

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2653 OF 2015

Ashok Dattatreya Bhor	..	Petitioner
VS.		
The Sanjivini Gramin Bigarsheti		
Sah. Pat. Mdt., Nashik & Ors.	..	Respondents

Mr. Ramesh Dubepatil with Mr. Ankur Pahade i/b. Ms Jay & Co. for
Petitioner.

Mr. Ranjit A. Agashe for Respondent No. 2.

CORAM : M. S. SONAK, J.
DATE: 12 JUNE 2018

ORAL JUDGMENT :

- 1] Heard the learned counsel for the parties.
- 2] By order dated 8th June 2016, notices were issued to the respondents and wherein, it was made clear that if time permits, the matter would be decided finally at the stage of admission itself.
- 3] Mr. Dubepatil, the learned counsel for the petitioner states that service is effected on all the respondents. In fact, Mr. Agashe, appears for the respondent no. 2. Taking into consideration, the order made on 8th June 2016, the petition is taken up for final hearing.

4] Accordingly Rule. Rule is made returnable forthwith in view of the order dated 8th June 2016.

5] The challenge in this petition is to the orders dated 9th April 2013 made by the Co-operative Court, Nashik in ABN Case No. 484 of 2010 and order dated 26th September 2014 made by the Maharashtra State Co-operative Appellate Court, Mumbai, in Appeal No.73 of 2013 confirming the Co-operative Court's order dated 9th April 2013. The two orders, in effect direct the petitioner to pay a sum of Rs.7,77,110/- along with interest at the rate of 15% per annum with effect from 1st April 2010 till realization of the entire amount to the respondent no. 1 Co-operative Society (Society).

6] Mr. Dubepatil, the learned counsel for the petitioner submits that the Co-operative Court's order dated 9th April 2013 was made *exparte*. He points out that at the relevant time, the petitioner could not attend the proceedings before the Co-operative Court as his nephew was admitted to Chiranjeevi Hospital at Nashik on account of serious medical complications due to a hole in his heart.

7] Mr. Dubepatil also submitted that the petitioner had earlier availed a loan of Rs.1,10,000/- from the society, which loan had been duly repaid. He submits that the documents which indicate that the petitioner had availed further loan of Rs.5,00,000/- are

forged and fabricated documents. He submits that the petitioner was unable to put-forth his case appropriately on account of the medical emergency which kept the entire family involved. He submits that the society has not produced any documents to indicate that the petitioner had indeed applied for loan. He submits that the disputed documents were never sent by the Co-operative Court for opinion of handwriting expert. He submits that even the fabricated documents expose the inconsistency involved in the case of the respondent no. 1 society. He submits that so-called loan application is stated to have been filed by the petitioner on 29th September 2007 but the loan is stated to be sanctioned on 22nd September 2007. He submits that the documents were not proved in accordance with law and in any case, sufficient opportunity was denied to the petitioners to put-forth and establish his defence. For all these reasons, Mr. Dubepatil submits that the impugned orders warrant interference. In the alternate, Mr. Dubepatil submits that the impugned orders be set aside and the petitioner be granted liberty to lead evidence in order to establish his defence.

8] In support of the alternate submission, Mr. Dubepatil submits that the examination-in-chief of the witness on behalf of the respondent no. 1 society concluded on 22nd January 2013. On that date, on account of the health complications of his nephew, the

petitioner and his Advocate could not remain present. Mr. Dubepatil points out that this was perhaps the only day on which the petitioner and his Advocate could not remain present. The Co-operative Court, without grant of any opportunity to the petitioner to cross-examine the witness made a '*No Cross*' Order on the same day. The matter was then adjourned to 26th February 2013 to enable the petitioner to file affidavit of evidence. Again, on that date since the petitioner was unable to file the affidavit, the Co-operative Court, declined an adjournment and closed the evidence of the petitioner. Mr. Dubepatil submits that the orders of '*No Cross*' and '*Closure of Evidence*' *ex facie* violate the principles of natural justice and fair play. The Co-operative Court failed to take into consideration the genuine reasons stated by the petitioner for inability to cross or lead defence evidence. Even a short adjournment was declined and this, constituted gross violation of principles of natural justice and fair play.

9] At this stage, there is no question of this Court going into the allegations that the society records had been fabricated to indicate that the petitioner had indeed availed loan of Rs.5,00,000/-. However, there is some material on record with regard to medical complications relating to Om Anil Bhor, nephew of the petitioner. The certificate produced on record indicates that this nephew

expired on 30th October 2012 on account of these complications. No doubt, the petitioner was deprived of opportunity to cross-examine or to lead evidence in January and February 2013. However, it does appear, that on account of the medical complications and the demise, the petitioner, was unable to effectively establish his defence before the Co-operative Court. From the record it does appear that the petitioner was contesting the matter before the Co-operative Court, but it is only in these 2 -3 months that the petitioner or his Advocate could not remain present and effectively defend the proceedings instituted by the respondent no. 1 society.

10] The '*No Cross*' Order was made without afford of even a single adjournment to the petitioner. So also, on the first date fixed for filing of affidavit in evidence, since, the petitioner could not file the affidavit in evidence, the petitioner's evidence came to be closed. Subject to imposition of certain conditions, these two orders deserve to be interfered with, so that, the petitioner, is granted an opportunity to prove his defence. Interests of justice warrant adoption of such a course though, some conditions will have to be imposed upon the petitioner in order to avail such relief.

11] If no such conditions are imposed and if ultimately the petitioner is unable to make good his defence then, all that will happen is that the society will be unduly restrained from recovering

its dues for some considerable period. In the facts and circumstances of the present case, therefore, an order which will be equitable to both the parties deserves to be made.

12] The appeal court has not adverted to the aspect of validity of the 'No Cross' Order or the Order closing evidence of the petitioner. The appeal court, has proceeded on the basis that since, the petitioner has failed to make good his defence, the appeal warrants dismissal. Although, specific grounds in relation to the manner in which 'No Cross' Order was made or the order closing the petitioner's evidence was made were raised before the appeal court, the appeal court, has not taken cognizance of such contentions.

13] For the aforesaid reasons, this petition is disposed of with the following order :

ORDER

(A) The impugned orders dated 9th April 2013 and 26th September 2014, shall stand set aside upon the petitioner complying with the condition in clause (B) stated hereafter;

(B) The petitioner to deposit with the Co-operative Court within a period of eight weeks from today an amount of

Rs.5,00,000/- i.e. the alleged principal amount, without prejudice to his defence;

(C) In case the amount as aforesaid is not deposited by the petitioner within a period of eight weeks from today, then, this petition shall be deemed to have been dismissed with costs of Rs.10,000/-;

(D) Since this Court was earlier inclined to grant a shorter period for making deposit, the learned counsel for the petitioner requested for eight weeks time to make deposit. Accordingly, it is clarified that there will be no question of any further extension to deposit the amount of Rs.5,00,000/- as aforesaid;

(E) In case, the amount of Rs.5,00,000/- is deposited by the petitioner before the Co-operative Court, within a period of eight weeks from today, the Co-operative Court to order the investment of such amount in a nationalized bank until the disposal of the proceedings in ABN Case No. 484 of 2010. The fate of such deposit shall abide by the fate of the final order in ABN Case No. 484 of 2010;

(F) In case, the condition in clause (B) as above, is indeed complied with by the petitioner, the proceedings can recommence before the Co-operative Court by affording the petitioner opportunity of cross-examination and leading his own evidence. In case, the society wishes to lead further evidence, the Co-operative Court may consider grant of such leave to the respondent no. 1 – society as well.

(G) It is made clear that this court has not adjudicated the matter on merits and therefore all contentions of all parties are left open to be decided by the Co-operative Court.

(H) The Co-operative Court is directed to dispose of the proceedings in ABN Case No. 484 of 2010 within a period of eight months from today or within a period of six months from the date of deposit of Rs.5,00,000/- by the petitioner.

(I) Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

14] All parties to act on basis of authenticated copy of this order.

(M. S. SONAK, J.)