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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.832 OF 2015

Shyamkant I. Singh (Ex-Chairman)
Sai Darshan Co-operative Credit
Society Limited & Ors.

..Petitioners.

V/s.

The Mumbai District Central Co-op.
Bank Limited & Anr.

..Respondents.

Mr.Kishor S. Patil for the petitioners.

None for the respondents.

CORAM: NITIN W.SAMBRE, J.

DATE : JUNE 26, 2018

P.C.:-

Heard the learned counsel for the petitioners.

2. Respondent No.1 filed Dispute bearing Case No.CC-I/120/2012 under section 91 of the Maharashtra Co-operative Societies Act, 1960 against the petitioners and one Sai Darshan Co-operative Credit Society Ltd. of which the petitioners were office bearers for recovery of amount of Rs.2,44,56,868/-.

3. The said Dispute came to be allowed vide judgment

and order dated December 31, 2012 wherein the Co-operative Court passed Award in favour of the Disputant as prayed, to be recovered with interest at the rate of 12.5% p.a. on the principal amount of Rs.2,34,42,600/-.

4. It is the case of all the petitioners that the signatures of the petitioners were forged on the acknowledgement of summons in the Dispute calling upon them to participate in the proceedings before the Co-operative Court. According to the petitioners, there was no proper and lawful service of summons in the dispute on the petitioners. The Co-operative Court proceeded ex-parte and delivered the Award on December 31, 2012.

5. The learned counsel for the petitioners in the aforesaid backdrop would urge that the petitioners got knowledge of the ex-parte Award in March, 2014 when there was a demand raised against the petitioners by the Disputant and as such, proceedings were taken out in June, 2014 for setting aside the ex-parte Award. According to the petitioners, they cannot be vicariously held responsible for the liability by virtue of the Award in the Dispute, as they ceased to exist as office bearers of the opponent Society

before the Co-operative Court. It is also claimed that the amount of loan has gone to the coffers of opponent No.1 Society and as such, the present petitioners cannot be personally held responsible.

6. The learned counsel for the petitioners then would urge that Revision Application for setting aside ex-parte Award taken out before the Co-operative Appellate Court vide R.A. No.69/2014 though allowed, however, it incorporated an unreasonable rider of deposit of fifty per cent of the amount as directed to be paid under the Award. According to him, in absence of an opportunity of hearing when the Award was passed, the Appellate Co-operative Court should have set aside the Award and should have passed an order of remand to the Co-operative Court with permission to the petitioners to participate afresh in the proceedings before the Co-operative Court. So as to demonstrate *bona fides*, the learned counsel for the petitioners would invite attention of this Court to the ground at page 14 of the petition so as to demonstrate that the present petitioners who are opponents in the Dispute have already deposited an amount of Rs.58.81

lakhs. As such, the condition of deposit ordered by the Co-operative Appellate Court needs to be waived with directions to decide the Dispute afresh.

7. None appears for the respondents, though served.

8. Having appreciated the submissions made by the learned counsel for the petitioners, it is required to be noted that this Court on January 23, 2015 directed the petitioner to deposit an amount of Rs.10 lakhs without prejudice to their rights and contentions. The fact remains that the petitioners have deposited the said amount. As such, even if the statement of the petitioners is accepted that earlier amount of Rs.58.81 lakhs plus Rs.10 lakhs is deposited, the fact remains that the petitioners are short by around Rs.60 lakhs so as to satisfy the condition incorporated by the Co-operative Appellate Court in the order impugned.

9. This Court called upon the learned counsel for the petitioners as to whether the petitioners are ready and willing to deposit additional amount, the learned counsel for the petitioners seeks time to take instructions.

10. In the aforesaid backdrop, this Court having to appreciate the conduct of the petitioners before the Co-operative Court, Co-operative Appellate Court and this Court and the financial liability fastened against them vide the Award passed in the Dispute.

11. The contention of the petitioners that they are office bearers of opponent No.1 Credit Co-operative Society is not a fact in dispute. The only fact that needs to be examined is, whether the petitioners can be held vicariously responsible to satisfy the liability of loan which was not repaid to the original Disputant.

12. As regards the contention that the Award delivered by the Co-operative Court pursuant to the provisions of section 91 of the Act without effecting service of summons on the present petitioners, when the dispute was pending before the Co-operative Court is concerned, there is no material on record to infer that there was no proper service of summons on the petitioners. The plea of the petitioners that their signatures were forged on the summons issued in the Dispute cannot be appreciated as all the petitioners are coming out with the same plea. Of course, it is

always open to the petitioners to establish the same based on evidence. However, as observed before, there is no material on record to infer non service of summons of the Dispute on the petitioners.

13. In the aforesaid background, having appreciated the conduct of the petitioners and the observations made by the learned Co-operative Appellate Court in the order impugned, in my opinion, the condition of deposit of fifty per cent of the amount awarded in the Dispute, appears to be absolutely reasonable.

14. The petitioners have been enjoying the interim relief passed by this Court for almost more than three years. Least that was expected of the petitioners was to deposit the said amount having been ordered by the Co-operative Appellate Court.

15. In the aforesaid background, I hardly notice any convincing reason which warrants interference in the extraordinary jurisdiction of this Court. The petition lacks merits and is dismissed.

(NITIN W.SAMBRE, J.)