

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

959 WRIT PETITION NO.2764 OF 2020
WITH WRIT PETITION NO. 2765/2020
WITH WRIT PETITION NO.2766/2020
WITH WRIT PETITION NO.2767/2020

DR SURESH SHAMRAO PATIL AND OTHERS
VERSUS
S S BHUTADA SOLE ARBITRATOR AND OTHERS

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Advocate for Petitioners : Mr. Kale Ajeet B.
Advocate for Respondents No.3: Mr. M L Sangeet

CORAM : S. V. GANGAPURWALA &
SHRIKANT D. KULKARNI, JJ.

DATE : 13th February, 2020

ORDER:

1. The petitioners are challenging the award passed by the Arbitrator.

2. Mr. Kale, learned counsel for the petitioners submits that the award passed by the Arbitrator is without jurisdiction. The petitioners are not members of the Multi State Cooperative Bank. The petitioners are ex-directors of the sugar factory. They are not borrowers nor guarantors in their personal capacity. They cannot personally be made liable for the loan sanctioned to the sugar factory. To buttress his submission, the learned counsel relied on the judgment of the Apex Court in the case of **Sau. Varsha Ravindra Isai Vs. Sau Rajashri Rajkumar Deshmukh**, reported in **2020 SCC Online Bom 2210**. The learned counsel submits that when prima facie award is untenable, the petitioners may not be directed to prosecute the remedy under section 34 of the Arbitration and Conciliation Act, 1996. The same would be very harsh. Stay cannot be granted by the

District Judge under section 34 of the the Act unless and until the petitioners deposit the amount. The petitioners are also to be required to pay court fees. Mr. Kale, learned counsel submits that the petitioners are not party to arbitration agreement and the proceedings could not have been initiated under section 84 of the Multi State Cooperative Societies Act. In case where the award is passed by Arbitrator without jurisdiction, writ petition under Article 226 of the Constitution would be tenable.

3. We have also heard Mr. Sangit, learned counsel for the respondents.

4. The matter was referred to the Arbitrator purportedly under section 84 of the Multi State Cooperative Societies Act. The arbitrator has passed award. Under section 34 of the Arbitration and Conciliation Act, 1996, remedy is available to challenge arbitration award on the grounds enumerated thereunder. Special forum has been created by by the statute. It cannot be said that remedy is not efficacious. Section 5 of the Arbitration Act further provides that notwithstanding anything contained in any other law for the time being in force, in matter governed by this Part, no judicial authority shall intervene except where so provided in this Part. Section 5 of the Arbitration Act lays down caution.

5. Anxiety of the petitioners, it appears is that if petitioners seek stay, the petitioners are required to deposit some amount, that is another aspect. For filing application under section 34, pre-deposit of amount is not a condition precedent. When the statute creates a special forum,

this Court would not invoke its jurisdiction considering section 5 read with section 34 of the Arbitration Act. The petitioners can agitate the grounds sought to be agitated in this Writ petition under section 34 of the Arbitration Act as may be permissible. The petitioners may claim benefit of Section 14 of the Limitation Act, which would be considered by the learned judge, on its own merits and as may be permissible under law.

6. With the aforesaid observation, Writ petitions disposed of. No costs.

(SHRIKANT D. KULKARNI, J.)

(S.V.GANGAPURWALA, J.)

JPC