

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

972 WRIT PETITION NO.4132 OF 2016

JYOTI CO-OPERATIVE CREDIT SOCIETY LIMITED
KOPERGAON THROUGH THE MANAGER DILIP ASARAM
RANDHAVANE

VERSUS

1. CHANGDEV APPA BHOJANE
2. DATTATRYA NARHARI BHAKARE
3. DAGU MOHAN GHUDGE
4. SUNIL SAMPATRAO WAGH

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Advocate for Petitioners: Mr. Gandhi Amol S.

Advocate for Respondents No.1&3:

Mr. Ramrao G. Nirmal h/f. Mr. S. S. Gangakhedkar

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CORAM : ARUN R. PEDNEKER, J.

DATE : 23rd AUGUST, 2023

PER COURT:

1. Heard.

2. The petitioner filed a suit for recovery of Rs.3,23,027/- against the borrower and so also respondents no.2, 3 and 4. The co-operative court after clubbing the proceedings passed an order dated 24.03.2014, wherein the co-operative court held that borrower as well as the guarantors liable for the payment of Rs.3,23,027/- along with interest. On 15.01.2016, the application was filed for correction of the order. It was the contention of the Bank that the name of the opponent / original respondent no.3 – Mr. Dagu Mohan Gudaghe

is not shown in the final order passed by the cooperative court and his name is deleted so also the operative order is only against original respondents no.1, 2 and 4. The original respondent no.4 is mentioned as respondent no.3. Thus, in the cause title, so also, in the operative part of the order Mr. Dagu Mohan Gudaghe is not shown in the final order nor any order is passed against him.

3. The learned counsel submitted before the co-operative court that there is a typographical mistake in the said order and that the error be corrected. The co-operative court having examined the judgment passed, by order dated 18.01.2016 held that on perusal of the reasoning part of the judgment it reveals that there is no mention of the name of the opponent Mr. Dagu Mohan Gudaghe in the judgment. In the whole record there is no order of deletion of this opponent or no specific reason for it's deletion is mentioned anywhere. Reading of the judgment fixes the liability of repayment on only 3 opponents mentioned in the judgment. The decree, if, it is corrected, it will change the whole judgment, which will not be called as clerical or typing mistake and, thus, dismissed the application for correction filed by the petitioner herein.

4. Perused the record. In the application filed by the applicant it is nowhere mentioned in

the application that why it has applied for correction of the order passed by the co-operative court after a period of 2 years and at what stage the applicant noticed that the name of Mr. Dagu Mohan Gudaghe is not in the cause title and no order is passed against him. Also from the order there is no discussion as regards the liability of Mr. Dagu Mohan Gudaghe. Although, it is the contention of the petitioner that he is the joint guarantor, the same now cannot be interfered from the judgment of the cooperative court.

5. In view of the same, entering the name of Mr. Dagu Mohan Gudaghe at this stage in the final order would amount to the variation of the judgment. It would be difficult to accept that it is merely a typographical error. The judgment passed could be rectified in appeal and not in an application for correction of a typographical error, because the finding will have to be given that the name of Mr. Dagu Mohan Gudaghe is deleted as a typographical error and to correct and make necessary changes. Since, the court was not in a position to render such a finding in an application for correction it has rightly rejected the application.

6. In view of the above, the present writ petition is disposed of.

7. The learned counsel for the petitioner submits that in the event the appeal is filed against the impugned order the time spent in prosecuting this writ petition so also before the co-operative court be condoned under section 14 of the Limitation Act. The petitioner will make an appropriate application before the authority and the authority to consider the same in accordance with law in the event the petitioner files the appeal or any other proceedings as may be available in law.

[ARUN R. PEDNEKER, J.]

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