

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**ARBITRATION PETITION NO.1368 OF 2014
WITH
IN PERSON APPLICATION NO.182 OF 2017
WITH
NOTICE OF MOTION NO.1911 OF 2017**

Mr. Goldie Purshottam Sud	...	Petitioner
Versus		
The Punjab & Maharashtra Co-operative Bank Limited And Others	...	Respondents

Mr. Goldie P. Sud, the Petitioner in-person present.
Mr. Atul Daga a/w Mr. Kuber Wagle and Ms. Dhawani Bokaria I/b
Purnanand & Co. for Respondent No.1.

CORAM : S.C.GUPTE, J.

DATE : 19 NOVEMBER 2018

P. C. :

. Learned Counsel for Respondent No.1 tenders a further affidavit on behalf of Respondent No.1. The Petitioner, who appears in-person, tenders his rejoinder. Both affidavits are taken on record.

2 Heard learned Counsel for the parties.

3 This petition challenges an arbitration award passed by a Sole Arbitrator under Section 84 of the Multi-State Co-operative Societies Act, 2002. The main ground of challenge, which is pressed before this court on behalf of the Petitioner, is that despite his having applied for permission to

lead oral evidence, opportunity to lead evidence was denied to him. In reply, it is submitted by learned Counsel for Respondent No.1 bank that the Petitioner never applied for leading of oral evidence before conclusion of arguments in the matter. Learned Counsel submits that the parties had concluded their oral arguments and it is only at the stage of filing of the written submissions that the Petitioner submitted a prayer for leading of oral evidence. The roznama of the proceedings maintained by the learned arbitrator is on record. Respondent No.1 bank itself has filed a complete text of the roznama. The roznama shows that after filing of pleadings, the opponents were absent and appeared for the first time on 28 April 2012 when the matter was adjourned by consent of parties. The Petitioner (original Opponent No.1) thereafter filed his application for leading of oral evidence. The application is dated 28 April 2012. In other words, it is the case of the Petitioner that on the very date, when he appeared through his advocate for the hearing, after the stage of filing of pleadings was over, he applied for permission to lead oral evidence. This is disputed by learned Counsel for Respondent No.1 bank. Learned Counsel submits that the application, though dated 28 April 2012, was actually filed on 14 July 2012. The roaznama maintained by the learned arbitrator does not show that there was any hearing of the matter at any time before 14 July 2012. The roznama of 16 June 2012, which is the immediately next date after the matter was adjourned on 28 April 2012, shows that Respondent No.1 bank had filed its written arguments on that date. On the every next date, i.e. 14 July 2012, the present application appears to have been filed by the Petitioner, though there is no appearance recorded on the part of the Petitioner. In other words, before the learned arbitrator could hear or consider the arguments of the parties, an application was indeed moved by

the Petitioner seeking permission to lead oral evidence. In the facts of the case, considering that the Petitioner had averred a case of fraud against the Respondent bank and also contested some cash deposit as not having been made by the Petitioner, it was imperative that the learned arbitrator ought to have considered the Petitioner's request for leading of oral evidence. There is no order on the application seeking permission to lead oral evidence. What we have instead is the final award rendered in the reference. It is only in this final award that there is a mention made of the Petitioner's application for permission to lead oral evidence. Non-consideration of the Petitioner's application for leading of oral evidence in this manner renders the award vulnerable to a challenge on the ground of conflict with the public policy of India and also on the ground that the Petitioner herein, who was the respondent to the reference, was unable to present his case within the meaning of clause (a)(iii) of sub-section 2 of Section 34 of the Arbitration and Conciliation Act, 1996. In the premises, the impugned award is liable to be set aside.

4 Accordingly, the impugned order dated 29 June 2013 is quashed and set aside. It is clarified that award is set aside on the ground that there was no adequate opportunity to the Petitioner herein to present his case and not on merits of the controversy and accordingly, it will be open for Respondent No.1 bank to agitate its claim in a fresh arbitral reference. The Petitioner accepts this position. Parties are agreeable to go before the same arbitrator for a fresh hearing of the reference. Accordingly, by consent of the parties, the reference is remitted to the same learned arbitrator for a fresh hearing in accordance with law, and after considering the Petitioner's application for leading of oral evidence. It is also agreed between the

parties that they shall not file any further pleadings in the matter and the reference may start from the stage of the Petitioner's application for leading of oral evidence. It is ordered accordingly. It is also clarified that the pleadings filed by the respective parties in the present arbitration petition shall also form part of the pleadings before the arbitral forum.

5 The Arbitration Petition is disposed of accordingly. In view of disposal of the petition, Notice of Motion No.1911 of 2017 does not survive and the same is also disposed of.

(S.C. GUPTE, J.)