

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12242 OF 2019

Sudhakar Dwarkanath Gujrathi and Ors. ...Petitioners
vs.
M/s. Sahakar Maharshee Shri Govindrao
(Nana Sonavane) Nagari Co-Operative Society
Limited, Andaarsool and Ors. ...Respondents

Mr. V.D. Kadam, for the Petitioners
Mr. G.R. Agrawal, for Respondent No. 1.

CORAM : N. J. JAMADAR
DATE : MARCH 11, 2020

P.C.:

. Heard the learned counsel for the parties.

2. This Petition takes exception to the judgment and order dated 19th August, 2019 passed by the learned President, Maharashtra State Co-Operative Appellate Court in Appeal No. 130 of 2018 whereby the Appeal preferred by Mr. Sudhakar D. Gujarathi, the predecessor in title of the Petitioners assailing the judgment and award dated 20th October, 2018 passed by the Co-operative Court in Dispute No. 1341 of 2004 came to be partly allowed. The Opponent Nos. 1 to 4 were directed to pay, jointly and severally, the amount of Rs. 16,90,000/- with interest @ 6% p.a. from 5th April, 2004 instead of 13% p.a. as ordered by the Co-operative Court.

3. The Respondent No. 1- Society, had filed the dispute, bearing Dispute No. 1341 of 2004, for recovery of the sum of Rs. 16 lacs along with interest with the averments that Mr. Sudhakar Gujarathi, the predecessor in title of the Petitioners had availed the said loan on 31st March, 2004. It was to be repaid with interest @ 13% p.a. The Defendant Nos. 2 to 4 in the said dispute, had stood guarantors and executed the documents in favour of the Society to secure the repayment of the said loan. Defendant No. 4 Kiran Gujarathi, who is the son of Sudhakar Gujarathi was then working with Yevala Branch of the Plaintiff society. The Defendant No. 4 had disbursed the loan in excess of the sanction.

4. The Defendant No. 1 Sudhakar resisted the claim with the contention that Defendant No. 1 had never availed any loan. The then Manager of the society Mr. Sahebrao Laxman Aher had committed fraud and prepared false documents to show that the loans were advanced to various persons including Baliram Laxman Shinde, Sanjay Rambhau Shendre, Khanderao Tatyaba Bhagwat and Mahadav Gopal Endait. The amount which was allegedly advanced to Defendant No. 1 was shown to have been utilized for repayment of the loans of the said persons.

5. The Co-operative Court was not persuaded to accept the defence of Defendant No. 1. The liability of Defendant Nos. 1 and 4 was held to have been proved. However, it was held that there was no material to fasten the liability on Defendant Nos. 2 and 3. Resultantly, the Co-operative Court passed the judgment and award directing the Defendant Nos. 1 and 4 to pay the sum of Rs. 16,90,000/- along with interest @ 13% p.a from 5th April, 2004 till realization. The Defendant No. 1 challenged the said judgment and award in Appeal, being Appeal No. 130 of 2018. By the impugned judgment and order, the learned President was persuaded to partly allow the Appeal and modify the order passed by the Co-operative Court to the extent of award of interest @ 6% p.a. instead of 13% p.a. Being aggrieved, the legal representatives of the original Defendant No. 1 Sudhakar Gujrathi have approached this Court.

6. The learned counsel for the Petitioners urged that the Courts have committed an error in passing the judgment and award of recovery of the loan amount along with interest, as the very factum of the loan having been availed of by the deceased Sudhakar was seriously disputed, and not conclusively proved by the Respondent No. 1-Society. An endeavour was made to demonstrate that a fraud was perpetrated by the then Manager of Respondent No. 1 Society,

Sahebrao Aher. Inviting the attention of the Court to certain observations in the report of the Auditor and the fact that there was no document to indicate that the Respondent No. 1 Society had done due diligence while advancing the loan, the learned counsel for the Petitioners submitted that the Petition deserves consideration.

7. The bold defence that the deceased Defendant No. 1 has not at all availed the loan, is required to be appreciated in the backdrop of the fact that the Petitioner No.1(b) herein, Kiran Gujarathi who was then working in the Yevala Branch of Respondent No. 1 had played a definitive role in advancing the loans which is referred to in the audit report, relied upon by the counsel for the Petitioners. The learned President of the Co-operative Appellate Court, has dealt with this challenge and found it to be unsustainable. The learned President has also referred to the documents being the vouchers Exhibit D-3 and D-4 and the cross examination wherein the deceased- Defendant No. 1 Sudhakar conceded to have signed the voucher Exhibit D-2, which evidences the withdrawal of the amount from the Bank. The voucher bears the signature of deceased in acknowledgment of the receipt of the said amount. The Co-operative Court as well as the Appellate Court have thus considered the challenge on facts and went on to record concurrent findings that

the deceased -Defendant No. 1 had availed the loan.

8. In this backdrop, in exercise of writ jurisdiction, no justifiable ground is made out to interfere with the concurrent findings of facts. Even otherwise, the defence does not appeal to human credulity.

9. Hence, the Petition stands rejected.

(N. J. JAMADAR, J.)