

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

30 WRIT PETITION NO.2386 OF 2020

SHIVAJI SHANKARRAO KADAM
VERSUS
OSMANABAD JANTA SAHKARI BANK LTD AND OTHERS

...
Advocate for Petitioner : Dr. R.R. Deshpande h/f Miss Deshpande
Priyanka R.
...

CORAM: ROHIT BABAN DEO, J.

Date: FEBRUARY 10th, 2020
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PER COURT :-

1 The petitioner is challenging the order dated 4.10.2019 rendered by the Civil Judge, Senior Division, Ahemadpur, District: Latur in RD No.50/2017 whereby and where-under the application/objection of the petitioner - Judgment debtor-1 for dismissal of execution petition is rejected.

2 The submission of the learned counsel for the petitioner is that since the decree stands satisfied, the objection could not have been dismissed.

3 The learned counsel for the petitioner submits that the decree holder bank preferred Regular Darkhast dated 11.7.2005 seeking to recover an amount of Rs.1,51,087.98 due and payable in terms of the award of the sole arbitrator in case 282/2004.

4 The learned counsel for the petitioner Judgment debtor-1 states that since on 29.09.2011, the entire amount was deposited, the second execution was not maintainable.

5 The amount of Rs.1,51,087.98 was recoverable as on 11.7.2005. According to the Judgment debtor-1, this amount is deposited over a period of more than seven years and the last installment of Rs.17000/- was deposited on 29.09.2011.

6 I have made repeated queries to the learned counsel for the petitioner as to on which date the principal amount which according to the learned counsel for the petitioner was Rs.1,23,174.29 was deposited. I have not received any satisfactory answer. A chart as regards the deposit of amount is handed over across the bar which is taken on record and marked 'X' for identification. However, even the chart does not substantiate the contention of the Judgment debtor-1 that the decree is satisfied. It is obvious that if the amount which is covered by the decree of execution is deposited over a span of seven years, the liability to pay interest as directed in the award for the period interregnum shall have to be fixed. It is not for this Court to look into the calculations. Prima facie, I am satisfied that the matter will have to be inquired by the executing Court. If the decree is satisfied, the petitioner – Judgment debtor No.1 need not nurture any apprehension that

the executing Court shall order coercive steps notwithstanding that the decree is satisfied. However, the question is whether the decree is satisfied and prima facie, that does not appear to be the case.

7 Needless to record, it shall be open for the petitioner – judgment debtor-1 to point out to the executing Court that the decree is already satisfied.

8 The petition is dismissed.

(ROHIT BABAN DEO, J)

vbd