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

WRIT PETITION NO.14232 OF 2023

Rupee Co-operative Bank Ltd.

... Petitioner

V/s.

Ramchandra Chimaji Katke & Ors

... Respondents

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Mr. Nitin Padmakar Deshpande, for Petitioner.

Mr. Gupte Deepak, for Respondents (Through V.C.).

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 5, 2023

P.C.:

1. Leave to amend. Amendment to be carried out forthwith.
2. *Prima Facie*, it appears that the decree directs the Liquidator appointed under the provisions of Maharashtra Cooperative Societies Act, 1960 to pay the amount.
3. The Appellate Court in exercise of power under Order 41, Rule 5 of the Code of Civil Procedure, 1908 had imposed condition to deposit amount for stay of the decree.
4. *Prima facie*, the plaintiff is in the shoe of creditor. The Liquidator is entitled to place holder of a decree in the shoes of creditor of the bank and according to the priorities contemplated by law need to distribute amounts of cooperative societies while carrying out liquidation. *Prima facie*, the Appellate Court could not

have imposed such condition of deposit of decretal amount on Liquidator. The impugned order imposing condition of deposit of amount cannot be sustained. Hence, pass following order:

- a) Impugned order to the extent of clauses (2) and (3) of the order dated 12 July 2023 passed by the District Judge – 17, Pune in Regular Civil Suit No.29 of 2023 is quashed and set aside.
- b) It is made clear that the plaintiff will be entitled to make a claim of amount as per the decree before the Liquidator and the Liquidator shall adjudicate upon such claim of the respondent as per the provisions of Section 109 of the Maharashtra Cooperative Societies Act, 1960.
- c) The Appellate Court shall decide the appeal on merits irrespective of setting aside of clauses 2 & 3 of the impugned order.

5. The writ petition stands disposed of in above terms. No costs.

(AMIT BORKAR, J.)