a Co-operative society acquiring interest in the property of the person who is party to the dispute may be joined as a party to the dispute and so recording, discountenanced the submission urged on behalf of the Petitioner that a non-member could not be joined as a party to the dispute. The Appellate Court also observed that surplus amount of Opponent No.4 is lying with the Opponent Nos.5 and 6 and therefore certainly the interest of the disputant Bank who is party to the dispute would be prejudiced and therefore the Respondent Nos.2 and 3 herein who are the Opponent Nos.5 and 6 could be added to the dispute. As indicated above, the Appellate Court has by the impugned order dated 22.03.2016 dismissed the Appeal.

4. The Learned Counsel for the Petitioner would seek to reiterate the submissions urged on behalf of the Petitioners before the Courts below and would seek to place reliance of the judgment of the Apex Court in the matter of Margret Almeida Vs. Bombay Catholic Co-operative Housing Society Ltd.¹ to support his contention that the Respondent Nos.2 and 3 herein could not be joined as party Respondents to the dispute. In my view, it is not possible to accept the said contention as what is sought to be done by the order passed by the Co-operative Court as confirmed by the Co-operative Appellate Court is that the Respondent Nos.2 and 3 herein

¹ LAWS (SC) -2012-1-77

are joined as party Respondents to the dispute. The said Respondents were required to be joined as Respondents in view of the fact that out of the sale proceeds of the property of the Petitioner a surplus amount is remaining. At the cost of repetition, it is required to be noted that the Respondent No.1 Bank i.e. Disputant has filed dispute claiming an amount of Rs.1,19,44,447/- from the Petitioners. Hence, arraying of the said Respondent Nos.2 and 3 herein as party Respondents to the dispute cannot be faulted with. The judgment of the Apex Court has therefore no application in the facts of the present case. Hence, no case for interference in the writ jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

[R.M. SAVANT, J]