THE HON'BLE SRI JUSTICE S.V.BHATT

WRIT PETITION No.14041 of 2006

ORDER:

The petitioner challenges the award bearing Rc.No.31/05-03 dated 31.12.2004 as illegal, arbitrary and without material.

2. The first respondent in purported exercise of his authority under Section 84 of the Multi-State Cooperative Societies Act, 2002 (for short 'the Act') passed the impugned award.

3. The admitted circumstances of the case are that on 31.12.1999 the petitioner with its partners borrowed a sum of Rs.15 lakhs from the second respondent/A.P. Mahesh Co-operative Urban Bank and executed a mortgage deed as security for the instant loan account. The loan was sanctioned with interest at 20% quarterly rests and a further 2% penal interest in case of default of installments by the petitioner. On 14.05.2002, the second respondent raised a dispute to recover of Rs.8,62,762.60 ps. from petitioner with further interest from 01.04.2002 till the date of realization. The petitioner participated in the enquiry before the first respondent and the first respondent upon examination of material available on record, statement of accounts, the repayments pleaded by the petitioner, held as follows:

> "**48)** On verification of documents of terms of agreements and the material produced it is found that the defendants are liable to pay the loan amount of Rs.8,62,762.60 ps. As on 31.03.2002 with further interest from 01.04.2002. But the defendants have paid Rs.10 lakhs in lumpsum on 22.03.2001. It is therefore ordered that the Bank shall charge simple interest at 19% without compounding from 22.03.2001 and shall waive the entire penal interest charged in the loan account. The difference of amount so arrived shall be adjusted at the time of liquidation of the loan account.
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> **49)** Therefore Award is hereby passed in favour of the plaintiff Bank. The defendant No.2, Sri. P. Prasad, who has take over all the assets and liabilities of defendant No.1 i.e. M/S Prasad Construction, shall pay the loan amount of Rs.8,62,762.60 (Rupees Eight lakhs sixty two thousand seven hundred and sixty two an sixty paise only) with

> further interest from 01.04.2002. Further the plaintiff Bank shall charge simple interest at 19% from 22.03.2001 and shall waive the entire penal interest charged. The difference of amount so arrived shall be adjusted at the time of liquidation of the loan account. If the defendant fails to repay the amount as arrived above within a redemption period of 3 months from the date of passing of Award the plaintiff Bank shall recover the outstanding loan amount with further interest as per the agreed terms from all the defendants jointly and severally by attaching and sale of their properties as mentioned in the schedule and other movable and immovable properties of the defendant."

Hence, the writ petition.

4. Mr. K.V. Bhanu Prasad, appearing for petitioner, contends that on 22.03.2001 a sum of Rs.10 lakhs was paid and the issue more related to grant of NOC by the second respondent bank and according to him, there was no outstanding as on the date of filing of the claim and no claim for recovery could have been raised under Section 84 of the Act. He prays for setting aside the impugned award.

5. Smt. Dyumani, appearing for second respondent bank, contends that on 14.05.2002 the instant dispute was raised by the second respondent bank to recover a sum of Rs.8,62,762.60 from petitioner. According to her, from the material available on record it is clear that the sanctioned and paid loan amount was Rs.15 lakhs and the single repayment was made on 22.03.2001. The instant application was filed to recover the balance amount and therefore, it cannot be contended that there was no outstanding amount to raise a dispute under Section 84 of the Act. Learned counsel draws the attention of this Court specifically to para 47 of the impugned award in support of her contentions and prays for dismissing the writ petition.

6. I have perused the material available on record and noted the contentions of learned counsel appearing for the parties.

7. Now the question for consideration is whether the award of the first respondent directing the petitioner to pay the loan amount of Rs.8,62,762.60

ps. with simple interest at 19% from 22.03.2001 suffers from illegality and irregularity warranting interference of this Court under Article 226 of the Constitution of India.

8. As already noted, the solitary contention of the petitioner is about the issuance of NOC by the second respondent bank and according to the petitioner, as there was no outstanding amount,
no claim could be raised much less an award impugned in the writ petition can be passed. The contention is merely noted to be rejected in *limini*.

9. The claim is one for recovery of Rs.8,62,762.60 ps. from the petitioner. The petitioner, assuming what is stated in para 47 of the award is right, is not fully exonerated of payment of balance amount to the second respondent bank. In case of recovery of amount due and payable under a loan transaction, if the petitioner has pleaded discharge of the loan amount, more particularly, when there is no dispute about receipt of Rs.15 lakhs loan from the second respondent bank, petitioner shall discharge the burden fully to non-suit the second respondent bank. In the case of hand, the first respondent having considered the material available on record and noticing the fact that imposition of compounding interest from 22.03.2001 as erroneous, has modified the claim as already noted. I do not see any infirmity or illegality warranting interference by this Court under Article 226 of the Constitution of India. No other ground is urged in the writ petition.

The writ petition fails and stands dismissed. As a sequel,
the miscellaneous applications, if any pending, shall stand closed. There shall be no order as to costs.

S. V. BHATT, J

March 30, 2016
DSK