

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

CIVIL APPLICATION NO.5002 OF 2019  
(Saraswati Co-operative Credit Society Limited Vs. Prakash Gagandas  
Basantani and others)  
IN  
WRIT PETITION NO.3758 OF 2008

Mr.M.S.Kulkarni, Advocate for the applicant.  
Mr.V.D.Hon, Sr.Counsel h/f Mr.A.V.Hon, Advocate for respondent  
Nos. 1 to 4.  
Mr.S.W.Munde, AGP for respondent No.5/State.

( CORAM : Ravindra V.Ghuge, J.)

DATE : 26/04/2019

PER COURT :

1. By this application, the applicant/society which is respondent No.2 in the writ petition, prays for withdrawal of the deposited amount of Rs.13,23,828/- alongwith interest.

2. Mr.Hon, learned Sr.Advocate has vehemently opposed this application. He submits that he is ready for a final hearing in the writ petition. He further submits that the final submissions of these litigating sides were advanced before an earlier Bench and the matter was closed for Judgment, though subsequently was made de-part heard.

3. I find from the record that this Court has earlier dealt with civil applications in the group of matters involving the same parties by an order dated 18/02/2015, in which this Court had concluded that the original petitioners have abused the process of Law and have played a trick on the Court by enjoying the conditional protection granted by the Court without discharging their obligations.

4. Considering that the amount deposited is on account of a recovery certificate issued u/s 101 of the M.C.S. Act, 1960 and the petitioners had directly appeared before this Court by avoiding the statutory remedy of Section 154(2A) mandating a deposit of 50%, this application is allowed. The applicant/society is permitted to withdraw the amount as prayed for in prayer clause 'A' alongwith accrued interest.

5. Needless to state, in the event an adverse order is passed in the petition against the applicant/society and if it is found that it has received excess amount, the said amount shall be redeposited in this Court alongwith interest @ 6% from the date of withdrawal till the date of deposit.

( Ravindra V.Ghuge, J.)