

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

WRIT PETITION NO. 12927 OF 2017

Dynamic Furnaces Pvt. Ltd. & Ors.

...Petitioners

Versus

The Jalgaon Peoples Co-op Bank Ltd. & Anr.

...Respondents

.....

Mr. S. V. Dixit, Advocate for the petitioners

Mr. V. D. Hon, Sr. Advocate i/b Mr. A. V. Hon, Advocate for
respondent no. 1

.....

AND

WRIT PETITION NO. 12852 OF 2017

Dynamic Furnaces Pvt. Ltd. & Ors.

...Petitioners

Versus

The Jalgaon Peoples Co-op Bank Ltd. & Anr.

...Respondents

.....

Mr. S. V. Dixit, Advocate for the petitioners

Mr. V. D. Hon, Sr. Advocate i/b Mr. A. V. Hon, Advocate for
respondent no. 1

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CORAM : BHARATI H. DANGRE, J.

DATE : JANUARY 12TH, 2022

PER COURT : -

1. The two writ petitions filed by the respective petitioners question the orders passed by the Judge, Cooperative Court, Jalgaon below Exh.50 in Dispute No. J/252/2003 and below Exh. 38 in

Dispute No. J/2/2003, respectively, filed by the opponents / petitioners for setting aside the order of 'No WS' are allowed subject to deposit of an amount calculated to be 50% of the amount in dispute, which is sought to be recovered, by opening a joint saving account in the name of disputant-bank and in the name of opponents in any nationalized Bank under protest, with a condition to credit the interest regularly to the disputant, within two months from the date of the order.

2. Heard the learned Counsel for the petitioners and the learned Senior Counsel for the respondent-Bank.

3. The sequence of events reveal that the disputant – bank filed two disputes before the Cooperative Court at Jalgaon for recovery of respective amounts against the opponents. In the said proceedings instituted in the year 2003, the opponents moved an application to direct the disputant-bank to produce some documents on record and the application was allowed but the disputant failed to produce the documents is the case of the petitioners. This resulted in the inability incurred by the opponents in filing their written statement in the dispute, which prompted the Cooperative Court to pass 'No WS' order in the year 2005 itself. The contention of the

petitioners / opponents in both the petitions is to the effect that they became aware of such order being passed in the year 2015 only and they moved an application for setting aside the 'No WS' order.

4. The contention of the learned Counsel for the petitioners is to the effect that while the dispute was being prosecuted, the bank had also initiated proceedings under the Securitization and Reconstruction of Financial Assets (SARFAESI) Act and the possession of the assets of the opponent party was obtained and some of the property was sold and the details of the price fixed in the said auction/proceedings not being made known to the petitioners/opponents, this created fetter in their right to contest the dispute by filing a written statement.

. In any case by considering the merit of the applications, and on perusal of the record, the learned Judge, Cooperative Court, Jalgaon was satisfied with the reasons for not filing the written statement and granted the applications but imposed the condition on the opponents to deposit 50% of the amount involved by opening a joint account in the name of disputant-bank and in the name of opponents in any nationalized Bank, under protest. The learned Judge also imposed a condition of crediting the interest regularly in

the account of the disputant-bank and it is this order, which is assailed in the present two writ petitions. On perusal of the impugned orders, I do not see any legal basis for ordering deposit of 50% of the amount sought to be recovered in the dispute and while setting aside the no WS order and permitting filing of the WS. Once the learned Judge was satisfied with the reasons cited for non-filing of the WS and further that since the WS is not filed, the opponents were prejudiced in putting their defence, the learned Judge ought to have allowed the applications subject to imposition of any costs and in this case by taking into account the huge delay of 13 years, a hefty costs, but instead he has chosen to direct deposit of 50% of the amount in a strange fashion by opening a joint account in the name of disputant-bank and opponents/petitioners, particularly when the opponents are disputing the amount claimed in the dispute and in absence of the amount being admitted, such a direction cannot be sustained. However, if the written statement is sought to be filed after a gap of more than 13 years, on the premise that the necessary documents were not made available for enabling the opponents to put their stand in the form of written statement on record, the period consumed in taking out the application and arguing the same seeking it's recalling, must be allowed with heavy costs. Considering the amount involved due and payable to the disputant-bank as claimed in

the dispute along with the interest, the imposition of costs of Rs.50,000/- by each of the opponents would serve the interest of justice.

. Necessarily the impugned orders passed by the Judge, Cooperative Court, Jalgaon in two disputes referred to above, are set aside to the extent of the direction issued to deposit 50% of the amount and further direction to invest it in the joint account as directed under direction no. (1) of the impugned order. Instead, the said orders stand substituted by allowing the exhibits subject to costs of Rs.50,000/- by each of the opponents to the disputant-Bank within a period of four weeks from today.

. Further, it is also directed that the said orders being passed on 08.02.2017, the written statement shall be filed within a period of four weeks from today. Since the dispute is of the year 2003 and is still pending, I deem it expedient to request the learned Judge of the Cooperative Court, Jalgaon to dispose of the proceedings in Dispute No. J/252/2003 and Dispute No. J/2/2003 within a period of six months from today, since it is submitted by the learned Senior Counsel for the disputant that the affidavit is already on record. Needless to state that both the parties shall render their cooperation

to the learned Judge in disposing of the proceedings pending before him.

5. If the written statement is not filed within a period of four weeks, no application shall be further entertained by the Judge, Cooperative Court, Jalgaon, to file the written statement.

6. With the aforesaid directions, the writ petitions stand disposed of.

[BHARATI H. DANGRE]
JUDGE