

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

WRIT PETITION NO.9342 OF 2022

**PRABHAKARS BAPPASAHEB GARJE AND ANOTHER
VERSUS
KANHUR PATHAR MULTY STATE CO-OPERATIVE CREDIT SOCIETY
LTD. THROUGH ITS MANAGING DIRECTOR**

...

Advocate for Petitioners : Mr. Sanjay L. Bhapkar

Advocate for Respondent : Mr. S.V. Suryawanshi

...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 27th SEPTEMBER, 2023

PER COURT :

1. By this petition, filed under Article 226 and 227 of the Constitution of India, petitioners challenge order dated 12/01/2022, passed by learned 10th Joint Civil Judge, Senior Division, Ahmednagar, below Exhibit-1 in Special Darkhast No.62/2011.

2. Petitioners are judgment debtors in darkhast filed by respondent for recovery of loan amount. In said darkhast arrest warrant was issued against petitioners on 23/03/2021. On execution of said warrant, petitioners were brought before executing Court and the Court by accepting cash security of Rs.25,000/- each, released petitioners. Thereafter, again petitioners remained absent in execution proceeding, therefore, again warrant was issued against petitioners. It appears from bailiff's report and impugned order that petitioner No.1/judgment debtor No.1 escaped

from custody of bailiff by giving jerk to his hands. Petitioner No.2/ judgment debtor No.3, was reported to be in hospital and therefore, executing Court adjourned the matter from time to time. In spite of knowledge that warrant was issued against petitioners, they failed to appear before the Court. Therefore, executing Court, by impugned order, confiscated security amount of Rs.25,000/- each deposited by petitioners and directed it to be paid to the State.

3. Thereafter, execution proceeding was compromised, pursis to that effect was filed at Exhibit-100 by respondent No.1 and execution proceeding stood withdrawn and was disposed of on 07/05/2022. It is the case of petitioners that they thereafter tried to file application before executing Court seeking return of cash security amount deposited by them. However, said applications were not accepted as execution proceeding was already disposed of. Petitioners have, therefore, filed present petition seeking refund of cash security amount and challenging order passed below Exhibit-1 dated 12/01/2022.

4. Heard learned advocate for petitioners and learned advocate for respondent. Perused writ petition memo, annexures thereto and the impugned order.

5. It is the case of petitioners that due to COVID pandemic they were unable to attend executing Court and in spite of warrant

issued against them and in view of withdrawal of execution proceeding, they are entitled for refund of their cash security amount. They contend that impugned order was not known to them and executing Court has passed said order without giving them opportunity of hearing. Therefore, the same is unsustainable and they are entitled for refund of cash security amount.

6. Learned advocate for respondent, on the other hand, strenuously opposed the petition contending that repeated absence on the part of petitioners compelled executing Court to issue warrant against petitioners. In spite of execution of warrant and depositing of cash security, petitioners again failed to attend the Court and therefore, again warrant was issued against them. He submits that considering the conduct of petitioners, executing Court is justified in confiscating cash security deposited by petitioners. He submits that, in fact, cash security ought to have been credited to respondent Cooperative Credit Society. He further submits that petitioners have failed to honour compromise on the basis of which respondent had withdrawn execution proceeding. Cheques given by petitioners are bounced and therefore, proceeding under Section 138 of Negotiable Instruments Act is filed against petitioners.

7. In the backdrop of above facts and considering conduct of petitioners that, in spite of depositing cash security, petitioners

repeatedly failed to attend the Court, petitioner No.1 escaped from custody of bailiff and in spite of knowledge that warrant is issued against them, petitioners deliberately remained absent before executing Court, and further considering the fact that petitioners have failed to honour compromise and cheques deposited by them towards repayment of loan were bounced and respondent was constrained to file complaint under Section 138 of the N.I. Act against petitioners, this Court is of the view that petitioners have failed to make out case to exercise extraordinary writ jurisdiction in their favour. Writ petition being devoid of merit is dismissed.

(NITIN B. SURYAWANSHI, J.)