

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

WRIT PETITION NO.10845 OF 2023

Najir Shamshoddin Mulani & Ors.

...Petitioners

Versus

Shivshakti Nagari Pat-Sanstha Ltd.

...Respondent

Mr. S. T. Bhosale, for the Petitioners.

CORAM : MADHAV J. JAMDAR, J.

DATED : 4th SEPTEMBER 2023

P.C. :

1. Heard Mr. Bhosale, learned counsel appearing for the Petitioners. The Petitioners are challenging by invoking power of this Court under Article 227 of the Constitution of India, the legality and validity of order dated 25th May 2023 passed by the learned Judge, Co-operative Court, Solapur in Miscellaneous Application No.22 of 2022.

2. Before considering the challenge to the legality and validity of the impugned order, it is necessary to set out certain factual aspects:-

i. The Respondent-society filed Co-operative Case No.1501

of 2006 in the Co-operative Court at Solapur under Section 91 of the Maharashtra Cooperative Societies Act, 1960 (hereinafter after referred to as **“the said Act”**) seeking award of amount of Rs.1,62,896/-. Out of the said amount, Rs.1,08,647/- was the principal amount and Rs.54,049/- was the interest.

ii. It appears that inspite of notice, the present Petitioners i.e. Opponents have remained absent therefore, an ex-parte award was passed by the learned Judge, Co-operative Court, Solapur on 17th June 2013 for an amount of Rs.1,62,896/- due as on 31st October 2006 together with future interest at the rate of 21% per annum w.e.f. 1st November 2006 till realization of the entire loan amount.

iii. The Petitioners filed Miscellaneous Application No.12 of 2017 seeking condonation of delay in filing the application for setting aside the said ex-parte judgment and award. The said Miscellaneous Application No.12 of 2017 was allowed by order dated 11th June 2018. By said order, stay was granted to the execution of the ex-parte judgment and award on the condition that the Petitioners deposit an amount of Rs.70,000/- with the

society within 8 days from the date of said order.

iv. As the delay was condoned, Miscellaneous Application No.18 of 2018 was taken out for setting aside the said ex-parte judgment and award. By order dated 11th February 2022 passed by the learned Judge, Co-operative Court, Solapur, the said Miscellaneous Application No.18 of 2018 taken out for setting aside ex-parte judgment and award dated 17th June 2013 was allowed. The said ex-parte judgment and award was set aside, subject to condition of depositing 25% of the award amount to the society in the loan account within a period of two months from the date of that order. By the said order, it has been held that the said deposit shall be subject to the final decision of the original dispute.

v. Thereafter, the present Petitioners filed Miscellaneous Application No.22 of 2022 praying that the delay in depositing said 25% amount be condoned. However, in the application in paragraph 2, it is contended that as Rs.70,000/- was already paid, the balance awarded amount is Rs.92,896/- and therefore, 25% of that amount i.e. Rs.23,224/- and the same be allowed to be deposited. By the impugned order dated 25th May 2023, the

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learned Judge, Co-operative Court, Solapur allowed the said Miscellaneous Application No.22 of 2022 and granted permission to deposit said 25% amount of Rs.1,62,896/- and not the amount as per the calculation of the Petitioners and further directed that as the Petitioners have caused delay in depositing the amount, they are held liable to pay interest on the said amount at the rate of 9% per month and interest shall be calculated from 22nd February 2022 till date on which the Applicant deposit the amount.

3. The factual position on record clearly shows that the ex-parte judgment and award was passed on 17th June 2013 for an amount of Rs.1,62,896/- which was due on 31st October 2006 together with future interest at the rate of 21% w.e.f. 1st November 2006 till realization of the entire loan amount. It has been observed in the various orders that the Petitioners have accepted that they had availed loan for the said amount and also that they have defaulted. As per the said ex-parte judgment and award, there is huge outstanding as neither the full principal amount nor the interest has been deposited.

4. It is further significant to note that while condoning the

delay in applying for setting aside ex-parte judgment and award, the learned Judge, Cooperative Court directed payment of Rs.70,000/-, which is not even the entire principal amount. While setting aside the ex-parte judgment and award, the learned Judge has imposed condition of deposit of 25% of the amount which has been awarded. In the impugned order, the learned Judge has held that the 25% of Rs.1,62,896/- should be deposited within one month and for delay, the interest should be paid by the Petitioners at the rate of 9% per annum from 22nd April 2022 till the date on which the Petitioners deposits the said amount. There is no illegality or perversity in the impugned order. Therefore, the interference by this Court under Article 227 of the Constitution of India is not warranted.

5. In the facts and circumstances of this case and in the interest of justice, the Petitioners are granted four weeks time to comply with order dated 25th May 2023 passed by the learned Judge, Co-operative Court, Solapur.

6. Subject to above, the Writ Petition is dismissed however, with no order as to costs.

[MADHAV J. JAMDAR, J.]