

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

WRIT PETITION NO.10032 OF 2014

Antu Balu Ugale

.. Petitioner

V/s.

Shahapur Nagari Sahakari Patsanstha
Mydt., Kolhapur and Ors.

.. Respondents

Mr.Gajanan M.Savagave for the petitioner

Mr.Kedar P. Lad I/b Mr.P.D.Dalvi for the respondent no.1

CORAM: K.K. TATED, J
DATED : FEBRUARY 6, 2019

P.C. :

1 Heard.

2 By this Writ Petition, under Article 227 of the Consitution of India, petitioner original respondent challenges the judgment dated 23.07.2014 passed by Member, Maharashtra State Co-operative Appellate Court, Bench Aurangabad on Deputation at Pune (Kolhapur) allowing respondent original disputant no.2's Appeal No.2 of 2013.

3 By impugned order dated 23.07.2014 appellate court set aside the judgment and award dated 03.11.2011 passed in Dispute bearing No.660 of 2005 by which the Judge, Co-operative Court, Kolhapur dismissed the dispute and remanded for hearing

after re-casting the issue.

4 The learned counsel for the petitioner submits that though the appellate court directed Trial Court to recast the issue same is not made clear which issue is required to be recasted. He further submits that there is no question of remanding the matter to the Trial Court for hearing on its own merits. He submits that judgment dated 23.07.2014 was passed by the Trial Court after considering the evidence on record. Hence, order passed by appellate court remanding the matter to the trial court is required to be set aside.

5 Heard.

6 It is to be noted that in the present proceeding, appellate court set aside the judgment and award dated 03.11.2011 on the ground that trial court has not framed proper issue.

7 Though the borrower admitted in his written statement loan transaction and prayed for installment due to his weak financial condition, trial court failed to consider the same on the basis of evidence and also not framed proper issues on that point,

8. Considering these facts and the order to remand the matter to the court below for deciding on its own merits, I do not find any reason to interfere with the well reasoned order under Article 227 of the Constitution of India. Hence, following order is passed;

a. Writ Petition is rejected.

- b. It is made clear that if trial court to recast the issue framed earlier, same be done after hearing both the sides.
- c. If issues are recasted, both the sides are entitled to file additional affidavit of evidence and compilation of documents if any.
- d. Writ Petition stands disposed of accordingly.
- e. No order as to costs.

(K.K. TATED, J.)