IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9616 OF 2017
(The N.D.C.C.Bank Vs. Vitthal Bapurao Dahe)
WITH
WRIT PETITION NO.9617 OF 2017
(The N.D.C.C.Bank Vs. Hanumant B.Patil)

Mr.L.H.Kawale h/f Mr.K.J.Suryawanshi, Advocate for the petitioner.
Mr.Sham B.Patil, Advocate for the respondent.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 27/09/2018

PER COURT :

1. This matter was heard at length on 16/07/2018 and 25/07/2018. On 25/07/2018, this Court had noted the statement of the learned Advocate for the employees which was recorded as under :-

> *"1 The learned Advocate for the Petitioner Bank submits, on instructions, that the principal amounts payable to the respective Respondents as per the judgments of the Industrial Court would be about Rs.1,61,200/- in the first petition and Rs.1,74,920/- in the second petition.*
>
> *2 The learned Advocate for the Respondents/ original Complainants submits that 9% interest granted by the Industrial Court from 01.04.2010 has not been*

calculated by the Petitioner Bank and as such, the amounts would be about Rs.2,89,915/- in the first petition and Rs.3,11,000/- in the second petition.

3 After these matters were heard for sometime, the learned Advocate for the Respondents was called upon to state as to whether, the Respondents are willing to take interest at the rate of 5% instead of 9% as granted by the Industrial Court.

4 The learned Advocate for the Respondents submits that he would take instructions in these matters with an intention of putting an end to the litigation at this stage itself.

5 The learned Advocate for the Petitioner/ Bank also submits that he would take instructions as the statement would bring the litigation to an end.

6 Stand over to 01.08.2018 for "passing orders"."

2. On 01/08/2018, the submissions of the learned Advocates were recorded in the order as under :-

"1. The submissions of the learned Advocates have been concluded. Before commencing the dictation of the order, an opportunity was given to the petitioner to take instructions whether the petitioner could pay the dues of the respondent along with 5% P.A. interest instead of 9% P.A. interest granted by the Industrial Court.

2. Learned counsel for the petitioner submits that the statement would be made within a week and this Court can deliver it's order in these two matters.

3. As such, S.O. to 9.8.2018 for passing orders. The matter would not be adjourned on the next date as this Court would dictate it's order."

3. Learned Advocate for the petitioner submits that, as an embargo had been created by the Commissioner of Co-operation and Registrar of Co-operative Societies, Maharashtra in giving monetary benefits to the employees towards arrears of increments, that the management of the petitioner / Bank did not agree even to the offer of the respondents/workers that they would accept 5% interest on the arrears instead of 9% granted by the Industrial Court.

4. Learned Advocate for the employees places on record a typed copy of the further order dated 23/08/2017 passed by the Commissioner for Co-operation and Registrar, Co-operative Societies addressed to the petitioner/ Bank, stating that the request for sanctioning payment of arrears cannot be decided by the said Authority and the Bank may consider such cases at the level of the Management of the Bank. Copy of the said communication is taken on record and marked as "X" for identification.

5. Notwithstanding the above, the petitioner/Bank has contended that the dues sought by the respondents, who are original complainants, could not have been entertained by the Industrial Court as the said dues were for the period from 2003 to 2010 and the complaint before the Industrial Court was filed on 15/01/2014. On account of delay, the complaint should have been rejected.

6. He has then drawn my attention to the 11 grounds formulated in the memo of the petition to support the second stand taken by the Bank that the Bank has a weak financial condition and hence these payments cannot be made.

7. Learned Advocate for the respondents/complainants has defended the impugned judgment.

8. I find from the record and the pleadings of the parties that the petitioner/Bank had specifically taken the stand that the amounts of arrears of increments cannot be paid to these complainants since the financial condition is very weak. The second ground is that the Commissioner for Co-operation has restrained the Bank from paying arrears of increments to the employees.

9. It requires no debate that a weak financial condition of an

employer cannot be a ground for non-payment of legal dues. The management of the petitioner/Bank should have managed the affairs in a manner which would not have led to the Bank getting into financial doldrums. Even otherwise, besides the said untrue statement, the Bank has failed in bringing such evidence on record which would indicate that these workmen would be held responsible for the weak financial condition of the Bank. The Industrial Court has considered the material placed before it and has observed in paragraph No.13 that the annual reports of the petitioner/Bank upto the years 2009-2010 would indicate that the Bank has made provisions for the payment of arrears of annual increments of the employees, which is a total amount of Rs.79900820/-. The Bank has earned a profit of Rs.1320993619.96. For the financial year 2010-2011, the Bank generated profit of an amount of Rs.22587637.68. It is based on these facts that the Industrial Court concluded that the Bank was not justified in merely assuring the employees of disbursement of arrears of increments and avoiding such payment on the spacious plea, which is held to be false, that the Bank has incurred losses.

10. In so far as the ground of delay is taken, it appears that the complainants and similarly situated workers were continuously

demanding arrears of increments. The fact situation indicates that the Bank had made financial provisions for making the payment of such arrears. However, they have avoided making the payment. With the hope of receiving the arrears, these complainants waited for about 3 years and then have filed the complaints. The non payments of arrears of increments is therefore a recurring cause of action and the complaints cannot be said to be barred by the Law of Limitation.

11. In view of the above and considering the gracious statement made by the respondents/workers, both these petitions are partly allowed only to the extent of reducing the interest on the unpaid arrears of annual increments from 9% p.a. to 5% p.a. from 01/04/2010. As such, if the unpaid arrears are paid by this respondent/Bank within 21 days to the respondents, the amount shall carry an interest of only 5% from 01/04/2010 till 10/10/2018. If the amount is not paid during this period, as is the contention of the learned Advocate for the respondent, the interest shall revert back to 9% from 01/04/2010 till the amount is actually paid.

(Ravindra V.Ghuge, J.)