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IN THE HIGH COURT OF JUDICATURE OF BOMBAY BENCH AT AURANGABAD

CIVIL APPLICATION NO. 7181 OF 2018
IN
WRIT PETITION NO.6977 OF 2012

Sharad Vithalrao Kuberkar APPLICANT

VERSUS

Nanded District Central Co-operative Ltd., & Ors. RESPONDENTS

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Mr. Amit A. Mukhedkar, Advocate for the applicant
Mr. P. R. Katneshwarkar, Advocate for respondent No. 2
Mr. K. J. Suryawanshi, Advocate for respondent No. 1

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 17th JULY, 2018

ORDER :

1. Heard learned advocates for the parties.

2. Mr. Mukhedkar, learned advocate appearing for the applicant submits that while original loan amount had been Rs.4,00,000/- taken by the petitioner, the applicant had been guarantor only to the extent of Rs.5,000/- and not any further. The respondent bank had moved co-operative court for recovery of loan amount and the proceedings ended up in its award. He submits that the petitioner society had been in appeal against award by the co-operative court, however, appeal was dismissed

and the petitioner is before this court in writ petition.

3. In the meanwhile, the respondent bank had issued a communication, under the signature of Special Recovery Officer, purportedly attaching savings bank account of the applicant in State Bank of Hyderabad, Industrial Estate Branch, Nanded referring to that the applicant had been surety to the extent of Rs.5,000/- plus interest @ 16.5%, which comes to Rs.2,46,605/- in aggregate and the surety is liable and responsible to bear the same with future interest thereon.

4. He submits that subsequently, this court had on 21st September, 2013 and 21st October, 2013 directed the principal borrower to deposit certain amounts in this court and the amounts to the tune of Rs.22,00,000/- have accordingly been deposited. He as such, submits that interest of the award holder has been more than sufficiently secured.

5. Apart from aforesaid, he submits, action of attaching bank account has been unsustainable, since going by the communication of the bank of attaching bank account of the applicant, recovery certificate is deemed to be a decree and will have to be put in execution, however, a high handed action has been taken by directing attachment of the savings account in

State Bank of Hyderabad, Industrial Estate Branch, Nanded, which is beyond the scope of proceedings and the recovery certificate.

6. He submits that entire execution pursuant to the orders of this court in writ petition has been stalled.

7. He submits, the applicant, who is pensioner, in the circumstances, has been handicapped and is suffering ignominy due to attachment and for want of operation of the bank account.

8. Mr. K. J. Suryawanshi, learned advocate for the respondent bank submits that the award has fastened onto the borrower and the guarantors, joint and several liability of entire amount thereunder. Additionally, he refers to that going by the communication regarding attachment, the applicant is liable to secure bank with an amount of Rs.2,46,605/- and further interest thereon. Additionally, he submits that the amount deposited in this court under the orders is only one tenth of the amount calculated by the bank as would emerge from observations in the orders. He further submits that the bank has moved an application for modification of the orders passed in writ petition. In the circumstances, he requests not to indulge

into the relief claimed in the civil application.

9. Mr. Katneshwarkar, learned advocate for respondent No. 2, original petitioner, supports the applicant stating that interest of the bank has been secured by the amounts deposited in this court.

10. Having regard to aforesaid submissions, it appears that the applicant who claims to be pensioner and had guaranteed repayment of loan to the extent of Rs.5,000/- has been claimed to put to inconvenience and an onerous burden is being claimed to have been placed on him and alleged against him, who has guaranteed to a limited amount. Further, him being a pensioner is not seriously disputed. By orders passed in writ petition particularly 21st September, 2013 and 21st October, 2013, execution of the award on deposit of amounts is stated to have been stalled.

11. Interest of the bank, to quite some extent has been taken care of at this stage and the writ petition is pending. Sufferer in the process appears to be the applicant. In the circumstances, it appears to be expedient to grant civil application in terms of prayer clause “D” on the condition that to show *bona fides*, the applicant shall deposit a sum of Rs.25,000/-. As such, civil

application is allowed in terms of prayer clause "D" on the condition that applicant deposits a sum of Rs.25,000/- in this court within a period of four weeks from today

12. Civil application stands disposed of.

[SUNIL P. DESHMUKH, J.]

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