IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2674 OF 2010

Samadhan s/o Paraji Wagh
Age. 35 years, Occ. Agril,
R/o. Bhokardan, Dist. Jalna … Petitioner

Versus

1. The Gajanan Maharaj Urban Co-op. Bank Ltd., Bhokardan, Tq. Bhokardan, Dist. Jalna, Through Branch Manager, Shri. Prakash s/o Maduba Kharat, R/o. Behind Gajanan Bank, Sillod, Bhokardan Dist. Jalna.

2. Vishnu s/o Madhavrao Misal Age. 39 years, Occ. Service, R/o. Near Telephone Office, New Bhokardan, Tq. Bhokardan, District Jalna.

3. Sheshrao s/o. Tejrao Mule, Age. 34 years, Occ. Business, R/o Chinchkhed Post. Mahora, Tq. Fafrabad, Dist. Jalna … Respondents

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Advocate for Petitioner : Mr. Narsingh B. Jadhav
Advocate for Respondent No.1 : Mr. V. D. Salunke
Advocate for Respondent Nos. 2 & 3 : Mr. Sandeep Y. Mahajan

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CORAM : NITIN B. SURYAWANSHI, J.

RESERVED ON : 07th APRIL, 2022
PRONOUNCED ON : 26th APRIL, 2022

JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally by the consent of the parties.

2. This petition filed under Articles 226 and 227 of the Constitution of India, takes exception to the judgment and award passed by the learned Judge, Cooperative Court, Aurangabad, in Dispute No.168/2006 and the judgment of the learned Member, Maharashtra State, Cooperative Appellate Court, Mumbai, Bench Aurangabad, in Appeal No.59/2008.

3. The respondent No.1 filed Dispute No.168/2006 against the petitioner being borrower and respondent Nos. 2 and 3 being guarantors for recovery of loan amount of Rs.21,98,283/-. It is the case of the respondent No.1 that the petitioner is proprietor of Samadhan Traders and the firm was in the business of seeds, fertilizers and insecticides. On 28-02-2002 the petitioner applied for cash credit loan facility of Rs.15 Lakhs. Respondent Nos. 2 and 3 stood guarantors for the said facility. By resolution dated 02-03-2002 respondent No.1 Bank granted cash credit loan of Rs.15 Lakhs, which carried interest @ 18% per annum and if the said remains outstanding 2% penal interest will be applied on the arrears. On 30-03-2002 the petitioner executed two promissory notes of Rs.10 Lakhs and Rs.5 Lakhs in favour of the respondent No.1 Bank. The petitioner and respondent Nos. 2 and 3 executed necessary loan documents. The petitioner failed to repay the loan of the Bank. Hence, the Bank filed the said Dispute.

4. The petitioner opposed the Dispute by filing written statement contending that the person who filed the dispute is not authorized and the same is therefore, liable to be rejected. He submitted that Samadhan Traders' business was closed down on 05-04-2001 because of criminal case and loss in the business. The petitioner has not taken any loan from respondent No.1 and respondent Nos. 2 and 3 were not guarantors to the loan facility. He contended that, since on 28-02-2004 his shop itself was not in existence, there was no question of obtaining the loan. The petitioner denied the execution of promissory notes and the loan agreement. He further contended that on 25-09-2002 he obtained loan of Rs.2,55,000/- from respondent No.1 Bank and at that time his signatures were obtained on the blank documents. He received a notice dated 06-10-2004 from respondent No.1 Bank for recovery of Rs.3,48,946/-, at that time, if he had availed loan of Rs.15 Lakhs the same would have been reflected in the said notice.

5. Respondent Nos. 2 and 3 filed their say and admitted that the petitioner was running business in the name of Samadhan Trading and they stood guarantors for loan of Rs.15 Lakhs availed by the petitioner from respondent No.1 Bank. They have executed the loan agreement. They further contended that petitioner is capable of repaying the entire loan amount. They contended that entire responsibility of

repayment of loan amount is that of the petitioner. Hence, the dispute against them be dismissed.

6. The Cooperative Court after recording evidence allowed the Dispute. The petitioner and respondent Nos. 2 and 3 are directed to repay the outstanding loan amount of Rs.15 Lakhs together with interest at the rate of Rs.18% per annum with effect from 30-03-2002.

7. The petitioner being aggrieved by the said award filed Appeal No.59/2008 before the Cooperative Appellate Court at Aurangabad. The Cooperative Appellate Court dismissed the appeal vide judgment dated 17-07-2008. The petitioner thereafter filed Review Petition No.6/2008 before the Cooperative Appellate Court which came to be dismissed on 29-10-2009. The petitioner has, therefore, filed the present writ petition challenging the order passed by the Cooperative Court as well as the Cooperative Appellate Court.

8. Heard Mr. N. B. Jadhav, learned advocate for petitioner, Mr. V. D. Salunke, learned advocate for respondent No.1, Mr. S. Y. Mahajan, learned advocate for respondent Nos. 2 and 3.

9. The learned advocate for petitioner strenuously contended that there is overwriting on the loan document. It is not possible to accept the contention of the respondent No.1 Bank that on the financial year ending date i.e. on 30th March the loan was disbursed to the

petitioner. According to him, the loan documents do not contain signatures of the witnesses. The loan document and the promissory notes are forged documents prepared by the respondent No.1. In the loan ledger more amount than the actual loan amount disbursed, is reflected. When the loan of Rs.15 Lakhs is disbursed, the loan ledger shows an amount of Rs.15,21,586/-. He assailed the judgment of the Cooperative Court as well as the Cooperative Appellate Court contending that both the Courts have failed to appreciate contentions raised and the evidence led by the petitioner in proper perspective. According to him, the anomalies in the documents pointed out by him are not properly appreciated by both the Courts and therefore, the impugned orders are unsustainable and the same may be quashed and set aside.

10. The learned advocate for respondent No.1, on the other hand, supported the impugned orders contending that all the loan documents and promissory notes are proved on record before the Cooperative Court. Even the petitioner's signatures are proved on all the documents. The guarantors have admitted loan transactions. Though joint and several liability is fastened on the guarantors along with the petitioner, however, the guarantors have not even filed appeal challenging their liability. He pointed out the complaint lodged by the

petitioner in the criminal Court claiming forgery and fabrication of documents against the respondent No.1 and it's Managing Committee Members, under Sections 406, 408, 409, 420, 463, 464, 466, 468, 469, 471 and 477(A) read with Section 34 of the Indian Penal Code, registered as R.C.C. No.95/2008 which has been dismissed by the Criminal Court on 14-10-2009. He, therefore, submits that there is no substance in the challenge raised by the petitioner and the same is liable to be dismissed.

11. The learned advocate representing respondent Nos. 2 and 3 admitted that the petitioner has availed the loan and respondent Nos. 2 and 3 stood as guarantors to the same. He further submitted that the petitioner is in a position to repay the same.

12. Heard the learned advocate for petitioner, the learned advocate for respondent No.1 and the learned advocate for respondent Nos. 2 and 3 at length. Perused the record.

13. It is a matter of record that in the dispute respondent No.1 has led evidence and the Cooperative Court on appreciation of evidence placed before it, recorded finding of fact that the petitioner has availed loan of Rs.15 Lakhs. *Prima facie* it came to a conclusion that loan agreement (Exhibit-34) bears signature of the petitioner and the petitioner has executed the same. Promissory notes of Rs.10 Lakhs and

Rs.5 Lakhs (Exhibits 32 and 33 respectively) are duly proved. The Court also considered the admission on the part of the respondent Nos. 2 and 3 that the petitioner availed loan and they stood guarantors to the same. The respondent Nos. 2 and 3 also admitted that they have executed the loan documents along with petitioner. By considering the loan register, the promissory notes and the entry in the loan ledger, the Cooperative Court has held that the petitioner and respondent Nos. 2 and 3 are liable to repay the loan amount of Rs.15 Lakhs together with interest.

14. The Cooperative Appellate Court has confirmed the findings of facts recorded by the Cooperative Court, after analyzing the evidence and appreciating the record and has recorded a finding that the petitioner availed loan of Rs.15 Lakhs and his signature on the documents i.e. loan agreement (Exhibit-41) and promissory notes (Exhibits 39 and 40) are proved on record and the petitioner has failed to prove his case. The appeal, therefore came to be dismissed. Even the Review Petition No.6/2008 filed by the petitioner has been dismissed on merits by the Cooperative Appellate Court.

15. There is sufficient evidence on record to show that the petitioner has availed the loan facility and executed necessary loan documents and promissory notes along with respondent Nos. 2 and 3, who stood guarantors to the said facility. In view of the documentary

evidence placed on record and the admission of respondent Nos.2 and 3 that the petitioner has executed the loan documents and they stood guarantors to the loan facility and that the petitioner has availed the loan, it is not possible to accept the contention of the petitioner that he has not availed the loan facility and he has not executed the loan documents. The contentions of the petitioner are contrary to the original record.

16. The cooperative Court and appellate Court have recorded concurrent findings of fact on the basis of record. There is no illegality or perversity in the orders impugned in the present petition. No merit is found in the challenge raised in the present petition. The petitioner has failed to make out the case to exercise extraordinary writ jurisdiction. The writ petition is, therefore, dismissed.

(NITIN B. SURYAWANSHI, J.)

SVH