

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.3164 OF 2016
IN
WRIT PETITION NO. 10837 OF 2014**

Vikram Hasmukh Rawal ..Applicant /Petitioner
Vs.
Abuyadaya Co-op Bank Ltd & Ors ..Respondents

Mr. B. S. Nayak for the Applicant /Petitioner
Mr. P. K. Pandey i/b Res Legal for the Respondent No.1

CORAM : R. M. SAVANT, J.
DATE : 11th JANUARY, 2017

P.C.

1 The Writ Jurisdiction of this Court is invoked against the order dated 12-8-2014 passed by the Learned President, Maharashtra State Co-operative Appellate Court, Mumbai, by which order, the Revision Application filed by the Petitioner herein came to be dismissed.

2 The Revision Application was filed by the Petitioner against the order dated 24-9-2013 passed by the Learned Judge of the Co-operative Court, Mumbai by which order the application filed by the Petitioner for appointment of the Court Receiver, came to be rejected. By the impugned order dated 12-8-2014 the Co-operative Appellate Court has confirmed the order dated 24-9-2013 passed by the Co-operative Court, the Petitioner was seeking the appointment of the Court Receiver in respect of the flat in respect of which an order for attachment before judgment was passed by the Co-operative Court.

The said relief sought by the Petitioner has been rejected by the courts below on the ground that the power under Order 40 of the Civil Procedure Code could not be exercised by the Co-operative Court. Both the courts below have also rejected the said application on the ground that the fact situation in the instant case does not warrant such an appointment. It is recorded by the Co-operative Appellate Court that the flat in question was put in possession of one Babubhai Raval who is the brother of the father of the Petitioner. The Co-operative Appellate Court has further recorded that there appears to be some dispute between the brothers interse, and that the property being attached by the Bank, could not be alienated. In so far as the machinery is concerned, the Co-operative Appellate Court has observed that it would be part of the evidence as to who is responsible for the missing property and whether value of the same can be appropriated towards the amount of loan to be paid to the Bank. Hence both the courts below have concurrently rejected the application for appointment of the Court Receiver.

3 The Petitioner has filed the above Civil Application for staying the operation of the application dated 14-6-2016 filed by the Respondent Bank for withdrawal of the dispute. The Petitioner is also claiming the relief in the above Civil Application that the Bank be directed to deposit the amount equivalent to the value of the said machinery with compensation for illegally parting with possession thereof.

4 In my view, since this court does not find any merit in the above Petition, there is no question of granting any relief to the Petitioner in the above Civil Application. The Writ Petition is accordingly dismissed. The Civil Application to stand rejected.

5 Needless to state that the application filed by the Bank would be dealt with on its own merits and in accordance with law.

[R.M.SAVANT, J]