

Sarnobat

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

WRIT PETITION NO. 5734 OF 2013

Sureshchandra Prabhudayal Agrawal
and Anr. .. Petitioners
Vs.
The Cosmos Co-operative Bank Ltd.
Kothrud, Pune & Ors. .. Respondents

**WITH
WRIT PETITION NO. 5735 OF 2013**

Surendra Bansal. .. Petitioner
Vs.
The Cosmos Co-operative Bank Ltd.
Kothrud, Pune & Ors. .. Respondents

Mr. Abhishek M. Pungliya, for the Petitioners.
Mr. Anand Kulkarni for the Respondents.

CORAM : M. S. SANKLECHA, J.

DATE : 19th SEPTEMBER, 2017.

P. C. :

1. This petition challenges the order dated 12th June, 2013 passed by the District Judge, Pune in Execution Proceeding. By the impugned order the objections of the petitioners were rejected and the petitioner was directed to deposit an amount of Rs.45 Lakhs.

2. By the order dated 9th July, 2013 this Court while issuing notice in the two petitions had stayed the Execution Proceedings.

3. The undisputed facts are that the petitioners in Writ Petition No. 5734 of 2013 are partners of M/s. AGL Electronics Corporation which had obtained Cash Credit Facility and Bill Discounting facility from respondent No. 1-Bank. In view of disputes between the borrower AGL Electronics Corporation and the Respondent-Bank, the same was referred to arbitration under the Multi-state Co-operative Societies Act, 2002. By an order dated 26th February, 2008 the arbitrator passed an award awarding to the respondent-Bank a sum of Rs.54.54 Lakhs (being aggregate at Rs. 46.36 Lakhs on Cash credit Facility and Rs.8.08 Lakhs on Bill Discounting Facility). The impugned award further attaches the residential house of the partners of the principal borrower M/s. AGL Electronic Corporation being CTS No. 128, Sankalp Co-operative Housing Society Ltd. (the suit property) till the realization of the amount granted by the Arbital Award.

4. The petitioner in Writ Petition No. 5735 of 2013 is the guarantor for M/s. AGL Electronics Corporation in respect of advances made to it by respondent-Bank. The petitioners in both petitions filed application before the Executing Court that the amount due under the arbitral award dated 26th February, 2008 stand fully satisfied in view of

the agreement arrived at between the petitioners in WP No. 5734 of 2013 and the respondent-Bank. This settlement according to the petitioners, was recorded in the letter dated 22nd April, 2008 addressed by the respondent-Bank to the petitioners. The aforesaid letter reads as under :

- “ 1. The property i.e. plot no. 14 adm. 453.6 sq. mtrs. Together with construction standing thereon i.e. the bungalow in Sankalpa Co-op. Hsg. Soc. No. 2 constructed on the land bearing S. No. 47/3/A, 47/3/B-1, 47/3/B-2, situated at Erandawane, Paud Road, Pune : 411004 is attached property in the Arbitration Reference No. 57/2006. This attachment is effected for the recovery of the Bank dues against M/s. AGL Electronics Corporation and other sister concerns. The Award in the said Arbitration Case has been passed and the attachment before judgment of the said property is made absolute till the recovery of the amount.
2. During the pendency, the parties arrived at amicable settlement whereby you are required to pay Rs.45.00 Lacs (Rupees Forty Five Lacs Only) to the bank against the loan dues whereupon the bank shall make application for the release of the said attachment and release the property mentioned in above 1, from the attachment.
3. This provisional NOC is issued authorizing you to find out the intending purchaser, finalize the deal and execute necessary deeds and documents to effectually transfer the said property to the intending purchaser subject to payment of Rs.45.00 Lacs to the Bank before execution of such document.
4. Upon receipt of Rs.45.00 Lacs the bank will issue Release Letter thereby releasing the said property from the attachment. If the amount of Rs.45.00 Lacs committed hereunder is not paid

before execution of the said conveyance of the property, this provisional NOC will stand automatically cancelled and no release letter would be issued. “

5. It is petitioners' contention that it is a consequence of the aforesaid letter, the petitioners had paid an amount of Rs.45 Lacs to the respondent-Bank and at settlement as contemplated in the letter dated 22nd April, 2008 had been arrived at. Hence, the decree was fully satisfied.

6. Mr. Carlos, learned counsel appearing for the respondent reads aforesaid comments differently. According to him the aforesaid communication dated 22nd April, 2008 is only provisional NOC and does not amount to settlement arrived at between the parties on the satisfaction of the decretal amount.

7. The aforesaid communication dated 22nd April, 2008 gives rise to the question of interpretation. Before the Executing Court, the petitioners had made an application that in view of the denial by the respondent-Bank to the settlement claim, they be given an opportunity to adduce oral evidence to establish that petitioners and the respondent-Bank had arrived at amicable settlement leading to the satisfaction of the arbitral award dated 26th February, 2006. However, the aforesaid application made on behalf of the petitioners was rejected on the ground that the documentary evidence namely a letter

dated 22nd April, 2008 speaks for itself. As pointed out herein above, the meaning of the letter dated 22nd April, 2008 would be better appreciated if the parties are allowed to lead oral evidence in support of their respective case. The impugned order records that "Thus after taking into account of transfer deed and letter dated 22nd April, 2008, even a blind man would not venture to say that the D.H. bank had agreed to accept the amount of Rs.45 Lacs for full and final settlement." This conclusion by the impugned order is not entirely supported by the plain meaning of letter dated 22nd April, 2008.

8. In these circumstances, parties ought to have been allowed to lead oral evidence, so as to bring out the real intent and object of the letter dated 22nd April, 2008. In the above view, the impugned order dated 12th June, 2013 is quashed and set aside.

9. The application at Exh. 24, 36, 50, 61 and 76 in the Execution Proceedings bearing No. 5 of 2009 are restored to the Execution Court for fresh disposal. This after permitting the parties to lead oral evidence in support of their respective contentions including the true and correct meaning of the letter dated 22nd April, 2008 addressed by the Bank to the petitioner.

10. It is made clear that I have not examined the merits of the dispute. The Executing Court will decide the aforesaid application on its own merits without being influenced by any observation made

herein.

11. Needless to state the Executing Court will decide the matter as expeditiously as possible.

12. Both petitions are disposed of in the above terms.

[M. S. SANKLECHA, J]