Arjun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5856 OF 2019

Sangli District Central Co-operative Bank Ltd. Through its Senior Officer & Authorized Signatory Shri. Pravin Annu Koli ...Petitioner

V/s.

Shri. Sanjay Panditrao Bhosale & Ors. ...Respondents

WITH
WRIT PETITION NO.4068 OF 2019

Sangli District Central Co-operative Bank Ltd. Through its Senior Officer & Authorized Signatory Shri. Pravin Annu Koli ...Petitioner

V/s.

Shri. Mohan Krishna Dhabugade & Ors. ...Respondents

WITH
WRIT PETITION NO.4070 OF 2019

Sangli District Central Co-operative Bank Ltd. Through its Senior Officer & Authorized Signatory Shri. Pravin Annu Koli ...Petitioner

V/s.

Shri. Shankar Siddhu Patil & Ors. ...Respondents

WITH

WRIT PETITION NO.4074 OF 2019

Sangli District Central Co-operative Bank Ltd. Through its Senior Officer & Authorized Signatory Shri. Pravin Annu Koli ...Petitioner

V/s.

Shri. Tanaji Dattu Pawar & Ors. ...Respondents

WITH
WRIT PETITION NO.4075 OF 2019

Sangli District Central Co-operative Bank Ltd. Through its Senior Officer & Authorized Signatory Shri. Pravin Annu Koli ...Petitioner

V/s.

Shri. Krishna Vithoba Dhabugade Deceased through his legal heirs 1-a. Shri. Mohan Krishna Dhabugade & Ors. ...Respondents

WITH
WRIT PETITION NO.13907 OF 2022

Sangli District Central Co-operative Bank Ltd. Through its General Manager & Authorized Signatory Shri. Balasaheb Manohar Ramdurg ...Petitioner

V/s.

Shri. Avinash Dinkar Patil & Ors. ...Respondents

WITH
WRIT PETITION NO.15370 OF 2022

Sangli District Central Co-operative Bank Ltd. Through its General Manager & Authorized Signatory Shri. Balasaheb Manohar Ramdurg ...Petitioner

V/s.

Shri. Bharmu @ Bramahandeo Rajaram Chavan & Ors. ...Respondents

WITH
WRIT PETITION NO.299 OF 2022

Sangli District Central Co-operative Bank Ltd. Through its General Manager & Authorized Signatory Shri. Mansing Bhimrao Patil ...Petitioner

V/s.

Shri. Shivaji Gunda Gawade & Ors. ...Respondents

WITH
WRIT PETITION NO.7514 OF 2023

Sangli District Central Co-operative Bank Ltd. Through its General Manager & Authorized Signatory Shri. Mansing Bhimrao Patil ...Petitioner

V/s.

Shri. Babasaheb Chandru Chavan & Ors. ...Respondents

WITH
WRIT PETITION NO.9838 OF 2023

Sangli District Central Co-operative Bank Ltd. ...Petitioner

Through its General Manager &
Authorized Signatory
Shri. Mansing Bhimrao Patil

V/s.

Shri. Maruti Ananda Gavali & Ors. ...Respondents

WITH
WRIT PETITION NO.790 OF 2023

Sangli District Central ...Petitioner
Co-operative Bank Ltd.
Through its General Manager &
Authorized Signatory
Shri. Mansing Bhimrao Patil

V/s.

Shri. Ashok Babaso More & Ors. ...Respondents

WITH
WRIT PETITION NO.986 OF 2023

Sangli District Central ...Petitioner
Co-operative Bank Ltd.
Through its General Manager &
Authorized Signatory
Shri. Mansing Bhimrao Patil

V/s.

Shri. Abasaheb Bhimrao Patil & Ors. ...Respondents

WITH
WRIT PETITION NO.13828 OF 2022

Sangli District Central ...Petitioner
Co-operative Bank Ltd.
Through its General Manager &
Authorized Signatory
Shri. Mansing Bhimrao Patil

V/s.

Shri. Jalindar Vishnu Yevale & Ors. ...Respondents

WITH
WRIT PETITION NO.9809 OF 2023

Sangli District Central ...Petitioner
Co-operative Bank Ltd.
Through its General Manager &
Authorized Signatory
Shri. Mansing Bhimrao Patil

V/s.

Shri. Dattatraya Shankar Sagare & Ors. ...Respondents

WITH
WRIT PETITION NO.2685 OF 2019

Sangli District Central ...Petitioner
Co-operative Bank Ltd.
Through its General Manager &
Authorized Signatory
Shri. Pravin Annu Koli

V/s.

Shri. Appaso Balaso Sawant & Ors. ...Respondents

WITH
WRIT PETITION NO.3031 OF 2020

Sangli District Central ...Petitioner
Co-operative Bank Ltd.
Through its General Manager &
Authorized Signatory
Shri. Pravin Annu Koli

V/s.

Shri. Sanjay Tukaram Mali & Ors. ...Respondents

Mr. Manoj Patil, for the Petitioner in all the Writ Petitions.

Mr. M. R. Deshpande i/b Mrs. A. R. S. Baxi, for Respondent No.1 in WP/4068/2019, WP/4070/2019, WP/4074/2019 & WP/4075/2019.

CORAM : MADHAV J. JAMDAR, J.
DATED : DECEMBER 11, 2023

JUDGMENT:

1. Heard Mr. Patil, learned Counsel appearing for the Petitioner.

2. This is a group of 16 Writ Petitions. In the Civil Writ Petition No.5856 of 2019, the Petitioner is challenging the legality and validity of the Judgment and Award dated 21st July 2017 passed by the learned Judge, Co-operative Court No.1, Sangli in Dispute No.451 of 2004 ("**first impugned Order**") as well as the legality and validity of the Judgment and Order dated 21st December 2017 passed by the learned Member, Maharashtra State Co-operative Appellate Court Mumbai, Bench at Pune in Appeal No.94 of 2017 ("**second impugned Order**").

3. By the second impugned Order, first impugned Order was set aside, the said Dispute was dismissed and the counter claim filed by the borrower was also dismissed.

4. Mr. Patil, learned Counsel appearing for the Petitioner-Bank states that the challenge in the other 15 Writ Petitions is also to similar orders.

5. Mr. Deshpande, learned Counsel appearing for Respondent No.1 in four Writ Petitions pointed out the Order dated 28th November 2017 passed in the Writ Petition No.1530 of 2014 and connected matters. He states that the dispute in all these Writ Petitions is squarely covered by the said Order 28th November 2017. He further states that the said Order has been confirmed by the Hon'ble Supreme Court.

6. Mr. Patil, learned Counsel appearing for the Petitioner fairly admits that the issues in the Writ Petition No.1530 of 2014 and connected matters are similar, however, he submits that when the Order dated 28th November 2017 had been passed, the Order dated 1st April 2014 passed by the Hon'ble State Consumer Disputes Redressal Commission, Maharashtra, Mumbai in First Appeal No.A/04/1032 to A/04/1035 and A/05/806 to A/05/808 has not been pointed out.

7. The Order dated 28th November 2017, on which Respondent No.1 placed reliance, reads as follows :-

> *"1. The petitioner-Bank challenges the judgment and order passed by the Co-operative Court No.1, Sangli, dated 8.10.2012, which was confirmed in appeal by the Co-operative Appellate Court vide judgment and order dated 25.11.2013.*
>
> *2. It is the case of the petitioner that the petitioner-Bank had extended loan to the respondents and dried*

grapes were mortgaged with the Bank. Since they are perishable goods, they were kept in a Cold storage. It appears that on 11.6.2003, there was a fire in the Cold storage and there was damage to the goods that were mortgaged with the Bank. It appears that while extending the loan, the Bank had paid the first premium of the insurance claim.

3. The petitioner-Bank had then filed a Dispute before the Co-operative Court seeking recovery of the loan amount along with interest. Defendant Nos. 2 to 8 had not filed their written statement. **The learned Co-operative Court had perused the records submitted by the Disputant Bank and had arrived at a conclusion that since the goods were pledged with the Bank, it was the duty of the Bank to take care of those goods by paying the insurance premium amount**. The Bank had paid only the first premium. The statement of account which was filed below Exhibit 37 was also not duly certified as required and the learned Court had therefore dismissed the Dispute.

4. The learned counsel for the petitioner has vehemently submitted that at the time of sanctioning the loan amount and disbursing the same, the Bank had got executed certain documents from the borrower which were signed by the borrower by which it was the duty of the borrower to take care of the goods which were pledged as well as to draw an insurance policy of the same. A promissory note was executed showing the rate of interest as 14.50%. The Bank had paid the first premium and had disbursed the loan. An agreement was

executed between the Bank and the borrower which contemplated that the Bank shall not be held liable for any damage to the goods and security of the pledged goods would be the sole responsibility of the borrower and not the Bank. There was also a consent letter signed by the borrower. It shows that upon default to pay the said amount, the Bank would auction and sell the goods which were pledged and that the borrower would not object to the same. The borrower had also deposited the 7 x 12 extracts with the Bank.

5. The learned counsel for the respondents has submitted that the very agreement and the consent terms which expect the borrower to draw insurance of the pledged goods are unreasonable. ***In fact, once goods are pledged, it will be the sole responsibility of the Bank. They do not appear to be secured loans or else the Bank could obtain certificates under Section 101 of the Maharashtra Co-operative Societies Act, 1960. In view of the facts stated hereinabove, the findings recorded by the Co-operative Court and confirmed by the Co-op. Appellate Court, do not call for any interference. Both the Courts have placed implicit reliance upon the judgment of the Hon'ble Apex Court reported in the case of Lalanprasad vs. Rahemat Ali AIR 1967 SC 1332,*** *wherein it was observed as follows :-*

> ***"If the possession of pledged goods is with the pledgee the pledge cannot maintain the suit for recovery of debt as well as retention of the pledged property would not be maintainable."***

The learned appellate Court has rightly held that as per

> ***the provisions of Section 172 of the Indian Contract Act, the pledge is bailment of goods as security for payment of debt of performance of a promise. Section 173 entitles a pawnee to retain the goods pledged as security for payment of a debt.***
>
> *6. Hence, the Petitions being sans merits, stand dismissed. Rule is discharged."*
>
> (Emphasis added)

8. The said Order has been confirmed by the Hon'ble Supreme Court by its Order dated 28th April 2018 in Special Leave Petition (Civil) Diary No(s).10502 of 2018.

9. Thus, it is clear that a learned Single Judge has specifically held that once goods are pledged, it will be the sole responsibility of the lender-Bank to secure them. A learned Single Judge has also placed reliance on the law laid down by the Supreme Court in ***Lallan Prasad v. Rahmat Ali***[1], where it has been observed that if the possession of pledged goods is with the pledgee, the pledge cannot maintain the suit for recovery of debt and that retention of the pledged property would not be maintainable. A learned Single Judge further held that, as per the provisions of Section 172 of the *Indian Contract Act*, *1872* the pledge is bailment of goods as security for payment of a debt or performance of a promise. Section 173 of the *Indian Contract Act, 1872* entitles a pawnee to retain the goods pledged as security for payment of a debt.

1 (1967) 2 SCR 233 : AIR 1967 SC 1322

10. The reliance on the Judgment of the Hon'ble State Consumer Disputes Redressal Commission will not help the Petitioner. A perusal of the Order passed by the Hon'ble State Consumer Disputes Redressal Commission clearly shows that the law laid down by the Supreme Court is not pointed out. Accordingly, no interference under Articles 226 and 227 of the Constitution of India is warranted.

11. The Writ Petitions are dismissed, however, with no order as to costs.

[MADHAV J. JAMDAR, J.]