

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD***

WRIT PETITION NO. 1068 OF 2018

Firoz Nurmohammad Issani ... Petitioner

Versus

The Shahada People's Cooperative
Bank Ltd., Shahada & others ... Respondents

Mr. A.N. Sikchi, Advocate holding for Mr. J.R. Shah, Advocate for
the Petitioner.

Mr. A.S. Savale, Advocate for Respondent no. 1.

Coram : N.M. Jamdar, J.

Date : 6 December 2018

Oral Order :

1. By this petition, the petitioner has challenged the order passed by the Maharashtra State Cooperative Appellate Court, Mumbai dated 12 October 2017 whereby the compromise award passed by the Cooperative Court dated 22 February 2017 was set aside and the dispute was restored to the file of the Cooperative Court.

2. Heard learned counsel for the parties. The Cooperative

Appellate Court has found that when the compromise was entered into by the Recovery Officer, he was not authorised to enter into compromise and that the borrower had not deposited an amount of ₹ 4,00,000/- in the loan account.

3. Learned counsel for the petitioner submits that the appellate Court could not have set aside the compromise decree in view of Order 23 Rules 3 and 3-A of the Code of Civil Procedure, 1908 and the appellate Court's order setting aside the compromise decree is erroneous.

4. Learned counsel for the respondents supports the impugned order and submits that the Recovery Officer was not authorised to enter into a compromise and there is no evidence that an amount of ₹ 4,00,000/- was deposited.

5. The matter was heard on 22 November 2018 and the following order was passed :

Heard the learned counsel for the parties.

2. Before the matter is proceeded further, since it is the contention of the petitioner that

he had compromised the dispute validly with the respondent-bank and has paid an amount of ₹ 4,00,000/- to the bank pursuant to the compromise, the petitioner must demonstrate that this was the position, if not, whether the petitioner is ready to deposit the amount of ₹ 4,50,000/- as on the date. It is only after this position is clarified by the petitioner, the matter can be considered after hearing the learned counsel for the respondent.

3. Stand over to 6 December 2018. To be listed under the Caption 'for direction'.

4. Ad-interim order to continue till the next date.

6. Learned counsel for the petitioner submits that further time of one week be granted as the petitioner is busy in a religious function for a period of one week. No supporting documents are produced.

7. The proceeding arises under the provisions of the Maharashtra Cooperative Societies Act, 1960 and is not a civil suit. Petitioner is the borrower of the bank. There is a finding that the Recovery Officer was not authorised to enter into the compromise. A finding is also recorded that an amount of ₹ 4,00,000/- has not been

deposited. In the backdrop of this factual position, a cogent evidence was necessary on the part of the petitioner and the same is not forthcoming. This was the position even before the Appellate Court. Therefore, no further indulgence can be granted to the petitioner. Even otherwise, by the impugned order, the proceedings have been remanded to the Cooperative Court and it is open to the petitioner to advance all contentions on merits before the Cooperative Court. It is also open to the petitioner to urge that the petitioner has paid an amount of ₹ 4,00,000/- by showing necessary proof in case, the said issue arises.

8. Since the observations made in the impugned order are in respect of validity of the compromise and since the dispute will be heard on its own merit, the observations made by the Cooperative Appellate Court in the impugned order are to be understood in that context.

9. With these observations, the writ petition is disposed of. Interim order stands vacated. The parties will appear before the Cooperative Court on 19 December 2018.

N.M. Jamdar, J.