

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.**

WRIT PETITION NO. 15091 OF 2017

The Maharashtra State Co-operative
Housing Finance Corporation Limited,
The District Office at Ahmednagar,
4/1, Shilpa Apartment, Maniknagar,
Nagar-Pune Road, Ahmednagar,
Through it's Manager.

...Petitioner

Versus

1. The Liquidator,
Armed State Workshop,
E.M.E. Gruh Rachna Sahakari Sanstha Maryadit,
Bhingar, Ahmednagar.
2. Professor Mohammad Azam,
Aged : 80 years, Occu. Retired,
R/o. 321/1, Bungalow No. 22,
In front of Bombay Hospital,
Mukundnagar, Ahmednagar.

...Respondents

.....

Mr. N. R. Bhavar, Advocate for the petitioner
Mr.B.G. Londhe h/f Mr.V.N. Shelke, Advocate for respondent no.1
Ms Sabahat T. Kazi, Advocate for respondent no. 2

.....

CORAM : RAJESH S. PATIL, J.

RESERVED ON : 29.09.2022

PRONOUNCED ON : 15.11.2022

JUDGMENT :-

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

sgp

CHALLENGE : -

2. The present petition is filed by the petitioner (original respondent no. 2 in Dispute No. 56/2013 before the Co-operative Court at Ahmednagar) challenging the judgment and order dated 24.04.2017 passed by the Maharashtra State Co-operative Appellate Court, Mumbai, Bench at Aurangabad in Appeal No. 08/2016 to the limited extent of directing the petitioner to deposit an amount of Rs. 1,68,783/- in the trial Court, while remanding the matter back to the Trial Court.

FACTS : -

3. Respondent no. 2 herein is a retired senior citizen aged 80 years. He is a member of respondent no. 1 – society. The petitioner is a co-operative housing finance corporation whose main aim is to provide loans to the poor and needy people in the society for construction of houses. Respondent no. 2, who is a member of respondent no. 1 – society in respect of Plot No. 41, had borrowed loan of Rs. 19,400/- from respondent no. 1 for construction of house on the said plot. The said loan was to be

repaid in installments to be decided by respondent no. 1 – society. In the year 1990, respondent no. 2 borrowed another loan from the petitioner – corporation. On 17.04.1990, respondent no. 2 paid Rs. 13,700/- towards repayment of loan obtained by him to the then chairman – Mr. P. K. Menon of respondent no. 1 – society. A receipt to that effect was issued with an endorsement that ‘No Dues’ are outstanding as against respondent no. 2. Respondent no. 2 thereafter even sought ‘NOC’ but the Chairman of respondent no. 1 – society for the reasons best known to him did not issue the ‘NOC’ on the ground that the ‘NOC’ would be issued only after accounts are finalized. Respondent no. 2 then time and again followed up for the same but it was not issued.

4. Though there was no dues pending against respondent no. 2, the liquidator of respondent no. 1 issued a notice to respondent no. 2 thereby directing him to pay dues of Rs.93,100/-, or else legal action would be taken against him. The respondent no.2 was frustrated but had no other option being a person with reputation in society and hence paid Rs. 93,100/-, under protest. The said purported amount was paid on 22.08.2008 and accordingly a certificate to that effect was issued.

sgp

5. Thereafter, respondent no. 2 sought from respondent no. 1 the account extract, however, no such account extract was ever supplied. Hence, respondent no. 2 on 08.02.2011 issued notice to the petitioner and demanded refund of Rs. 93,100/- (which was wrongfully recovered from respondent no. 2 by the petitioner) with interest. The petitioner did not comply with the demand made in the notice.

6. Thereafter, suddenly on 15.03.2011, respondent no. 1 issued notice to respondent no. 2 and demanded dues of Rs. 85,170.85/- as outstanding towards the loan borrowed.

7. On 11.04.2012, respondent no.2 through his Advocate issued a notice to the petitioner and respondent no. 1 and demanded amount of Rs. 93,100/- wrongfully collected from him, with interest @ 18% p.a. but the petitioner and respondent no. 1 did not respond to the same.

8. Thereafter, respondent no. 2 had no option but to file Dispute No. 56/2013 before the Cooperative Court at

Ahmednagar against the petitioner and respondent no. 1 thereby seeking declaration that the notice dated 15.03.2011 issued by respondent no. 1 for recovery of Rs. 93,100/- from respondent no. 2 is illegal, bad in law and not binding on him.

9. The petitioner and respondent no. 1 were duly served in the proceedings before the Cooperative Court at Ahmednagar in Dispute No. 56/2013, however, they did not turn up before the Court and hence the matter was proceeded in their absence and the Dispute No. 56/2013 was decided *ex parte* by Judgment and Award dated 22.07.2013, thereby holding that the notice dated 15.03.2011 is illegal and *void ab initio* and not binding on respondent no. 2 and further directing the petitioner and respondent no. 1 to pay an amount of Rs. 93,100/- to the respondent no. 2 with interest @ 18% p.a. from the date of filing of the Dispute till its realization.

10. It is the case of the petitioner that it became aware of the impugned award dated 22.07.2013, only in the last week of April-2015 when the notice of Reg. Darkhast No. 385/2013 was received by it. It is further case of the petitioner that thereafter
sgp

they collected the certified copies from the Cooperative Court and proceeded further to challenge the impugned Award by filing Appeal before the Maharashtra State Cooperative Appellate Court, Mumbai, Bench at Aurangabad, along with delay condonation application u/s 97 of the Maharashtra Cooperative Societies Act, 1960.

11. The Maharashtra State Cooperative Appellate Court, Mumbai, Bench at Aurangabad, after hearing the parties, disposed off the Appeal No. 8 of 2016 by Judgment and Order dated 24.04.2017 and remanded back the Dispute No. 56/2013 to the Cooperative Court for fresh hearing subject to deposit of Rs.1,68,783/- in the trial Court on or before 30.06.2017.

12. The petitioner therefore approached this Court in it's writ jurisdiction challenging the impugned Judgment & Award dated 24.04.2017 passed by the learned Member, Maharashtra State Co-operative Appellate Court Mumbai, Bench at Aurangabad, only to the extent of direction to the petitioner to deposit an amount of Rs. 1,68,783/-.

13. This Court vide order dated 4th January, 2018, issued notice to the respondents and granted stay to the impugned order to the extent of clause '3'. Thereafter, on 09.03.2018, the *ad interim* relief granted was further extended for four weeks and thereafter the matter was not listed on board for four years, and only when the advocate for respondent no. 2 moved an application for circulation, the matter was listed on board on 20.09.2022. On 20.09.2022, the advocate for petitioner had filed a leave note and the matter was adjourned to 29.09.2022 and the interim relief was continued till then.

14. The matter was taken up for hearing on 29.09.2022 and all the parties were heard through their advocates.

SUBMISSIONS : -

15. Learned counsel for the petitioner submits that the petitioner was not heard by the trial Court and strongly objected to the condition of deposit of amount before the trial Court.

15.1] Petitioner's counsel submitted that the petitioner is a Co-operative Housing Society and the subject matter of dispute is
sgp

in respect of loan advanced by it to the respondent no.1, and its member and therefore, thorough inquiry and/or trial is required to be held to arrive at a proper conclusion. Therefore the remand of matter back to trial Court should have been unconditional.

15.2] Directing petitioner to deposit of decretal amount in trial Court, on a remand, is as good as passing of final award in favour of the respondent no. 2.

16.1] The counsel for the respondent no. 2 submitted that, her client is 80 years old, and is fighting the legal battle from the year 1990. The petitioner was duly served on 17.04.2013, and they chose not to appear in the matter. Hence the Court had no option but to decide the matter finally and accordingly the Dispute was decided on 22.07.2013. The Appellate Court has shown leniency and remanded the matter back to Trial Court, on condition that Petitioner deposits the decretal amount in Court. It's a money decree, the petitioner is seeking a waiver of deposit of decretal amount, hence the present Writ Petition requires to be dismissed.

ANALYSIS : -

17. Though petitioner's counsel has come up with a case that the petitioner was not heard by the trial Court, perusal of the document submitted by the advocate for respondent no. 2 shows that the petitioner, who was original respondent no. 2, was served on 17.04.2013. It appears that thereafter the advocate for respondent nos. 1 and 2 did not appear in the proceedings before the court and hence the court had no other option but to decide the matter finally and accordingly the Dispute was decided *ex parte* on 22.07.2013 thereby allowing the Dispute and directing the petitioner and respondent no. 1 to pay a sum of Rs. 93,100/- to the respondent no. 2 herein with interest @ 18% p.a. The appeal preferred by the petitioner was disposed off remanding the matter back for fresh hearing with a stipulation that the decretal amount be deposited in the trial Court.

18. This petition is filed for setting aside the direction to the extent of deposit of decretal amount in the trial Court.

19. I am of the considered view that the petitioner wants a waiver of money decree passed by the trial Court which is
sgp

impermissible in law. If the petitioner wants to challenge only a part of the order passed by appellate Court and if he is satisfied with the remand order, he cannot take a defence that the part of the order which is a money decree should be waived for him. In any case, the said amount has to be deposited with the trial Court and it is not supposed to be repaid to the respondent no. 2, who is a aggrieved party. One cannot forget that the respondent no. 2 who is a retired senior citizen aged 80 years is fighting for his legal right from the year 1990 and even today the alleged amount claimed against him and deposited by him is not paid back to him.

20. In such circumstances, I do not find any illegality or error in the impugned Award passed by the Appellate Court on 24.04.2017. In this view of the matter, the Writ Petition stands dismissed. Rule is discharged.

[RAJESH S. PATIL]
JUDGE

21. After pronouncement of the judgment, counsel for the petitioner – Mr. N. R. Bhavar seeks stay of this judgment and order for a period of four weeks from today, so as to challenge the same before the Hon'ble Apex Court.

sgp

22. Considering the prayer made by counsel for the petitioner, this judgment and order pronounced today, is stayed for a period of four (04) weeks from today. After four weeks from today, stay granted today, shall stand vacated automatically without reference to this court.

[RAJESH S. PATIL]
JUDGE