

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 12015 OF 2013

Gangadhar V. Phakatkar .. Petitioner
vs.
The Haveli Taluka
Onion Growers Co-op.
Kharedi Vikri Sangh MT. .. Respondents

Mr. N.A. Mogre for the Petitioner.
Mr.Yogesh N. Patil i/b. Mr. V.D. Patil for Respondent.

CORAM : M. S. SONAK, J.
DATE : 12 APRIL 2019.

ORAL JUDGMENT :-

1] Heard Mr. N.A. Mogre for the petitioner and Mr. Yogesh Patil for the respondent.

2] The challenge in this petition is to the orders/awards dated 20th December 2007 and 26th November 2013 made by the Cooperative Court and the Cooperative Appellate Court respectively directing the petitioner to pay the respondent – society an amount of Rs.5,91,286/- along with interest at the rate of 6% per annum from 14th June 2000 till entire repayment of the amount.

3] Mr. N.A. Mogre, learned counsel for the petitioner, submits that the impugned award dated 20th December 2007

made by the Cooperative Court was *ex-parte* . He points out that the petitioner had engaged advocate and expected the advocate to diligently pursue the matter before the Cooperative Court. However, this was not done. Mr. Mogre submits that the petitioner should not be made to suffer for the fault on the part of his own advocate.

4] Mr. Mogre by way of illustration submits that on 19th September 2007 '*no cross order*' was made by the Cooperative Court, thereby depriving the petitioner opportunity of cross-examining the witness on behalf of the society. He submits that the advocate quite unilaterally took out an application for setting aside the no cross order on 4th October 2007. the same was allowed by order dated 9th October 2007 subject to payment of costs of Rs.1500/-. On 19th October 2007, the society pointed out that no costs have been paid and at this stage, the advocate for the petitioner applied for some time to challenge the order dated 9th October 2007. Mr. Mogre submits that the petitioner had no knowledge about the status of the proceedings before the Cooperative Court and acquired knowledge only when the process in execution

proceedings was served upon the petitioner. Mr. Mogre submits that the petitioner deserves opportunity to contest the matter on merits and therefore, the impugned orders must be set aside.

5] Mr. Yogesh Patil, learned counsel for the respondent, points out that the petitioner was throughout negligent in the matter. He submits that the petitioner is only interested in avoiding payments to the society after having obtained loans from the society. He defends the impugned orders on the basis of reasoning reflected therein. He submits that this petition may therefore, be dismissed.

6] The rival contentions now fall for determination.

7] The two Courts, in this case, have held against the petitioner. The Appeal Court, in details, has considered the contention with regard to effective opportunity. From the perusal of the impugned orders as well as the material on record, it cannot be said that the impugned orders suffer

from any jurisdictional error so as to warrant interference in exercise of supervisory jurisdiction.

8] In fact, the record indicates that the petitioner was not at all serious in pursuing the matter before the Cooperative Court and it is only by way of afterthought that blame is sought to be apportioned on his own advocate. From the instance cited by Mr. Mogre, learned counsel for the petitioner, it can hardly be said that the advocate for the petitioner was not making any attempts to prosecute the case on behalf of the petitioner. Besides, in such matters, it is not sufficient for the petitioner to show that he has engaged his advocate and thereafter, it was not the responsibility of the petitioner to pursue the matter with his advocate or to enquire about progress of the matter with his advocate. Nothing of this sort has been done or demonstrated by the petitioner. The petitioner's diligence after service of process in the execution proceedings is not a good cause to explain the utter lack of diligence in prosecuting before the Appeal Court.

9] Besides, there does not seem to be any serious dispute of the fact that the petitioner had obtained financial assistance from the society. There is really no jurisdictional error in the impugned orders so as to warrant interference by exercising the powers under Article 226 of the Constitution of India.

10] In the morning session, the matter was adjourned in order to enable Mr. Mogre to obtain instructions from the petitioner as to whether the petitioner is willing to deposit the awarded amount before the Cooperative Court, in case, the petitioner was serious about contesting the matter before the Cooperative Court almost 15 years after dispute was instituted by the society. Mr. Mogre, on the basis of instructions, stated that the petitioner is not in a position to deposit any amount before the Cooperative Court. Upon cumulative consideration of all these circumstances, it does appear that the petitioner is only interested in delaying the proceedings before the Cooperative Court.

11] For all the aforesaid reasons, this petition is dismissed.
There shall be no order as to costs.

12] The interim order, if any, granted earlier stands
vacated.

13] The respondent - society is permitted to withdraw the
amounts deposited by the petitioner in this Court together
with interests, if any, that may have accrued thereon.

(M. S. SONAK, J.)