

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 5030 OF 2014

Avinash R. Patel & Ors.

.. Petitioners

v/s.

Abhyudaya Co-operative Bank Ltd. & Ors.

.. Respondents

Mr.Dinesh Shah for Petitioners.

Mr. Balakrishna Adyanthaya for Respondent No.1

CORAM: MILIND N. JADHAV, J.

DATE : FEBRUARY 21, 2020

P. C :-

1. Rule. Heard forthwith with consent of learned counsel appearing for the parties.

2. The present petition takes exception to the order dated 28.03.2014 passed by the Maharashtra State Co-operative Appellate Court at Mumbai in Appeal No. 154 of 2013 arising out of order dated 10.06.2013 in Misc. Application No. 05/2013 and judgment and award dated 30.09.2009 by the Judge Co-operative Court No.III, Mumbai in Dispute No. CC/III/1069 of 1994. Heard Mr. Shah, learned counsel appearing on behalf of the petitioner and Mr. Adyanthaya

learned counsel for the contesting respondent No.1 i.e. Abhyudaya Co-operative Bank Ltd. (the main contesting respondent) have taken me through the impugned order and the pleadings of the case. The impugned order allows the appeal filed by the petitioners and sets aside the order dated 10.06.2013 and award dated 30.09.2009 in so far as petitioners are concerned and subject to the petitioners depositing a sum of Rs.4 lakhs and remands the case back to the trial court for a fresh disposal on merits.

3. Both the learned counsels for the respective parties are in agreement with the above. Mr. Shah informs that Rs.4 lakhs have already been deposited by the petitioners in this Court during the pendency of the petition. The respondent No.1 bank is permitted to withdraw the said amount alongwith accrued interest. The amount so withdrawn shall stand to the account of the petitioners in the hands of the respondent No.1 and subject to the final order passed by the trial court in the proceedings on a fresh disposal on merits.

4. Mr. Shah makes a grievance that the petitioners who are opponents before the trial court be permitted to file additional written statement. Mr. Adyanthaya fairly submits that the original written statement which was filed before the trial court by the father of the petitioners. He submits that there will be no harm if the petitioners

are permitted to file the additional written statement before the trial court as pleaded by Mr. Shah. He submits that all questions of the parties be kept open before the trial court.

5. The trial court shall dispose of the proceedings as remanded afresh within a period of six months from the date of receipt of an authenticated copy of this order.

6. The amount of Rs. 4 lakhs alongwith accrued interest which shall be withdrawn by respondent No.1 bank from this Court shall be kept in an escrow account subject to the final orders passed by the trial court.

7. Writ Petition is accordingly disposed of with no order as to cost.

(MILIND N. JADHAV, J.)