IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

936 WRIT PETITION NO.6113 OF 2021

1. Rajiv Anil Deshmukh
Age 49 years, Occu.Agriculturist,
R/o Ghat Road Chalisgaon,
Tq. Chalisgaon, Dist. Jalgaon

2. Udensing Ramsing Pawar (Dead)

3. Dr. Kartarsingh Sardarsingh Pardeshi
Age : 70 years, Occu : Doctor,
R/o Laxmi Nagar, Chalisgona,
Tq. Chalisgaon, Dist. Jalgaon.

4. Bhausaheb Khandu Jadhav
Age : 56 years, Occu. Agriculturists,
R/o At Post Tambole,
Tq. Chalisgaon, Dist. Jalgaon.

5. Pramod Pandurang Patil
Age : 50 years, Occu. Agriculturist,
R/o At Post Bhamre,
Tq. Chalisgaon, Dist. Jalgaon. ...Petitioners.

Versus

1. The Jalgaon District Central
Co-operative Bank Limited,
27, Ring Road, Jalgaon,
Tq. & Dist. Jalgaon.

2. Belganga Sahakari Sakhar Karkhana
Ltd. Bhoras, Tq. Chalisgaon,
Dist. Jalgaon,

3. Krushnarao Devrao Patil
Age : Major, Occu : Agriculturist,
R/o : At Post Gudhe,
Tq. Bhadgaon, Dist. Jalgaon.

4. Santosh Bhivsan Patil
Age : Major, Occu : Agriculturist,
R/o At Post Bodarde,

Tq. Bhadgaon, Dist. Jalgaon.

5. Kashinath Budha Patil (Dead)
6. Shekh Jamal Shekh Fattu (Dead)
7. Dilip Hilal Magar (Dead)

8. Sahebrao Ramchandra Patil
Age : Major, Occu : Agriculturist,
R/o. At Post Bahal,
Tq. Chalisgaon, Dist. Jalgaon.

9. Shivaji Vikram Patil
Age : Major, Occu : Agriculturist,
R/o. At Post Vadale Vadali,
Tq. Chalisgaon, Dist. Jalgaon.

10. Lilabai Yashwantrao Patil
Age : Major, Occu : Agriculturist,
R/o At Post Karajgaon,
Tq. Chalisgaon, Dist. Jalgaon. ...Respondents

(As per the statement in the petition
Respondent No. 2 to 10 are formal parties)

...

Advocate for Petitioners : Mr. V. B. Patil
Advocate for Respondent No.1 : Mr. V. D. Salunke

...

CORAM : MANGESH S. PATIL, J.

DATE : 27.10.2021

ORAL JUDGMENT :-

Heard.

2. Rule. The Rule is made returnable forthwith. Learned Advocate Mr. V. D. Salunke waives service on behalf of respondent No. 1. At the request of both the sides, the matter is heard finally at the stage of admission.

3. The petitioners are some of the respondents in a recovery dispute raised by the respondent No.1 against them as well as the rest of the respondents. The petitioners submitted an application for amending their written statement so as to include paragraph 14A to 14E. The learned Judge of the Co-operative Court rejected their application and the learned Co-operative Appellate Court dismissed their revision. Hence this writ petition.

4. The learned Advocate Mr. Patil for the petitioners submits that respondent No. 1 disputant bank has filed the recovery proceedings against respondent No. 2 Factory arraying the petitioners and the other respondents as the respondents with the allegations that they are guarantors. Since it is a matter of recovery the amendment was sought to be incorporated in their written statement so as to bring on record various facts and circumstances whereby the liability would stand reduced. Both the Courts below failed to consider the necessity of incorporating the amendment. Mere delay could not have been the ground to reject the application. The disputant respondent No.1 bank has sold out various assets of the respondent No.2 – Factory under the provisions of The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter

referred to as " SARFASI Act") in the year 2018. It is a supervening event. There was no occasion for the petitioners to bring on record the fact earlier. He would submit that a serious prejudice would be caused to the petitioner if the proposed amendment is not allowed to be carried out. He would also refer to the decisions of the Supreme Court in the cases of ***Gurubaksh Singh and others Vs. Buta Singh and another; 2018 AIR (SCW) 2635 and Chakreshwari Construction Private Limited Vs. Manohar Lal; 2017 (5) SCC 212.*** He would submit that both the Courts below have clearly ignored the principles to be borne in mind while deciding the application for amendment as laid down in this case.

5. The learned Advocate Mr. Salunke for respondent No.1 - Bank referring to the affidavit-in–reply filed on its behalf submits that so far as the proposed amendment in paragraph Nos. 14A to 14D, the petitioners are seeking to bring on record some events which had taken place way back upto the year of 2015. There is absolutely no explanation to be found in the application for amendment as to why all these facts could not have been brought on record at earlier point of time. So far as the proposed amendment in paragraph 14E, regarding realization of the assets of the bank under the provisions of

SARFASI Act, the learned Advocate would submit that this is a fact which stands admitted. Even there is enough record to substantiate these facts which the petitioners can independently bring on record and for which formal amendment of the pleadings would not be necessary.

6. The learned Advocate would also submit that apart from the proposed amendment in paragraph No.14E, the respondent No.1 Bank with the permission and direction of the Division Bench of this Court has also sold out the stock of sugar which was hypothecated and even that fact can be brought on record, without specific amendment in the pleadings. There is no necessity for carrying out the formal amendment in respect of these facts. The whole intention of the petitioners is to protract the litigation which is going on since 2002. Both the Courts below having specifically marked the conduct of the petitioners, have rightly rejected the application. There is no error which can be rectified by invoking the writ jurisdiction of this Court.

7. I have carefully considered the arguments and perused the papers including the decisions cited at the bar. The dispute was filed in the year 2002. Respondent No.1 - Bank has closed its evidence in the year 2017. The respondent No.

2 – Factory has also closed its evidence in the year 2018. The petitioners have also filed their affidavit in lieu of examination-in-chief and when the matter was listed for the cross-examination of petitioners' witness, the present application was filed.

8. It is a matter of record that it is a claim for recovery of amount. The circumstances which would reduce the liability will have to be brought on record. The proposed amendment in paragraph Nos. 14A to 14D seem to bring on record some transactions of the year prior to 2015 i.e. even before the respondent No.1 – Bank tendered its evidence. There is absolutely no explanation to be found in the application filed by the petitioners for amendment as to why these facts could not have been brought on record at earlier point of time. To this extent, the amendment sought to be carried out in those paragraphs at belated stage without there being any justification for it cannot be permitted. No fault can be, therefore, found with the concurrent observations and conclusions of the two Courts below that there is no justification and sufficient ground which would entitle the petitioners to carry out the amendment in para 14A to 14D.

9. However, in paragraph No. 14E, the petitioners intend to bring on record some supervening events i.e. the events which

have occurred in the year 2018, after the respondent No. 1 Bank closed its evidence. It is sought to be pleaded that pursuant to the provisions of SARFAESI Act, the respondent No.1 Bank has already realized the assets to the tune of more than Rs. 39 crore. In my considered view, it is a fact which needs to be brought on record and for which an amendment in the written statement of the petitioners would be necessary. As the matter now stands the respondent No. 1 - Bank has already closed its evidence so also the respondent No. 2 - Factory. Therefore it is indeed imperative for the petitioners to somehow bring on record the events that have occurred in the year 2018 as is sought to be pleaded in paragraph No.14E. No prejudice is likely to be caused to the respondent No.1 Bank if all these facts are allowed to be pleaded and then brought on record. Even these facts would help the trial Court in deciding the dispute in a just and proper manner.

10. Though the two Courts below have made cursory observation that the events that are to be brought on record in paragraph No. 14E can be proved independently, one cannot comprehend as to how, in the absence of any proceedings, the petitioners would prove those.

11. Considering all the aforementioned state-of-affairs, the writ petition deserves to be allowed partly.

12. Writ Petition is partly allowed. The impugned orders to the extent of refusing the petitioners to carry out the proposed amendment in paragraph 14E are quashed and set aside. The application filed by the petitioners (Exhibit 194) is allowed only to that extent.

13. The challenge in this writ petition to the rest of the part of the orders of the court below is rejected.

14. The petitioners however, shall to carry out the amendment immediately without protracting the trial of the dispute.

15. Respondent No.1 – Bank is permitted to lead additional evidence if it chooses.

16. Rule is made absolute in above terms.

(MANGESH S. PATIL)
JUDGE

shp/-