

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**LETTERS PATENT APPEAL NO.162 OF 2013
IN
WRIT PETITION NO.6405 OF 2009**

Naveen Tukaram Sali

..Appellant

Versus

**The Mahad Co-operative Urban Bank
Ltd. and others**

..Respondents

Mr. Amol P. Mhatre, Advocate for the Appellant.

**Mr. S. B. Deshmukh, Advocate for Respondent No.1 – Bank with
Mr. Irvin D'Souza.**

CORAM : B. R. GAVAI &

RIYAZ I. CHAGLA, JJ.

DATE : 19th NOVEMBER, 2018

P.C.

1] The Appeal challenges the order passed by the learned Single Judge dated 10th September 2012, vide which the learned Single Judge of this Court has dismissed the Writ Petition filed by the present Appellant.

2] The Respondent No.1 had initiated the proceedings before the learned Co-operative Court for recovery of loan amount from Respondent No.2, the original borrower as well as present Appellant and Respondent No.3, who were guarantors. The learned

Co-operative Court came to a conclusion that the award could be passed against Respondent Nos.2 and 3, but not against the present Appellant. Being aggrieved by the dismissal of the dispute against the present Appellant, Bank went in Appeal before the learned Co-operative Appellate Court. Learned Co-operative Appellate Court allowed the Appeal and held that the present Appellant who was a guarantor was also liable to make the payment. Being aggrieved thereby, the present Appellant filed the Writ Petition. The Writ Petition is dismissed by the learned Single Judge. Being aggrieved thereby, the present Appeal.

3] Learned counsel for the Appellant submits that in a suit filed by the present Appellant being Regular Civil Suit No.7 of 2004, the Consent Terms were executed between the present Appellant and Respondent No.2. It is submitted that, as per the said Consent Terms, there is no liability on the present Appellant to make any payment towards the loan taken by the Respondent No.2.

4] We find that the contention as raised by the Appellant is without substance. The Consent Terms were executed between the present Appellant and the Respondent No.2. Admittedly,

Respondent No.1 is not signatory to the said Consent Terms. As such, Respondent No.1 cannot be bound by the arrangement as arrived at by the Appellant and the Respondent No.2.

5] Learned Single Judge has rightly considered this position. We do not find any merit in the Appeal. The Appeal is dismissed.

[RIYAZ I. CHAGLA, J.]

[B. R. GAVAI, J.]