IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 13465 OF 2017

Prakash Eknath Chaudhari … Petitioner
V/s.
The State of Maharashtra & Ors. … Respondents

Mr. Ketan V. Joshi i/b Ergo Juris for the Petitioner.
Mr. S.R. Nargolkar i/b Omkar Amberkar for Respondent No.2.
Mr. Aumkar Joshi for Respondent No.3.
Ms. K.R. Kulkarni, A.G.P. for the State.

CORAM : A.A. SAYED AND
MANISH PITALE, JJ.

DATE : 20th DECEMBER, 2017.

P.C. :

1 The Petitioner, a member and shareholder of Respondent No.2-Bank has filed this Petition under Articles 226 and 227 of the Constitution of India. The relief claimed in the Petition is for a direction to Respondent No.2 Bank and its Board of Directors to recover all the loans which are sanctioned without following due procedure.

2 The grievance of the Petitioner is that Respondent No.2-Bank has granted uncontrolled and unregulated loans to its members by the Board of Directors which is controlled by the Chairman. The loans are granted to none else but persons of the Chairman of Respondent No.2-Bank.

It is contended that the loans are issued in contravention of the provisions of the Model Bye-laws and the Recovery of Debts due to the Banks and Financial Institutions Act, 1993. It is contended that the loans are sanctioned without there being any mortgage or proper security or documentation and some of the borrowers are not even members of the Bank and that the Bank is not making any efforts to recover the loan amount which is to the tune of Rs.6,05,00,000/- as enlisted in paragraph 7.

3 Affidavit-in-Reply has been filed by Shri Devachand Haribhau Aher, C.E.O. of Respondent No.2-Bank. It is stated in the said Reply that the allegations made by the Petitioner are baseless, and proper procedure has been followed when the loans and advances were sanctioned and disbursed. It is asserted that the loans were properly secured and that the same are being repaid in a timely fashion and there is no default in repayment on the part of the borrowers. The compilation of the files of the loan processed by the Bank are relied upon to demonstrate that proper procedure has been followed when sanctioning and disbursing the loans and appropriate and sufficient security has also been taken. The said files also evidence the fact that the loan repayment is also as per schedule and that there is no default on the part of the borrowers. It is stated that the Management of the Bank and also that of the Educational institution is vested in a democratically

elected body of Board of Directors in the case of the Bank and a Managing Committee in case of the Educational Institution. Merely because the same person is the Chairman, would not mean that the entire control and administration of both the institutions is with the same person. It is stated that the day-to-day administration of the Bank is with the Officers of the Bank who carefully supervise and ensure efficient administration whereas policy decisions are taken by the management level which is vested in the Board of Directors. The administration is subject to the duel control of the Reserve Bank of India and the authorities of the Co-operative department. Learned Counsel for the Respondent has pointed out that the entire files of the loan have been brought to the Court for perusal. He has also tendered a Statement showing the name of the borrowers, the membership numbers, the amount repaid and the amount outstanding. The statement is taken on record and marked “X”.

4 We are informed that the Petitioner, after being served with the copy of the Affidavit-in-Reply, has also taken inspection of all the files of the Respondent-Bank. The learned Counsel for the Petitioner concedes that the Petitioner has taken inspection of the files and that nothing irregular has been discovered therein. In any event, there is no rejoinder filed by the Petitioner denying the assertions in the Affidavit-in-Reply.

5 We find that the Petition is complete abuse of process of law. The allegations which are made in the Petition are false and baseless and on misplaced apprehensions and are completely unjustified.

6 In these circumstances, we are granted an opportunity to the learned counsel for the Petitioner to take instructions whether the Petitioner is willing to withdraw the Petition and the matter is kept back in the afternoon session.

7 In the afternoon session, we are now informed by the learned Counsel that the Petitioner does not wish to withdraw the Petition and the Court may pass appropriate orders.

8 In the circumstance, the Petition is dismissed with costs of Rs.50,000/- to be paid by the Petitioner to Respondent No.2-Bank within a period of two weeks from today.

9 List the Petition on 15.01.2018 under the caption "directions" for reporting compliance.

(MANISH PITALE, J.) **(A.A. SAYED, J.)**