

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

ARBITRATION PETITION NO. 1590 OF 2015

Mr. Shaan Uttamsingh & Anr.

...Petitioners

vs

Shamrao Vithal Co-op. Bank Ltd. & Ors.

...Respondents

Mr. Archit Jayakar I/b. Jayakar & Partners for Petitioners.

Mr. R.V. Vengurlekar for Respondent No.1.

CORAM : S.C.GUPTE, J.

DATE : 28 FEBRUARY 2019

P.C. :

Heard learned Counsel for the parties.

2 This arbitration petitions challenges an award passed by a sole arbitrator in the matter of a reference under Section 84 of the Multi-State Co-operative Societies Act, 2002 ('Act'). The challenge is to the extent the award is said to apply to the Petitioners herein. The Petitioners herein claim to be legal heirs of one Gopaldas Parmanand Sippy, who was arraigned as Defendant No.2 in the arbitration reference filed by the Respondent bank before learned arbitrator under Section 84 of the Act. The Petitioners are grandsons of Gopaldas Sippy through his predeceased daughter Soni Uttamsingh. The Petitioners are presently residing at a flat at Altamount Road in Mumbai. The Petitioners claim to have come to know of the award and the action of the Respondent bank in pursuance thereof when their flat was sought to be attached in execution of the award. The Petitioners claim that they had no notice of the arbitration proceedings or of the award at any time before the flat was sought to be attached. It is

apparent from the award passed by the sole arbitrator in the present case that the only two legal heirs of deceased Gopaldas Sippy, who were arraigned as opponents to the arbitration case, were Ajit Sippy and Mohini Gopaldas Sippy, who were, respectively, also opponents in their own right, Ajit Sippy in his capacity as a principal debtor and Mohini Sippy in her capacity as a guarantor. It is the case of the Respondent bank that even Gopaldas Sippy was a guarantor but Gopaldas had deceased prior to the filing of the arbitration case. His estate was sought to be arraigned through Ajit Sippy and Mohini Sippy. The award passed by the learned arbitrator to the extent it seeks to order recovery of the dues from deceased Gopaldas Sippy from out of the estate left by the deceased certainly cannot be sustained as against the Petitioners herein. The Petitioners as legal heirs of deceased Gopaldas Sippy had neither notice of appointment of the arbitrator nor of the arbitral proceedings and even otherwise were unable to present their case. The award accordingly cannot be sustained so far as they or the estate of Gopaldas Sippy represented by them are concerned.

3 Accordingly, the petition succeeds and the impugned award dated 28 November 2008 is set aside to the extent it relates to recovery of dues from the estate of Gopaldas Sippy coming into the hands of the Petitioners herein. In case any execution is levied against the flat occupied by the Petitioners on the footing that the same represents the estate of the deceased Gopaldas Sippy coming into the hands of the Petitioners, the same will have to be raised forthwith.

4 The Respondent bank will be entitled to make a fresh reference against the Petitioners herein to the extent of the estate of the

deceased Gopaldas Sippy coming into their hands.

5 It is agreed that objections on merits including limitation are open to the Petitioners.

(S.C. GUPTE, J.)