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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.8402 OF 2016

Mr. Dhondappa Kundalik Sakhare & Anr.

..Petitioners

Vs

Samata Gramin Bigar Sheti Sahakari Patsanstha
& Anr.

..Respondents

Mr. Sagar K. I/b T.D. Deshmukh for the Petitioners.

CORAM : A.S.GADKARI, J.

DATE : 10th July 2019.

P.C.:

1] By the present petition under Article 227 of the Constitution of India, the petitioners have impugned, Judgment and Order dated 5th February 2015 passed by the learned Member of Maharashtra State Co-Operative Appellate Court, (Mumbai) Bench, Pune, dismissing the appeal No.107 of 2014 preferred by the petitioners and confirmed the Judgment and Order dated 6th August 2014 passed by the learned Judge, Co-Operative Court, Solapur in Dispute bearing No.816 of 2008.

2] Heard the learned counsel for the petitioners. Perused the record annexed to the petition.

3] The learned counsel for the petitioners submitted that, as “No W.S.” Order was passed against the petitioners, they could not place on record their defence in the said Dispute filed by the respondent No.1/credit society and therefore a money decree has been passed against the petitioners. He submitted that, if the petitioners would have been granted an opportunity to file W.S. perhaps they could have placed before the Court appropriate defence and the result of the case would have been different. He therefore prayed that, the impugned Judgment and Orders passed by both Courts below may be quashed and set aside.

4] Perusal of the record indicates that, it is an admitted fact on record that, the petitioner No.1 availed loan facility from the respondent/credit society and the petitioner No.2 remained guarantor to the said loan transaction. It is the further admitted fact on record that, the petitioner No.1 did not repay the loan amount along with interest accrued thereon and therefore the respondent No.1/credit society instituted the said Dispute under Section 91 of the Maharashtra Co-Operative Societies Act in the Co-Operative Court at Solapur. The petitioners were granted sufficient opportunity by the Trial Court to file their WS, however, when they failed to file it, the Trial Court passed an Order of “No W.S.”.

5] The record indicates that, the petitioners did not cross-examine the witnesses examined by the respondent No.1/credit society. The basic fact of acceptance of loan facility from the financial institution has not been dispelled by the petitioners, as a legal consequence, the Trial Court was pleased to allow the said Dispute thereby directing the petitioners to jointly and severally pay the amount mentioned in the operative part of the said Judgment and Order. The Appellate Court after scrutinizing and reappreciating the entire evidence available on record, was pleased to uphold the decision of the Trial Court.

6] As noted earlier, it is an admitted fact that, the petitioner No.1 has availed loan facility from the respondent No.1/credit society and the petitioner No.2 stood guarantor to the said transaction. After taking into consideration the entire material available on record, this Court is of the view that, both the Courts below have not committed any error either in law or on facts while passing impugned Judgment and Orders.

Writ Petition being de hors of merits, is accordingly rejected.

(A.S.GADKARI, J.)