***IN THE HIGH COURT OF JUDICATURE AT BOMBAY***
***CIVIL APPELLATE JURISDICTION***
***WRIT PETITION NO. 1530 OF 2014***
***WITH***
***WRIT PETITION NO. 1531 OF 2014***
***WITH***
***WRIT PETITION NO. 1532 OF 2014***
***WITH***
***WRIT PETITION NO. 1533 OF 2014***

Sangli District Central Co-op. Bank Ltd. ...Petitioner
Versus
Shri Sahebrao Shivram Bhosale & Ors. ...Respondents

Mr. Umesh R. Mankapure, for the petitioner (in all the matters)
Ms. A.R.S. Baxi,for respondent No.1 (in all the matters)

***CORAM : SMT. SADHANA S.JADHAV, J.***
***DATE :28th November, 2017.***

***P.C. :***

1. The petitioner-Bank challenges the judgment and order passed by the Co-operative Court No.1, Sangli, dated 8.10.2012, which was confirmed in appeal by the Co-operative Appellate Court vide judgment and order dated 25.11.2013.

2. It is the case of the petitioner that the petitioner-Bank had extended loan to the respondents and dried grapes were mortgaged with the

Bank. Since they are perishable goods, they were kept in a Cold storage. It appears that on 11.6.2003, there was a fire in the Cold storage and there was damage to the goods that were mortgaged with the Bank. It appears that while extending the loan, the Bank had paid the first premium of the insurance claim.

3. The petitioner-Bank had then filed a Dispute before the Co-operative Court seeking recovery of the loan amount along with interest. Defendant Nos. 2 to 8 had not filed their written statement. The learned Co-operative Court had perused the records submitted by the Disputant Bank and had arrived at a conclusion that since the goods were pledged with the Bank, it was the duty of the Bank to take care of those goods by paying the insurance premium amount. The Bank had paid only the first premium. The statement of account which was filed below Exhibit 37 was also not duly certified as required and the learned Court had therefore dismissed the Dispute.

4. The learned counsel for the petitioner has vehemently submitted that at the time of sanctioning the loan amount and disbursing the same, the Bank had got executed certain documents from the borrower which were signed by the borrower by which it was the duty of the

borrower to take care of the goods which were pledged as well as to draw an insurance policy of the same. A promissory note was executed showing the rate of interest as 14.50%. The Bank had paid the first premium and had disbursed the loan. An agreement was executed between the Bank and the borrower which contemplated that the Bank shall not be held liable for any damage to the goods and security of the pledged goods would be the sole responsibility of the borrower and not the Bank. There was also a consent letter signed by the borrower. It shows that upon default to pay the said amount, the Bank would auction and sell the goods which were pledged and that the borrower would not object to the same. The borrower had also deposited the 7 x 12 extracts with the Bank.

5. The learned counsel for the respondents has submitted that the very agreement and the consent terms which expect the borrower to draw insurance of the pledged goods are unreasonable. In fact, once goods are pledged, it will be the sole responsibility of the Bank. They do not appear to be secured loans or else the Bank could obtain certificates under Section 101 of the Maharashtra Co-operative Societies Act, 1960. In view of the facts stated hereinabove, the findings recorded by the Co-operative Court and confirmed by the Co-op. Appellate Court, do not call for any

interference. Both the Courts have placed implicit reliance upon the judgment of the Hon'ble Apex Court reported in the case of **Lalanprasad vs. Rahemat Ali AIR 1967 SC 1332,** wherein it was observed as follows :-

> *"If the possession of pledged goods is with the pledgee the pledge cannot maintain the suit for recovery of debt as well as retention of the pledged property would not be maintainable."*

The learned appellate Court has rightly held that as per the provisions of Section 172 of the Indian Contract Act, the pledge is bailment of goods as security for payment of debt of performance of a promise. Section 173 entitles a pawnee to retain the goods pledged as security for payment of a debt.

6. Hence, the Petitions being sans merits, stand dismissed. Rule is discharged.

***(SMT. SADHANA S.JADHAV, J.)***