IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1269 OF 2016

Gulabhusen Badshah Mulla and anr. : Petitioners.
versus
Laxmi Sahakari Bank Ltd, Maishal and ors. : Respondents.

Mr. P D Pise for the Petitioners.
Mr. T S Ingale for the Respondent No.1.

CORAM : R. M. SAVANT, J.
DATE : 15th February 2017

P.C.

1 The writ jurisdiction of this court is invoked against the order dated 10/07/2015 passed by the learned Member of the Maharashtra State Co-operative Appellate Court, Mumbai Bench at Pune by which order the Appeal filed by the Respondent No.1 Bank came to be allowed and resultantly, the judgment and award dated 10/05/2012 passed by the learned Judge, Co-operative Court, No.2, Sangli in Dispute bearing No.1087 of 2008 came to be set aside and the Dispute in turn came to be allowed and the Respondent Nos.1 to 4 therein were ordered to pay jointly and severely an amount of Rs.2,84,416/- to the Respondent No.1 Bank along with interest at 16% p.a. from 01/04/2008 till realization of claim amount.

2 The Petitioners herein had availed of a loan facility in the sum of

Rs.2,50,000/- for agricultural purposes in March 2007. The said loan was payable within a period of 5 years of its disbursement. There is no dispute about the fact that the said loan was disbursed to the Petitioners. Prior to the said 2007 loan, the Petitioners, it seems, had availed of a loan for construction of house in the year 2004 for which they had as and by way of security executed a mortgage deed in respect of the properties bearing CTS No.229 and 230 admeasuring 62.2 sq.ft and 95.7 sq.ft.. The said mortage was a registered mortgage executed on 21/05/2004. In the context of the present Petition what is relevant to note is that on page 5 of the said mortgage it has been mentioned that the said security given by the Petitioners for the loan taken for construction of house, which security was to operate for a period of 12 years would also operate for all other loans that would be taken by the Petitioners from the Respondent No.1 Bank during the said period.

3 On default being committed by the Petitioners of the loan obtained for agricultural purposes, the Respondent No.1 filed the Dispute in question being No.1087 of 2008 in the Co-operative Court at Sangli. The said Dispute was filed for recovery of the amount of Rs.284416/- along with interest at 16% per annum from 01/04/2008. The Petitioners herein who were the Respondents in the said Dispute filed their written statement and accepted the factum of disbursement of the loan by the Respondent No.1 Bank for the agricultural purpose. It was stated by them in the written statement that they

have availed of a loan in the year 2004 for construction of house which they have repaid in the year 2007.

4 The Trial Court on the basis of the pleadings framed issues amongst which was the issue as to whether the Petitioners who are the Respondents in the Dispute prove that the mortgage dated 21/05/2004 qua the loan for agricultural purposes was illegal. The Trial Court i.e. the Co-operative Court on the basis that though the Dispute has been filed in respect of the loan taken for agricultural purpose, the Disputant i.e. the Respondent No.1 Bank had filed documents which include the statement of accounts for the loan taken for construction of house and therefore, the Trial Court observed that there was no connection between the pleadings and the evidence which was adduced on behalf of the Respondent No.1 Bank and accordingly dismissed the Dispute by the judgment and order dated 10/05/2012.

5 The Respondent No.1 Bank aggrieved by the dismissal of the Dispute by the Co-operative Court filed an Appeal being No.88 of 2012 before the Co-operative Appellate Court. The learned Member of the Co-operative Appellate Court went threadbare into the facts of the case. The learned Member held that there can be no dispute about the fact that the Petitioners herein had availed of the loan from the Respondent No.1 Bank and that they had also executed documents by way of loan agreement, promissory note and

the letter of continuity of mortgage pursuant to the sanction of the said loan. The learned Member of the Co-operative Appellate Court adverted to the evidence adduced on behalf of the Respondent No.1 Bank and especially the evidence of the Petitioner No.1 herein wherein he had specifically admitted in clear terms that he has provided the property mentioned in the mortgage deed as a continuous security. The learned Member held that once the Petitioners have admitted the factum of the loan as also have executed the documents in favour of the Respondent No.1 Bank, then it was not open for the Petitioners to question the grant of loan on the basis of the fact that there was confusion as regards the loan for construction of house and the loan taken for agricultural purposes. The learned Member of the Co-operative Appellate Court also adverted to the fact that it is the Petitioners who themselves applied for the agricultural loan and they have thereafter availed of the loan, the learned Member has also adverted to the fact that not a single question was put to the witness of the Respondent No.1-Bank as regards the statement of account produced by it in respect of the said loan The learned Member therefore observed that the finding of the Co-operative Court based on the discrepancy in respect of the documents produced before it was erroneous. The learned Member, as indicated herein above, accordingly set aside the judgment and award of the Co-operative Court and in turn allowed the Dispute.

6 The above Petition had come up for admission before a learned

Single Judge of this Court on 05/05/2016 on which day ad-interim relief in terms of prayer clause (c) came to be granted to the Petitioners subject to the Petitioners depositing Rs.2,50,000/- in this Court. The said order has not been complied with by the Petitioners till date.

7 The learned counsel appearing on behalf of the Petitioners would seek to make submissions based on the factum of the loan taken for construction of house in the year 2004 and thereafter loan taken for agricultural purposes in the year 2007. It was his submission that security granted by the Petitioners was only for the loan taken for construction of house and could not extend to the loan taken for agricultural purposes. The learned counsel would therefore contend that the properties of the Petitioners allegedly mortgaged to the Respondent No.1 Bank cannot be proceeded with for recovery of the loan amount.

8 In my view, it is not possible to accept the said contention. The Lower Appellate Court having regard to the material on record, has for cogent reasons set aside the judgment and award passed by the Co-operative Court, which was principally on the ground that there is no Dispute about the application for loan being made by the Petitioners, disbursement of the loan to the Petitioners and availment of the loan by the Petitioners. In terms of the mortgage, the same was also to act as security for the loan taken for

agricultural purposes, hence there is no substance in the said contention of the learned counsel for the Petitioners that the mortgaged property cannot be proceeded against. In that view of the matter, no case for interference in the writ jurisdiction of this Court is made out. The above Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]