

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

**WRIT PETITION NO.2466 OF 2015
ALONG WITH
WRIT PETITION NO.2465 OF 2015
ALONG WITH
WRIT PETITION NO.2467 OF 2015**

Chandrashekar Shankararo Kadam : Petitioner
versus
The Chairman,
The Miraj Co-operative Bank Ltd. Miraj
and ors. : Respondents.

Mr. V S Talkute a/w Mr. S R Ghanvat for the Petitioner
Mrs. V S Nimbalkar, for the Respondent No.3.

CORAM : R. M. SAVANT, J.
DATE : 07th February 2017

P.C.

1 The above Petitions take exception to the identical orders all dated 07/01/2015 passed by the learned Member of the Maharashtra State Co-operative Appellate Court (Mumbai) Bench, Pune by which orders the Appeals filed by the Petitioner came to be dismissed and resultantly the orders dated 17/04/2013 passed by the learned Judge of the Co-operative Court No.2, Sangli came to be confirmed.

2 The Petitioner herein had filed three Disputes in the Co-operative Court at Sangli seeking a declaration against the Respondent Bank to the effect that the Petitioner is not liable to pay any amount to the Respondent Bank.

The said Disputes were therefore filed seeking virtually a preemptive relief. It seems that after the Disputes came to be filed, and the written statement came to be filed by the Respondent Bank, the said Disputes were kept for recording of evidence of the Disputant i.e. the Petitioner herein. The Disputes were listed before the concerned Co-operative Court on number of occasions and in the interregnum in view of the dire financial condition of the Respondent Bank a liquidator came to be appointed on the Respondent Bank under Section 105 of the Maharashtra Co-operative Societies Act in the year 2006. On the liquidator being appointed, it was the obligation of the Disputant to seek permission of the Registrar to continue the Disputes by arraying the liquidator as a party to the said proceedings. It seems that though permission was granted to the Petitioner to array the liquidator as a party to the said proceedings, the said permission granted by the Registrar was not placed on record in two Disputes. In view of the fact that the Petitioner failed to lead evidence, the Disputes were dismissed for non-prosecution on 15/10/2010. The Petitioner applied for restoration of the Disputes immediately thereafter. However, the applications came to be rejected by the Co-operative Court by its orders dated 17/04/2013. the reasons put forth by the Petitioner for not leading evidence and not remaining present did not commend acceptance to the Co-operative Court.

3 The Petitioner aggrieved by the said orders dated 17/04/2013 passed by the Co-operative Court took exception to the same by filing Appeals

in the Co-operative Appellate Court being Appeal Nos.70 of 2013, 68 of 2013 and 69 of 2013. The learned Member of the Co-operative Appellate Court having regard to the fact that the Respondent Bank itself had filed Disputes being Nos.1008 of 2004, 1006 of 2004 and 1007 of 2014 for recovery of loan amount which had progressed substantially as also having regard to the fact that the Petitioner in his Disputes was only seeking relief of declaration that he is not liable to pay, as also having regard to the fact that the Petitioner had not placed on record the permission to sue the liquidator in two disputes, did not deem it appropriate to interfere with the orders dated 17/04/2013 passed by the Co-operative Court, and accordingly dismissed the Appeals.

4 The learned counsel for the Petitioner Shri Talkute would contend that the Petitioner ought to be given an opportunity to prosecute the Disputes on merits. It was the submission of the learned counsel for the Petitioner that the three Disputes filed by the Petitioner could be heard along with the Disputes filed by the Respondent Bank being Nos.1008 of 2004, 1006 of 2004 and 1007 of 2004.

5 In my view, it is not possible to accept the contentions urged by the learned counsel for the Petitioner. No doubt the issue in the instant case is about the restoration of the Disputes filed by the Petitioner which have been dismissed for non-prosecution. However, the said issue has to be addressed

from the perspective of whether it is necessary to restore the said Disputes. The Petitioner had filed the said Disputes without the Respondent Bank taking any steps for recovery of the amount. The Disputes as indicated above was filed the Petitioner seeking a declaration that he is not liable to pay anything to the Respondent Bank. The Respondent Bank has thereafter filed its Disputes for recovery of the loan amount from the Petitioner. The Co-operative Appellate Court was therefore right in observing that the Petitioner in the light of the Disputes filed by the Respondent Bank would be entitled to take such defences as are available to the Petitioner in law against the recovery of the loan amount sought to be made by the Respondent Bank.

6 In my view, therefore, no useful purpose would be served by restoring the Disputes filed by the Petitioner as the Petitioner can defend the Disputes filed by the Respondent Bank for recovery of the loan amount on such grounds as are available to him in law. The fact that the said Disputes filed by the Respondent Bank have also progressed cannot be lost sight of. In that view of the matter, no case for interference in the writ jurisdiction of this Court is made out. The above Writ Petitions are accordingly dismissed.

[R.M.SAVANT, J]