IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4819 OF 2018

Prabhakar Eknath Mahajan ...**PETITIONER**

VERSUS

1. The Jalgaon Janata Sahakari Bank Ltd Jalgaon ...**RESPONDENTS**

2. M/s. Sudhir Textiles, Partner of M/s Sudhir Textiles, Jalgaon

3. Sudhakar Chintaman Chaudhari

4. Chintaman Puna Chaudhari (deleted by order dated 05-02-2021)

5. Sau. Sagunabai Ukha More (dead) through Legal Heirs

5a. Ukha Ramu More (deleted by order dated 05-02-2021)

5b. Dugadas Ukha More

5c. Gopalkrishna Ukha More

Mr. Vijay B. Patil, Advocate for the petitioner
Mr. Ankush N. Nagargoje, Advocate for the respondent

CORAM : KISHORE C. SANT, J.
RESERVED ON : 05th JULY, 2023
PRONOUNCED ON : 06th September, 2023

P. C.

1. This petition is by the guarantor who stood guarantee for the loan given by respondent No.1-bank to the principal borrower. Other respondents are formal parties for the purpose of deciding this petition. The petitioner has challenged the order passed by the learned Maharashtra State Cooperative Appellate Court, Mumbai, Bench at Aurangabad in Appeal No.114 of 2015 dated 25-09-2017. The learned Appellate Court by way of impugned order confirmed the judgment and order passed by the Cooperative Court, Jalgaon dated 03-08-2015 in dispute No. J/457/2000. Both the courts have held the petitioner liable jointly and severally for the loan amount of Rs.1,75,000/- availed by the principal borrower and the award is modified accordingly by the Cooperative Court, Jalgaon. The learned Appellate Court has dismissed the appeal filed by the present petitioner.

2. The ground on which the petitioner has approached this court is that his liability as per the documents executed

between the parties is only to an amount of Rs.1,75,000/- whereas the bank is holding the petitioner liable for entire outstanding loan amount taken by the principal borrower in another loan account to which the petitioner is not a guarantor.

3. The facts in short, are that, the petitioner stood guarantee for the principal borrower by executing a document in favour of respondent No.1-bank. He has undertaken his liability only to the extent of Rs.1,75,000/-. The property of the petitioner was also mortgaged on 12-12-1988. There is specific clause in the said mortgage that the said mortgage is executed towards security only to the extent of the amount of Rs.1,75,000/- and the interest, costs, charges and expenses to be paid by the mortgagor to the mortgagee. On that stipulation the property adm. 1800 sq. mts. From out of Survey No. J-30 at village Mamurabad was mortgaged as described more particularly in the mortgage deed. It is, thus, the case of the petitioner is that the petitioner was liable only to the amount of Rs.1,75,000/-.

4. There was a default committed by the principal borrower in repayment of the amount. The bank therefore, approached the Cooperative Court by raising dispute bearing ABA/JGA/457/2000 praying for recovery amount of Rs.21,74,005.88/- with 18% interest per annum on the said amount till realization of the amount from the opponent Nos. 1 to 3 therein. In prayer clause-D, it is stated that all the opponents i.e. opponent Nos. 1 to 6 were liable for the said amount. The petitioner is shown as opponent No. 6 in the said dispute. Averments further shows that this amount was to be paid by opponent Nos. 1 to 3. Against this petitioner averment is that he has given his property towards mortgage i.e. land Gut No. 104 adm. 2-H 76-R and thus all the opponents are jointly and severally liable to repay the amount. Principal borrower had taken loan amount of Rs.94,000/- on 04-08-1990 and Rs.6,14,000/- on 23-10-1991. To all subsequent loan accounts, opponent Nos. 2 and 3 are stood guarantee. On this pleading suit was filed. The petitioner and other opponents appeared in

the suit. The petitioner denyied execution of mortgage deed in respect of land Gut No.104, situated at Mamurabad. He denied that he has signed any documents. His further case is that the Principal borrower has already made repayment of the entire loan amount to which it is alleged that mortgage was executed by this petitioner.

5. The learned Cooperative Court, Jalgaon however allowed the dispute against opponent Nos. 1 to 3. As against other opponent Nos. 4 to 6 including the petitioner the suit came to be dismissed. The bank filed an appeal before the Maharashtra State Cooperative Appellate Court, Mumbai, Bench At Aurangabad by filing appeal No. 2/2013. The appeal was partly allowed. The dispute was remanded to the learned trial court only for limited purpose of hearing against the present petitioner in view of the alleged execution of the deed of mortgage dated 12-12-1988. On remand, the learned trial court held that this petitioner is liable to the extent of Rs.1,75,000/- by judgment and order dated 03-08-2015. Since the petitioner

was held liable to the extent of Rs.1,75,000/- he preferred an appeal bearing No. 114/2015.

6. The Appellate Court considered that the petitioner had offered his immovable property as security for the loan amount of Rs.1,75,000/- only that was availed by the borrower for construction of building as she was member of the society. The dispute was held to be maintainable under Section 91(1)(a) to (e) of the M. C. S. Act. The Appellate Court held that the petitioner had accepted his liability to repay the loan amount of Rs.1,75,000/-. The appeal came to be dismissed by the judgment and order dated 25-09-2017. The petitioner has therefore approached this court.

7. In this the submissions of the petitioner are that the petitioner had accepted the liability towards the loan amount of Rs.1,75,000/- only that was taken for the purpose of construction. The payment of the loan towards construction of building is already repaid by the principal borrower and

therefore, there is no question of fastening any liability upon the petitioner. The petitioner is neither borrower nor guarantor and is not even member of the society and thus he was not covered under Section 91(1)(a)to(e) of the M. C. S. Act. The property of the principal borrower was attached and was sold. Thus, outstanding amount is already recovered by the bank that was given towards building of the principal borrower. Remaining amount is about subsequent loans those were given by the bank to the principal borrower. This petitioner cannot be held liable for the amount of subsequent loan. The alleged mortgage deed i.e. Exh.186 was not executed for the purpose of co-lateral security to secure other loans in dispute. It was necessary for the bank to maintain the separate account for the loan amount of Rs.1,75,000/-. Opponents have deposited amount of Rs.4,30,608/- after 04-03-1992 and that fact is admitted. Even thereafter, the borrower deposited an amount of Rs.5,11,857/- till 02-03-1994. The building for which the loan amount of Rs.1,75,000/- was granted is sold in the proceeding. Amount of Rs.9 lakhs was received in the said sale that amount should have been appropriated towards loan account. However, instead of depositing that amount in the first account it was adjusted in different account. It is submitted that this fault is of the bank and the amount towards sale towards the building be adjusted in the loan account of the loan taken for building. It is prayed that the impugned judgment and order be quashed and set aside. He submits that the learned trial court had rightly dismissed the dispute. Even after he submits that only after remand it is wrongly held that this petitioner is jointly and severally liable for the loan amount of Rs.1,75,000/-.

8. Learned advocate for the bank submits that the petitioner cannot go beyond the pleadings. In the written statement filed by the petitioner in the dispute he submitted that mortgage was towards loan account No.97 for an amount of Rs.4,27,000/-. Loan account No. 59 was for different loan. Thus, the petitioner is liable for loan outstanding in account No.97 for the entire amount as per Exh.186 i.e. mortgage deed executed for the entire amount. He submits that courts below have rightly

considered this aspect. He invites attention of this court to para No. 16 of the appellate court's judgment wherein the court considered that the petitioner had offered additional security to the loan in question. He thus submits that in view of this the petitioner is clearly liable for entire loan amount.

9. After hearing the parties this court has gone through the document dated 12-12-1988 executed by this petitioner Exh.186. There it is clearly stated in the said mortgage deed that it is executed pursuant to the agreement for consideration of sum of Rs.1,75,000/-. It is further seen that the mortgage was executed to secure the repayment of the loan amount of Rs.1,75,000/- and the interest, costs and charges thereupon. Thus, the amount of Rs.1,75,000/- is specifically mentioned in the evidence on behalf of the bank i.e. Exh.30. It is seen that opponent No.1 is principal borrower. Opponent Nos. 2 and 3 were guarantors. Against this petitioner evidence is that all the opponents are jointly and severally liable for repayment of loan. Further evidence shows that it is opponent Nos.1 to 3 who have

failed to repay the amount. A specific suggestion was given that for loan for constructinon of building account No.59 was opened. Amount on auction of the property of principal borrower of Rs.9 lakhs however wasdeposited in another account No.98.

10. In the evidence this petitioner has stated that the petitioner is not liable to repay the loan. The mortgage was only for an amount of Rs.1,75,000/-. The specific liability was only against opponent Nos. 1 to 3. The bank officer has accepted in the evidence that this petitioner is not guarantor to any of the loans. He was also not liable for any loan taken thereafter.

11. On going through the Simple Mortgage to Secure Loan dated 12-12-1988, this court finds that there is clear recital that mortgagee is to secure repayment of the said amount of Rs.1,75,000/- and all the interest, costs, charges and expenses hereby secured and to be paid by the mortgagor to the mortgagee. It is reproduced as below:- “The Mortgagors in the

said property (hereinafter referred to as the Mortgaged the premises/land) into and infavour of the Mortgagee by way of Mortgagee to secure repayment of the said amount of Rs.1,75,000/- and all the interest costs, charges and expenses hereby secured and to be paid by the Mortgagor to the Mortgagee".

12. Thus, it is clear that mortgagor had undertaken responsibility to repay the amount of Rs.1,75,000/- and all the interest, costs, charges and expenses thereby secured. No other interpretation is possible looking to the wording of the simple mortgage to secure loan. The learned trial court has rightly passed the order considering the documents i.e. Simple Mortgage to Secure Loan. Even the appellate court has not committed any mistake while dismissing the appeal by upholding the judgment of the trial court. The court has rightly considered the evidence on record including the sanction letter issued by the disputant bank, concerned letters and registered mortgage deed executed between the disputant and defendant

No.6 i.e. this petitioner. Nothing is shown from the record that the bank has used this mortgage deed or security for any other purpose that to secure the amount of Rs.1,75,000/- with accrued interest, expenses, etc.

13. On overall consideration of the matter this however court finds that since the document was executed only for the purpose of A/c loan No.59 for construction of a building and to the extent of amount of Rs.1,75,000/- alongwith interest etc., it would be appropriate for the respondent-bank to appropriate the amount for the security only in account of loan No.59 for which the mortgage deed was executed and not in any other account. Amount of loan A/c No.59 if satisfied in that case not to take any action against the present petitioner.

14. This court finds that though both the courts below have rightly passed the judgment, this clarification would be necessary.

15. With this, writ petition stands partly allowed and disposed off.

[KISHORE C. SANT, J.]

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