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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.10886 OF 2022

The Kokan Mercantile Co-op Bank Ltd.

Through Authorized Officer

Ismail Ali Kasu Sr. Manager (Legal) ... Petitioner

V/s.

Patel Mohammed Arif Shafeeq Ahmed &

Ors. ... Respondents

WITH

INTERIM APPLICATION NO.17400 OF 2022

IN

WRIT PETITION NO.10886 OF 2022

Patel Mohammed Arif Shafeeq Ahmed &

Ors. ... Applicants

In the matter between

Kokan Mercantile Co op Bank Ltd. ... Petitioner

V/s.

Patel Mohammed Arif Shafeeq Ahmed &

Ors. ... Respondents

WITH

WRIT PETITION NO.10863 OF 2022

The Kokan Mercantile Co-op Bank Ltd.

Through Authorized Officer

Ismail Ali Kasu Sr. Manager (Legal) ... Petitioner

V/s.

Patel Yasmin Mohammed Arif & Ors.

... Respondents

WITH

INTERIM APPLICATION NO.17401 OF 2022

IN

WRIT PETITION NO.10863 OF 2022

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Patel Yasmin Mohammed Arif & Ors.	... Applicants
In the matter between	
The Kokan Mercantile Co-op Bank Ltd.	... Petitioner
V/s.	
Patel Yasmin Mohammed Arif & Ors.	... Respondents

Mr. Surel S. Shah i/by Mr. Sandeep Ramesh Waghmare,
for Petitioner.

Mr. Prakash Pandit i/by Mr. Ratnesh M Dube, for
Respondents in both the writ petitions.

CORAM : AMIT BORKAR, J.

DATED : SEPTEMBER 5, 2023

P.C.:

1. Challenge in the petitions is to the common order passed by the Executing Court on 6 January 2022 in Darkhast Nos.2241 of 2019 and 2242 of 2019 allowing applications below Exhibit 11 and Exhibit 20.

2. The respondent herein filed execution petition for execution of award passed by the Arbitrator. The terms of award passed by Arbitrator are as under:

1) The Respondents Nos.1 to 7 in RCS No.203/2014 are directed by the award to repay the amount of Rs.4,11,80,375.45 together with the future interest @ 15% p.a. from the date of this award.

2) The Respondents Nos.1 to 7 in RCS No.204/2014 are directed by the award to repay the amount of Rs.2,89,24,895/- together with the future interest @ 15%

p.a. from the date of this award.

3) The Respondents Nos.1 to 8 in RCS No.204/2014 are directed by the award to repay the amount of Rs.2,87,34,025/- together with the future interest @ 15% p.a. from the date of this award.

4) The Respondents Nos.1 to 9 in RCS No.204/2014 are directed by the award to repay the amount of Rs.2,64,81,858/- together with the future interest @ 15% p.a. from the date of this award.

5) The respondents in all four cases to bear the cost of all these claim applications as provided by law.

6) All the four awards be drawn accordingly.

3. The judgment debtor-respondent filed proceedings under Section 34 of the Arbitration and Conciliation Act,1996 wherein this Court in paragraph 6 observed as under:

“6....The Bank claims that there is still an amount in excess of Rs.3 crores yet to be recovered from these Petitioners. There is no doubt that the bank will need to take appropriate steps in execution.....”

4. During pendency of execution, the judgment debtor filed two applications below Exhibits 11 and 20.

5. By filing application below Exhibit 11, the judgment debtor contended that the execution petition be dismissed as award is satisfied.

6. By application below Exhibit 20, the judgment debtor prayed for re-conveyance of mortgage properties executed by mortgage deeds dated 27 April 2010, 13 November 2011 and 26 March 2012.
7. The Executing Court allowed both the applications.
8. According to the petitioner, in terms of liberty granted by this Court in proceedings under Section 34 of the Arbitration and Conciliation Act, 1996, this Court permitted bank to claim amount in excess of Rs.3 Crores. According to the petitioner, therefore, the said issue has not been dealt with by the Executing Court while disposing of application below Exhibit 11.
9. On perusal of the award, it is clear that the Arbitrator directed respondent Nos.1 to 7 to pay specified amount along with rate of interest fixed in the award. The purport of the award being clear, there is no ambiguity in the award which entitles Executing Court to adjudicate any other claim than the claim of the decree holder as per award.
10. On perusal of the award, in my opinion, save and except specified amount mentioned in the award and the future interest of 15%, no further claim could have been adjudicated by the Executing Court.
11. Moreover, the application under Section 34 of the Act was filed by the judgment debtor. In such matter, this Court never intended to grant any relief to the decree holder. Therefore, in my opinion, adjudication by Executing Court holding that the award is satisfied, no interference is called for.

12. In so far as the application below Exhibit 20 is concerned, in the absence of specific direction to that effect in the award, the relief as granted by the Executing Court could not have been granted.

13. At this stage, learned Advocate for the judgment debtor states that he will apply before the petitioner-bank for release of his properties,¹ . He will file the application before petitioner-bank for releasing mortgage properties. If such application is filed, the petitioner-bank shall decide such application within four weeks from the date of application. In case of adverse order, it shall be open to the judgment debtor to adopt appropriate proceedings as permissible in law.

14. In that view of the matter, on overall consideration of the matter, no interference is required under Article 227 of the Constitution of India.

15. Both the writ petitions are, therefore, dismissed. No costs.

16. In view of disposal of writ petitions, nothing remains to be adjudicated in the interim applications. Therefore, both the interim applications stand disposed of.

(AMIT BORKAR, J.)