

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION (ST.) NO.5674 OF 2019

Shirish Dalichand Oswal

...Petitioner

vs.

Rupee Co-Op Bank Ltd. and Ors.

...Respondents

Mr. Matheus Nedumpara a/w. Ms. Preeti Dambre I/b. Rohini Amin, for the Petitioner.

Mr. Pratap Patil, for Respondent No. 1.

CORAM : M. S. SONAK, J.

DATE : APRIL 25, 2019

P.C.:

. Heard Mr. Nedumpara, learned counsel for the Petitioner along with Ms. Dambre and Mr. Patil, learned counsel for the Respondent No. 1.

2. The challenge in this Petition is to the order dated 7th January, 2019 made by the Maharashtra State Co. Op. Appellate Court, Mumbai Bench at Pune. By the impugned order, the Petitioner's application (Exhibit 35 and 37) came to be rejected.

3. Mr. Nedumpara, learned counsel for the Petitioner submits that the Appeal Court has erred in observing that the relief in the nature of injunction or declaration cannot even be considered at

the interim stage. He submits that such powers are vested in the Appeal Court and therefore such observation is incorrect. He further submits that the Appeal Court clearly erred in observing that the earlier order had attained finality. He submits that the concept of finality in such matters is entirely different and the aspect of finality is not considered in the Appeal Court. He submits that the original documents were taken away by the bank on the premise that they were required to be produced before J.M.F.C., Pune. However, in fact such documents were not even produced before J.M.F.C., Pune. He submits that the Petitioner has apprehension that the original documents would be tampered and such apprehension is not addressed in the impugned order. For all these reasons, Mr. Nedumpara submits that the impugned order warrants interference under the supervisory jurisdiction of Article 227 of the Constitution. He submits that the impugned order was made without afford of opportunity of hearing to the Petitioner.

4. Mr. Pratap Patil, learned counsel for the Respondent No. 1 defends the impugned order on the basis of reasoning reflected therein.

5. The impugned order records that the Appellant was heard in person. There is nothing on record to indicate that the Appellant had applied for adjournment in order to be represented by an advocate or in order to enable his advocate to make submission in the matter. Therefore, it will not be correct to say that the impugned order came to be made without complying with the principles of natural justice.

6. Even though Mr. Nedumpara is right in his submission that on interim stage the relief of injunction can always be granted or that the concept of finality is not to be stretched too far, nevertheless the same are not good ground to interfere with the impugned order.

7. All that the Appeal Court has stated that the documents in question have already admitted in evidence. Therefore, the application was made for return of the original documents for production before the some other Court. Such application was allowed by order below (Exhibit 18). The order below Exhibit 18 was never challenged by the Petitioner. Therefore, though the said order may not have attained finality in the strict sense, the learned

Appeal Court was quite right in making the impugned order and rejecting the Petitioner's application for declaration of documents. In such circumstances the application (Exhibit 35 and 37) were not required to be allowed. By this application, the Petitioner resists the return of such documents or in the alternate such documents be replaced on record. Already the orders made in the proceeding required the advocate to bring on record such documents, if the same are called by the Court at any stage. The apprehension expressed by the Petitioner also cannot be the basis for requiring the Respondent-Bank to bring back the original documents. As it is, the documents have already been admitted in evidence. The copies of such documents have been retained on record in the course of evidence proceeding. Therefore, it is not possible to accept that such documents will now be tampered with by the bank. Based upon such apprehension, there is no case made out for grant of relief.

8. For all the aforesaid reasons, this Petition is dismissed.

9. There shall be no order as to costs.

(M. S. SONAK, J.)