

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.5190 OF 2019
WITH
CIVIL APPLICATION NO.6953 OF 2019

ASHOK CHITRA MANDIR
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Shri Abhay D. Ostwal, Advocate for the petitioner.
Shri S.P.Tiwari, AGP, for respondent nos.1 to 4.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 18th June, 2019

Per Court:

1 Not on the Board. Mentioned. Taken on the Production Board.

2 I have heard the learned advocate for the petitioner and the learned AGP on behalf of the respondents, on the writ petition as well as the civil application.

3 On 30.04.2019, this Court (Coram : V.L.Achliya, J.) had passed the following order :-

Heard.

2. *In brief, it is the contention of learned counsel for the petitioner that the impugned order in the nature of*

communication dated 13th March, 2019, directing the petitioner to pay the sum of Rs.6,66,592.71 on or before 31st March, 2019, and in default the recovery proceedings shall be initiated under the provisions of Maharashtra Land Revenue Code, 1966, is unsustainable in law.

3. Learned counsel submits that under the scheme floated by the Government, the interest free loan to the tune of Rs.17,05,000/- was disbursed to the petitioner. In terms of agreement entered in between petitioner and Respondent Nos.2 and 3, the interest free loan was agreed to be repaid within five years in quarterly installments of Rs.86,993/-. The period of 1st installment commenced w.e.f. 25th October, 1999. It is the contention of learned counsel for the petitioner that the petitioner has paid the installments in terms of the agreement and committed no default giving rise cause to charge the interest @ 18%.
4. It is the contention of learned counsel for the petitioner that the petitioner has deposited the entire loan amount in terms of agreement and committed no default so as to make him liable for payment of interest. Without considering the response filed by the petitioner, the impugned communication has been sent to petitioner to pay the amount and in default threatened to initiate proceedings for recovery.
5. On the basis of instructions received from the petitioner, learned counsel for the petitioner submits that in order to show bonafides of petitioner, the petitioner is ready to deposit the amount in this Court and urged to stay the implementation of the order.
6. Considering the submissions advanced, the following order is passed :-

ORDER

- (i) Issue notice to the respondents, returnable on 18th June, 2019. Learned A.G.P. accepts the notice for the respondents and seeks time.
- (ii) In the meantime, there shall be ad-interim relief in terms of prayer clause "(c)", subject to deposit of amount of Rs.6,66,592.71 in this Court within four weeks from today.

- (iii) *If such amount is deposited, the same shall be invested in the fixed deposit in any nationalized bank.*
- (iv) *The deposit of amount shall be without prejudice to the rights and contentions of the petitioner."*

4 By the Civil Application, the petitioner prays that the time be extended and the Demand Draft for an amount of Rs.6,66,593/- dated 10.06.2019 drawn on the Corporation Bank in the name of the Registrar, High Court, Bench at Aurangabad, be accepted in pursuance to the order passed by this Court on 30.04.2019.

5 After considering the submissions of the learned advocates for the respective sides, I find that the impugned order dated 13.03.2019 passed by respondent no.3 does not indicate any reasons. The contention of the petitioner is that the interest free loan that the petitioner had taken, was subject to repayment at specific intervals. As per the agreement signed by the petitioner with the respondent corporation, the installments were deposited within time. Not a single installment was delayed and there was no delayed payment. In this backdrop, there was no occasion for respondent no.3 to levy interest at the rate of 18% per annum, which is the amount deposited by the petitioner in this Court.

6 Though the learned AGP has strenuously attempted to defend the impugned order, I find that no reasons have been assigned as to why interest at the rate of 18% per annum is being levied upon the petitioner. The contentions of the petitioner are not considered. No details appear in

the order as regards the purported delayed payment of loan installments. Details of payment of loan installments are also not mentioned. In short, I am unable to assess as to why respondent no.3 has imposed 18% per annum interest on the petitioner.

7 In view of the above, this Writ Petition is partly allowed. The impugned order dated 13.03.2019 is quashed and set aside on the following conditions :-

- (a) The petitioner shall appear before respondent no.3 on 06.07.2019 at 12:00 noon.
- (b) The petitioner or it's legal representative would address respondent no.3 by advancing oral submissions or even by tendering the written notes of arguments.
- (c) Respondent no.3 would conclude the hearing in the matter on or before 20.07.2019 and shall post the matter on 09.08.2019 for delivering his order. It is expected that respondent no.3 would deliver a reasoned order on 09.08.2019 and copies of the order would be kept ready to be delivered to the litigating sides.

8 Considering the above, the Civil Application is allowed. The Registry of this Court shall accept the Demand Draft dated 10.06.2019 being tendered by the petitioner and the said amount shall be invested in

the fixed deposit receipt with any nationalized bank at Aurangabad for an initial period of six months. Needless to state, if the petitioner succeeds before respondent no.3, it would be at liberty to move a civil application before this Court for seeking withdrawal of the said amount. So also, if the entire amount is held to be payable by the petitioner, respondent no.3 would be at liberty to withdraw the said amount after six weeks from the date of the passing of the order on 09.08.2019.

9 The litigating parties shall act upon a printout copy of this order obtained from the official website of the Bombay High Court.

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(RAVINDRA V. GHUGE, J.)