

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2851 OF 2016

Arvind D. Bhat .. Petitioner
vs.
Shri. Suvarna Sahakari Bank Ltd. and ors. .. Respondents

Ms Anjali N. Helekar for the Petitioner.

CORAM : M. S. SONAK, J.
DATE : 29 JULY 2016.

P.C. :-

1] The challenge in this petition is to the order dated 19 July 2014 made by the Maharashtra State Cooperative Appellate Court partly allowing Revision Application No. 17 of 2014 instituted by the respondent No.1 society.

2] The respondent No.1 society had instituted Dispute No. 8 of 2008 before the Cooperative Court, Pune. By an *ex-parte* order dated 17 May 2008, the Cooperative Court had directed the opponents, which includes the petitioner herein to jointly and severally pay a sum of Rs.1,70,44,739.73 together with interests (future) at the rate of 16% per annum, with quarterly rest on the principal amount from 1 August 2007 till the payment of entire dues.

3] The petitioner, vide Miscellaneous Application No. 16 of 2011, applied for setting aside the *ex-parte* order dated 17 May 2008 before the Cooperative Court. By order dated 28 January 2014, the Cooperative Court allowed the Miscellaneous Application No. 16 of 2011, set aside the *ex-parte* order dated 17 May 2008 and restored the Original Dispute No. 8 of 2008 for consideration, in accordance with law.

4] The respondent No.1 society, aggrieved by the aforesaid order dated 28 January 2014 instituted Revision Application No. 17 of 2014 before the Maharashtra State Cooperative Appellate Court, Mumbai. This revision came to be partly allowed and the operative portion of the impugned order dated 19 July 2014 reads thus:

ORDER

The Revision is partly allowed.

The order of the trial Court restoring the dispute is modified only to the extent of condition of making 25% of the amount of Award and furnishing solvent security by the Opponents jointly and severally for the remaining amount of the Award. The 25% amount be deposited in the Court by the Opponents jointly and severally within two months and the same be invested in any nationalised bank. Such deposit would be without any prejudice to the defence of the Opponents and the successful party to the dispute would be entitled to this amount.

The trial Court may pass necessary order regarding its disposal in the final Judgment and Award of the dispute.

5] This means that the restoration of the original dispute has not been interfered with. However, the same has been made subject to the petitioner depositing 25% of the award amount and furnish solvent security in respect of the balance.

6] Ms Helekar, learned counsel for the petitioner, has submitted that the Revisional Court was not justified in imposing the condition with regard to deposit and furnish of solvent security. She submitted that the material on record indicates that the petitioner was only a sleeping partner and further, at no stage the respondent No.1 Society issued any notice with regard to non service of the amount of loan obtained by the Partnership Firm. Ms Helekar also pointed out that the statement of account had not been produced by the respondent No.1 society, at the stage when the *ex-parte* order was made. Taking into consideration of all these circumstances, Ms Helekar submitted that the imposition of the condition for restoration was uncalled for and ought to be interfered with.

7] With the assistance of learned counsel for the petitioner, the record has been perused, including in particular the written statement which has been filed by the petitioner, consequent upon

the restoration of the original dispute. The written statement nowhere disputes the factum of receipt of amount by the Partnership Firm, of which, the petitioner is/was undoubtedly a partner. The defence that no proper notice was furnished with regard to non-service of loan amount, at least *prima facie*, does not inspire any confidence. The issue of the petitioner being a sleeping partner does not appear to have been raised in so many terms in the written statement. In any case, even assuming that such a defence has been raised, the same, at least *prima facie*, does not affect the right of the respondent No.1 society to recover the amount, if found due. Ultimately, it would thereafter be open to the petitioner to recover such amount from the remaining partners, if an appropriate case to such effect is indeed made out by the petitioner.

8] Taking all these circumstances into consideration, the Revisional Court was entirely justified in imposing the condition, which it has imposed in the impugned order. It must be noted that the original dispute was instituted in the year 2008 and even though, the *ex-parte* order has been set aside, it is clear that the recovery proceedings have been delayed for well over eight years for

reasons more attributable to the petitioner than the respondent No.1.

9] If the petitioner is indeed serious in contesting the proceedings, such seriousness is required to be demonstrated by making deposit of 25% of the award amount and offering solvent security for the balance. The impugned order which directs precisely this, suffers neither from any illegality nor any jurisdictional error.

10] For the aforesaid reasons, there is no case made out to interfere with the impugned order. This petition is dismissed. There shall, however, be no order as to costs.

(M. S. SONAK, J.)

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