

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10588 OF 2019

JYOTSNA RAJENDRA WANI
VERSUS
CHEMIST CO OPERATIVE CREDIT SOCIETY LTD JALGAON
THROUGH ITS MANAGER

Mr.S.V.Suryawanshi , Advocate for the petitioner.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 27/08/2019

PER COURT :

1. The petitioner/judgment debtor is aggrieved by the order dated 17/07/2019 passed by the Executing Court by which application Exh.71, seeking referring of the "No Dues Certificate" to a Handwriting Expert, in RD No.290/2012 (Old No. of 2006), has been rejected.

2. The learned Advocate for the petitioner submits that he had obtained loan of Rs.2,00,000/- in 2003. The Credit Society moved a dispute before the Co-operative Court on 27/06/2005. By judgment dated 01/11/2005, the Co-operative Court directed the petitioner to repay Rs.2,52,409/- alongwith simple interest @ 18% on the

principle amount from 27/06/2005 till regularization. The petitioner approached the Co-operative Appellate Court and by judgment dated 11/07/2018, the appeal was dismissed.

3. The learned Advocate for the petitioner submits that he repaid the entire amount as per the judgment of the Co-operative Court and he was given a "No Dues Certificate" by the Manager of the Society on 03/05/2007. He produced the said certificate before the Co-operative Appellate Court to contend that he has already repaid the entire amount. The Co-operative Court concluded that whether he has repaid the amount, could be decided in the pending execution proceeding, which was initiated in 2006.

4. The learned Advocate for the petitioner relies upon the cross examination of the Manager of the Credit Society recorded on 10/07/2019. I have perused the first paragraph of the cross examination below Exh.64 and it appears that the said Manager has specifically stated that, *"It is not true that I have issued any certificate of repayment of loan to the judgment debtor as a Manager, The certificate dated 03/05/2007 attached to Exh.63 carries my signature. The certificate is on the letter pad. It is not true to say that the said certificate has been issued by me as a Manager. I was the Manager*

on 03/05/2007. It is not true that I have signed on the said certificate.”

5. Considering the above, in order to have corroborative evidence and in order to convince me that this petition needs to be entertained, I called upon the petitioner to demonstrate from any document, which would indicate that he has repaid an amount of Rs.2,95,382/- inclusive of the simple interest. I asked him to show me the counterfoil of the deposit slip by which he claims to have deposited this amount in cash. The learned Advocate submits that the petitioner cannot trace out the counterfoil slip to indicate depositing of the said amount in one stroke through cash. He has no document to indicate that the Society has issued any certificate closing the particular loan account and giving him the statement of accounts.

6. In the absence of the above, I do not find that the Executing Court, having considered these aspects, has committed any error in rejecting Exh.71. I also find a serious deficiency in the contention of the petitioner that, if he repaid the entire loan amount and if the execution proceedings were pending, he could have produced certain documents to seek the disposal of the execution proceedings on the

ground that the decree is satisfied. The learned Advocate explains that the execution proceedings actually commenced in 2012. If that be so, he could have moved the said Court immediately in 2012 and sought the closing of the execution proceedings.

7. As such, this petition, being devoid of merit, is therefore dismissed. Needless to state, the Executing Court would consider the examination and the cross examination of Chandrakant Suresh Jagtap, who claims to be the Manager as on 03/05/2007, alongwith the entire oral and documentary evidence while deciding RD No.290/2012.

(Ravindra V.Ghuge, J.)