IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 13243 OF 2017

Pa.Pu. Gagangiri Maharaj Nagari
Sahkari Patsanstha Maryadit, Sangamner,
Tal- Sangamner, Dist. Ahmednagar.
Through its Manager. **PETITIONER**

VERSUS

1. Ramesh Padmakar Dengle
   Age- Major, Occ- Agri,
   R/o. Nimgaon Jani,
   Tal- Sangamner,
   Dist. Ahmednagar.

2. Ajit Waliba Sonawane,
   Age- Major, Occ- Agri,
   R/o. Nimgaon Jani,
   Tal- Sangamner,
   Dist. Ahmednagar.

3. Ajay Padmakar Dengle,
   Age- Major, Occ- Agri.,
   R/o. Nimgaon Jani,
   Tal- Sangamner,
   Dist. Ahmednagar. **RESPONDENTS**

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Mr. Abhijit Darandale, Advocate for the petitioner.
Mr. Chaitanya V. Dharurkar, Advocate for Respondent No. 1.

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[CORAM : NITIN B. SURYAWANSHI, J.]

RESERVED ON: 30th JUNE, 2022
PRONOUNCED ON: 19th JULY, 2022

JUDGMENT:

. Rule. Rule made returnable forthwith. Heard with the consent of learned advocate for the parties.

2. By this petition filed under Article 227 of the Constitution of India, the petitioner/patsanstha challenges the order dated 28.04.2017, passed by the Maharashtra State Co-operative Appellate Court, Mumbai, Bench at Aurangabad, in Appeal No. 126/2015.

3. The petitioner advanced loan of Rs. 50,000/- to respondent No. 1 which carried interest rate of 19% per annum. Respondents No. 2 and 3 stood guarantors to said loan. Since, respondent No. 1 failed to repay the loan, the petitioner filed dispute No. 503/2003 under section 91 of Maharashtra Co-operative Societies Act 1960 and Rules 1961, in Co-operative Court, Kopargaon, for recovery of loan amount of Rs. 1,13,911/- together with interest.

4. The Co-operative Court allowed the dispute on 24.02.2015 and directed respondents to jointly land severally pay an amount of Rs. 1,13,911/- along with interest at the rate of 19% per annum from the date of filing of dispute till its realisation. Respondents challenged the order passed in dispute by filing Appeal No. 126/2015. The Appellate Court by the impugned order has modified the order passed by the Co-operative Court thereby permitting respondent No. 1 to pay dues

in three installments of Rs. 50,000/- by the end of July-2017, Rs. 50,000/- by the end of October-2017 and Rs. 50,000/- including interest by the end of December-2017. In default of single installment, the petitioner was held entitle to recover Rs. 1,50,000/- (1,45,445+cost of the dispute) along with interest at the rate of 19% per annum from 01.05.2017 till realisation. The petitioner is aggrieved by this modification.

5. Heard the learned advocate for the petitioner and learned advocate for respondent No. 1. Though served, none appears for respondents No. 2 and 3.

6. The learned advocate for the petitioner assailed the impugned order submitting that the Appellate Court has recorded a finding that the loan documents show that the parties have agreed to pay interest at the rate of 19% per annum with quarterly rest on amount of Rs. 50,000/-. The loan bond shows interest at the rate of 19% per annum, without any rest as column in respect of rest is remained blank, and therefore, in absence of agreement, society is not permitted to charge interest at quarterly rest. He submits that there is no challenge by the respondent No. 1 in respect of charging of interest by quarterly rest. When charging of interest by quarterly rest is not

at all challenged by respondent No. 1, the Appellate Court has erred in recording perverse finding. He further submits that when the petitioner had denied payment of Rs. 20,580,/-, the Appellate Court has erroneously taken into consideration un-exhibited documents i.e. photocopies of payment of said amount. He further submits that when there was no challenge to the account statements by respondent No. 1 and there were no pleadings about payment of Rs. 20,580/-, the Appellate Court has erroneously held that amount of Rs. 20,580/- is lying with the society and therefore, adjusting that amount, respondent No. 1 has paid total amount of Rs. 70,580/- towards repayment of loan. He submits that Appellate Court was not justified in permitting respondent No. 1 to produce receipts of year 1999 towards payment of total amount of Rs. 20,580/-. He further submits that the Appellate Court has erred in coming to a conclusion that the petitioner has not given any evidence about present status of hyphothecated vehicle and directed the petitioner to dispose of said vehicle and adjust sale proceed towards claim amount. He states that said vehicle is of year 1999 and nothing would be received by selling the same.

He further submits that even in terms of order of Appellate Court, respondent No. 1 has failed to pay amount of installments directed by the Appellate Court. He has paid two installments and failed to pay third installment, and, therefore, the petitioner is entitled to recover entire dues. He submits that total dues recoverable against respondent No. 1 were Rs. 5,17,836/- out of which respondent No. 1 has deposited Rs. 2,13,000/-. Thus, total amount of Rs. 3,04,836/- along with interest is liable to be recovered from respondent No. 1. He therefore, submits that the Appellate Court had no reason to modify the order passed by the Co-operative Court.

7. On the other hand learned advocate for respondent No. 1 submits that in terms of Appellate Courts' order he has deposited two installments of Rs. 50,000/- each, however, third installment is remained to be deposited due to financial difficulties faced by respondent No. 1. He further submits that despite there being clear directions to dispose of hyphothecated property and adjust sale proceed, the petitioner has failed to do so and therefore, this Court may not interfere in the Appellate Courts' order. He further submits that in the Co-operative Court witnesses of the petitioner were not cross examined by respondent No. 1, therefore, opportunity of hearing was not given to respondent No. 1 by the Co-operative Court. He submits

that pursuant to the orders passed by this Court, demand draft of Rs. 1,13,911/- was deposited by respondent No. 1 in this Court, therefore, respondent No. 1 has cleared the dues. He supports the order passed by the Appellate Court.

8. Heard Mr. Abhijit Darandale, the learned advocate for the petitioner and Mr. Chaitanya Dharurkar, the learned advocate for the respondents at length. Perused the documents placed on record.

9. Admittedly, the Co-operative Court has passed an award directing the respondents to jointly and severally pay an amount of Rs. 1,13,911/- along with interest at the rate of 19% per annum from the date of filing of dispute (i.e. 08.05.2003), till the realisation. It is matter of record that the petitioner has led evidence and has proved the loan documents and the account statements, which are exhibited by the Co-operative Court. The respondents have failed to challenge the documents and the evidence of the petitioner, by cross examining the witnesses. The respondents have admitted the loan amount in the written statement and prayed for installments. The evidence of petitioner has gone unchallenged as respondents failed to cross examine the witnesses of the petitioner and to lead

evidence. Statements of account produced on record by the petitioner are not challenged by the respondents. No evidence is led by the respondents in respect of payment of Rs. 20,580/-. As per the promissory note dated 24.11.1999, the respondents have agreed to pay interest at the rate of 19% per annum, with quarterly rest, on the loan amount of Rs. 50,000/-. In that view of the matter, the Appellate Court has erroneously proceeded to hold that *in the loan bond column in respect of rest is blank and therefore, 'in absence of specific evidence in respect of rest, the disputant is entitled to charge agreed rate of interest without any rest.'* Since this finding is contrary to the documentary evidence placed on record i.e. petitioner's loan agreement and promissory note, said finding cannot be sustained.

10. Without there being any evidence on record and without the respondents having challenged the account statements, the Appellate Court has erred in recording a finding that the petitioner has charged interest on postage, advocate fees, insurance and penal interest etc., and therefore, these entries and the entries in respect of charging of interest on rest are required to be deleted and statement needs to be recasted. This finding also cannot be sustained in view of the fact that in

the written statement, the respondents have admitted the loan amount and only prayed for installments. At no point of time, the respondents have challenged account statements and loan documents.

11. The Appellate Court has further erred in relying on the photo copies of receipts dated 24.11.1999, of total amount of Rs. 20,580/-, while holding that the petitioner has not specifically denied said amount and therefore, said amount is held to be lying with the petitioner. Said finding is perverse as the Appellate Court could not have relied upon the the photo copies of receipts of year 1999, which were at no point of time placed before the Co-operative Court and when in the written statement respondents have admitted loan amount and only prayed for installments.

12. The Appellate Court has further erred in directing the sale of the hyphothecated vehicle and directing appropriation of said amount. Admittedly, said vehicle is of the year 1999 and therefore, sale of said vehicle after 19 years would fetch very meager amount to the petitioner, as it would have to be sold as scrap. Thus, the Appellate Court appears to have erroneously exercised jurisdiction vested in it and has committed an error

apparent on the face of record in considering inadmissible evidence and recording findings on the basis of irrelevant material. The Appellate Court had no reason to modify the order passed by the Co-operative Court.

13. Admittedly, respondent No. 1 has failed to pay third installment as per the direction of Appellate Court. In that view of the matter, and for the aforestated reasons, this Court is of the opinion that, the impugned order cannot be sustained and same is liable to be quashed and set aside. Hence, the following order:

ORDER

i) The writ petition is allowed in terms of prayer clause 'B'.

ii) The impugned order dated 28.04.2017 passed by the Maharashtra State Cooperative Appellate Court, Mumbai, Bench at Aurangabad in Appeal No. 126/2015 is quashed and set aside.

iii) Rule is made absolute to above extent.

[NITIN B. SURYAWANSHI, J.]