IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

Amk

COMMERCIAL APPEAL NO. 550 OF 2019
IN
COMMERCIAL ARBITRATION PETITION NO. 119 OF 2016
WITH
NOTICE OF MOTION NO. 988 OF 2019
IN
COMMERCIAL APPEAL NO. 550 OF 2019

M/s. Rainproof & Anr. .. Appellants
Vs.
The Abhyudya Co-op. Bank Ltd. .. Respondent

Mr. Mangesh Sawant i/b Arun Panicker for the Appellants.
Ms. Kshma R. Bhandari i/b Ghosalkar for the Respondent-Bank.

CORAM : PRADEEP NANDRAJOG, C.J. &
SMT. BHARATI DANGRE, J.
DATE : 4th FEBRUARY, 2020.

P. C. :

1. The Appeal is listed for preliminary hearing. *Vide* impugned order dated 06.08.2019 Commercial Arbitration Petition No. 119 of 2016 filed by the Respondent-Bank laying a challenge to the Award dated 29.04.2019 has been allowed with the reasoning that the learned Arbitrator has travelled beyond the scope of the reference made.

2. Backdrop facts are that the Respondent granted two cash credit facilities and one term loan facility to the Appellants. They being in default the Respondent, a Co-Operative Bank, filed Recovery

Proceeding under Section 101 of the Maharashtra Co-operative Societies Act, 1960 before the Assistant Registrar, Co-operative Societies. On 20.12.2006 the Assistant Registrar held that the Appellants were liable to pay ₹ 28.88 Lakhs in the cash credit account and the term loan account. Three Writ Petitions were filed challenging the recovery certificate. On 25.04.2007 the Writ Petitions were disposed of directing that appropriate remedy under Section 154 of the Maharashtra Co-operative Societies Act, 1960 be availed of before the Divisional Joint Registrar. Said remedy being availed of, on 10.09.2007 the Divisional Joint Register remanded the matter to the Assistant Registrar for fresh adjudication. On 11.01.2007 the Respondent became a Multi-State Co-Operative Bank and thus on 26.03.2009 the Registrar held that he had no jurisdiction to proceed under the Maharashtra Co-operative Societies Act, 1960. The Respondent was directed to seek appointment of an Arbitrator under Section 84 of the Multi State Co-operative Societies Act, 2002. The Respondent filed an application before the Central Registrar under the Multi State Co-operative Societies Act, 2002 invoking Section 84. Arbitrator was appointed. The Appellant raised a jurisdictional issue before the learned Arbitrator who, *vide* order dated 09.05.2011 held that he had no jurisdiction to entertain the claim. The said decision of the Arbitrator was challenged in an Appeal filed by the Respondent under Section 37 of the Arbitration Act. *Vide* Judgment dated 23.01.2013 the Appeal was allowed holding that the learned Arbitrator had jurisdiction. The Arbitrator was directed to decide the dispute on merits but before that the Appellants had filed Writ Petition (C) No. 48 of 2012 before the

Supreme Court which was disposed of on 09.04.2015. The order reads as under:

> *"In the course of hearing of this matter, it has been submitted by Mr. Dhruv Mehta, learned senior counsel appearing for the petitioners that a letter dated 6th April, 2015 had been addressed to the petitioners by the respondent-Bank, wherein it has been stated in Clause (2) as under :*
>
> > *"2) As on date, a sum of Rs.7,93,51,486.17 is due and payable by your to our Bank under your credit facility accounts. However, under the OTS policy of the Bank, your credit facility accounts can be settled for Rs.2,41,76,719.17, which is the present outstanding principle amount."*
>
> *So, as on 6th April, 2015, as per the One Time Settlement (OTS) Scheme, 2008, about a sums of Rs.2.42 Crores (Rupees Two Crores Forty Two Lakhs only) was payable by the petitioners to the respondent-Bank.*
>
> *The learned counsel appearing for the petitioners has submitted that the petitioners are ready and willing to make payment as per the said scheme. However, he has expressed his doubt about the calculation of the afore-stated amount.*
>
> *At present, on ad-hoc basis the petitioners are prepared to accept the said offer. If it is so, 25% of afore-stated amount shall be paid by the petitioners to the respondent-Bank within one month from today and the remaining 75% shall be paid by the petitioners, as per the guidelines dated 10th March, 2008 issued by the Reserve Bank of India, in maximum 11 equal monthly instalments, together with interest at the Minimum Lending Rate from the date of settlement upto the date of final payment. The respondent-Bank shall give details about the amount which is to be paid by the petitioners every month.*

> *As there is some doubt with regard to calculation of the amount which has been referred to hereinabove, it has been agreed by the learned counsel for both the sides that as per the provisions of Section 84(4) of the Multi-State Cooperative Societies Act, 2002, an Arbitrator to be appointed by the Central Registrar or his nominee, shall determine the amount payable and if the said amount is more or less than the afore-stated amount, the same shall be adjusted within one month from the date on which the Arbitrator determines the amount payable.*
>
> *The amount shall be paid as per the following :*
>
> > *"If the borrower opted to pay in instalment he should pay minimum 25% of settlement amount within one month from date of approval of application under One Time Settlement Scheme and balance amount to be paid in maximum 11 monthly instalments with interest @ PLR (At present PLR is 13.5%) on the settlement amount on daily reducing balance till repayment of entire dues under One Time Settlement Scheme."*
>
> *In view of the above order, the earlier interim order stands vacated and it is directed that no coercive action shall be taken against the petitioners for recovery of the amount due and payable if the amount is paid as per the afore-stated arrangement.*
>
> *A copy of this order shall be forwarded to Respondent No.3 by the Registry of this Court.*
>
> *The writ petition stands disposed of accordingly."*

3. Suffice it to state the aforenoted order became the order of reference to the Arbitrator and the reference would be limited to the said order. The order passed by the Supreme Court notes that the stand

of the Respondent was that sum of ₹ 7,93,51,486.17 was payable and that under the OTS policy ₹ 2,41,76,719.17 could be paid within time contemplated by the policy. The Appellants dispute the computation of ₹ 2,41,76,719.17. In that view of the matter, the Supreme Court directed that the amount payable under the OTS be quantified and for which agreement of the parties was recorded that the Arbitrator appointed by the Central Registrar under the Multi State Co-operative Societies Act, 2002 shall do the needful.

4. Thus, the mandate of the learned Arbitrator was to simply quantify the amount payable under the OTS policy of the matter. The Award which has been set aside by the learned Single Judge shows that the learned Arbitrator settled issues as if the amount payable under the three credits granted to the Appellant had to be paid or not. The learned Single Judge has rightly held that the power of the Arbitrator was limited to the order of reference and that is why the bank did not lay any claim to the amount outstanding in the three accounts and limited itself to the OTS scheme of 2008.

5. We find no infirmity in the impugned order dated 06.08.2019 and thus we dismiss the Appeal *in limine* without issuing any notice.

6. In view of dismissal of Appeal, Notice of Motion No. 988 of 2019 is disposed of as infructuous.

Arjun M. Kadam

[SMT. BHARATI DANGRE, J.] [CHIEF JUSTICE]

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