

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1199 OF 2020
WITH
WRIT PETITION NO.1210 OF 2020

PRAKASH UTTAMCHAND DOSHI
VERSUS
SAI ARIHAND NAGARI SAHKARI PATHSANSTHA AND OTHERS

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Advocate for Petitioners : Shri Patil - Barhate A.S.
h/f Shri Chapalgaonkar A.S.
Advocate for Respondent 1 : Shri Pawar H.F.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: February 24, 2020
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PER COURT :-

1. In the first petition, the petitioner / original disputant in Dispute No.231 of 2018, is aggrieved by the order dated 3.7.2019 passed by the Cooperative Court directing the addition of a third party Manoj Uttamchand Doshi. The petitioner is also aggrieved by the judgment dated 27.8.2019, delivered by the appellate Cooperative Court, by which, Revision No.40 of 2019 filed by the petitioner, has been dismissed.

2. I have considered the strenuous submissions of the learned Advocate for the petitioner.

3. The record reveals that the disputant and the third party are

real brothers. The petitioner had applied for loan of Rs.15,00,000/- and the original opponent Nos. 2 and 3 stood as surety. An agreement was executed in favour of the society. The disputant has taken a stand that the loan amount was never disbursed to him and was never deposited in his account. The third party / real brother of the petitioner, withdrew the loan amount. With these pleadings, the disputant has questioned the action of the financial institution in seeking recovery of loan. In this backdrop, the third party, which has withdrawn the loan amount from the loan account of the disputant, was sought to be arrayed as an opponent by the financial institution, which has been permitted by the Cooperative Court.

4. The appellate Cooperative Court found that the disputant himself took a stand that the amount of loan was withdrawn from the loan account by the third party and though he is the real brother of the petitioner and a party to a common business, the financial institution will have to array the third party. It was noted that the third party is the beneficiary of the loan transaction as he has allegedly withdrawn the loan amount with the aid of forged documents. As such, the financial institution was held to have rightly contended that the presence of the third party would be necessary as he operated the loan account of the petitioner / disputant.

5. Considering the above, I do not find that the concurrent orders could be termed as being perverse or erroneous and the first petition, being devoid of merits is, therefore, dismissed.

6. In the second petition, the petitioner / original guarantor and respondent No.3 in Dispute No.233 of 2018, is aggrieved by the order dated 3.7.2019, passed by the Cooperative Court. The petitioner had prayed that the dispute be held as being untenable and the same be transferred to a Civil Court. The Cooperative Court did not find any merit in the said application and has rejected it. The petitioner preferred Revision No.41 of 2019 before the appellate Cooperative Court and contended that the Cooperative Court has no jurisdiction to grant declaratory relief. The record reveals that the biological brother of the petitioner Manoj had operated the loan account and the financial institution had the record, by which, the borrower as well as the Guarantor had requested it to permit Manoj to operate the loan account.

7. The appellate Court noticed that the application dated 13.3.2019, filed by the petitioner was a vague application, in which, it was stated that since the Cooperative Court does not have the jurisdiction to grant declaratory reliefs, the matter be transferred to a Civil Court. The appellate Cooperative Court noticed that the dispute

raised was maintainable and the intention of this petitioner was to delay the proceedings by making an application, which had no merits. The appellate Court concluded that the Cooperative Court had the jurisdiction to decide the dispute raised before it.

8. In view of the above, the second petition, being devoid of merits, is therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

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