



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.15440 OF 2023
WITH
WRIT PETITION NO.15442 OF 2023
WITH
WRIT PETITION NO.15444 OF 2023

Mr. Pralhad Chavatrao Lawand

...Petitioner

Versus

Parvati Mahila Gramin Bigar Sheti

Sahakari Pathsanstha Maryadit & Anr.

...Respondents

Mr. Ashok M. Misal, for the Petitioner.

CORAM : MADHAV J. JAMDAR, J.

DATED : 11th DECEMBER 2023

JUDGMENT:

1. Heard Mr. Ashok Misal, learned Counsel appearing for the Petitioner.
2. The Petitioner in Writ Petition No.15440 of 2023 is challenging the Order dated 17th June 2023 passed by the learned Judge, Cooperative Court, Solapur below Exhibit-40 in Cooperative Case No.139 of 2015 (hereinafter referred to as “**the impugned order**”). By the said impugned Order, Application of the Petitioner seeking permission to lead further evidence has been rejected. Mr. Ashok

Misal, learned Counsel appearing for the Petitioner states that challenge in other Writ Petitions is also to similar Orders in companion Disputes pending before the Co-operative Court, Solapur and the factual position in all the three Writ Petitions is identical.

3. The factual position on record in Writ Petition No. 15440 of 2023 shows that in the year 2015, the Respondent No.1-Parvati Mahila Gramin Bigar Sheti Sahakari Pathsanstha Maryadit has filed Cooperative Case under Section 91 of *the Maharashtra Co-operative Societies Act, 1960* (hereinafter referred to as **“the said Act”**) for recovery of certain dues against the Petitioner. The factual position on record further shows that the Respondent No.1 has led evidence and thereafter, the Petitioner has also led evidence and the respective witnesses were cross-examined. Thereafter, the Petitioner has closed the evidence by filing evidence closure *pursis*. Thereafter, arguments have commenced and at that stage, the present Application in question has been filed by the Petitioner-original Opponent seeking permission to lead further evidence.

4. Mr. Ashok Misal, learned Counsel appearing for the Petitioner has pointed out the issues in the aforementioned Co-operative Case No.139 of 2015. He states that similar issues are framed in other

matters. Said issues read as under:-

ISSUES

- “1. Does disputant society prove that it is entitled to recover an amount of Rs.3,88,689/- along with future interest @ Rs.15% p.a. from opponent no.1 & 2 jointly and severally?*
- 2. Does disputant prove that it is entitled to attach the deposit of opponent and recovery loan amount?*
- 3. Do opponents prove that the loan documents are bogus and the signatures of opponents there on are false and bogus?*
- 4. Do opponents prove that they are entitled for the settlement of amount in deposit and said amount be given to them along with interest 13% p.a.?*
- 5. Do opponents prove that they are entitled for compensatory costs of Rs.25,000/- each from disputant?*
- 6. What judgment and award?”*

(Emphasis added)

5. He also pointed out the decision of the Supreme Court in ***K. K. Velusamy v. N. Palanisamy***¹ and more particularly relied on paragraphs 13, 14 and 19. The said paragraphs read as under:-

“13. The Code earlier had a specific provision in Order 18 Rule 17-A for production of evidence not previously

¹ (2011) 11 SCC 275

known or the evidence which could not be produced despite due diligence. It enabled the court to permit a party to produce any evidence even at a late stage, after the conclusion of his evidence if he satisfied the court that even after the exercise of due diligence, the evidence was not within his knowledge and could not be produced by him when he was leading the evidence. That provision was deleted with effect from 1-7-2002. The deletion of the said provision does not mean that no evidence can be received at all, after a party closes his evidence. It only means that the amended structure of the Code found no need for such a provision, as the amended Code contemplated little or no time gap between completion of evidence and commencement and conclusion of arguments. Another reason for its deletion was the misuse thereof by the parties to prolong the proceedings under the pretext of discovery of new evidence.

14. The amended provisions of the Code contemplate and expect a trial court to hear the arguments immediately after the completion of evidence and then proceed to judgment. Therefore, it was unnecessary to have an express provision for re-opening the evidence to examine a fresh witness or for recalling any witness for further examination. But if there is a time gap between the completion of evidence and hearing of the

arguments, for whatsoever reason, and if in that interregnum, a party comes across some evidence which he could not lay his hands earlier, or some evidence in regard to the conduct or action of the other party comes into existence, the court may in exercise of its inherent power under section 151 of the Code, permit the production of such evidence if it is relevant and necessary in the interest of justice, subject to such terms as the court may deem fit to impose.

(Emphasis added)

“19. We may add a word of caution. The power under section 151 or Order 18 Rule 17 of the Code is not intended to be used routinely, merely for the asking. If so used, it will defeat the very purpose of various amendments to the Code to expedite trials. But where the application is found to be bona fide and where the additional evidence, oral or documentary, will assist the court to clarify the evidence on the issues and will assist in rendering justice, and the court is satisfied that non-production earlier was for valid and sufficient reasons, the court may exercise its discretion to recall the witnesses or permit the fresh evidence. But if it does so, it should ensure that the process does not become a protracting tactic. The court should firstly award appropriate costs to the other party to compensate for the delay. Secondly, the court should take up and

complete the case within a fixed time schedule so that the delay is avoided. Thirdly, if the application is found to be mischievous, or frivolous, or to cover up negligence or lacunae, it should be rejected with heavy costs.”

(Emphasis added)

6. Perusal of the issues framed in the said Dispute clearly shows that one of the issue is whether the loan documents are fabricated and whether signatures of the Petitioner-Opponent affixed on the same are false and fraudulent. Therefore, the issue has been specifically framed regarding the said aspect. The evidence has been led by both the parties and the Petitioner-Opponent filed evidence closed *pursis* and thereafter, arguments have commenced. At that stage, an Application has been filed contending that it is necessary to examine expert witness for proving that the signatures on the loan documents are not of the Petitioner. However, it is to be noted that the said issue is specifically framed on 1st July 2017 and the evidence has been led by both parties, witnesses have been examined and evidence has been closed.

1. Mr. Ashok Misal, learned Counsel appearing for the Petitioner heavily relied on paragraphs 13, 14 and 19 of *K. K. Velusamy* (supra).

A persual of said paragraphs of the decision of the Hon'ble Supreme Court makes it clear that the Supreme Court has held that if the Petitioner satisfies the Court that if despite exercising due diligence, the evidence was not within his knowledge and could not be produced by him when he was leading the evidence, the Court may in exercise of its inherant power under Section 151 of the *Code of Civil Procedure, 1908* permit the production of such evidence if it is relevant and necessary in the interest of justice, subject to such terms as the Court may, deem fit to impose. In paragraph No.19, the Supreme Court has specifically stated that said power is to be exercised only in *bona fide* cases. It has also been held that said power is not to be used in the case where an Application to lead additional evidence is filed with a *mala fide* intention to prolong the judicial proceedings.

7. In the Application which has been filed seeking production of additional evidence, it is not stated that despite exercising due diligence, the evidence was not within the knowledge of the Petitioner and could not be produced earlier. The learned Trial Court has held that the Application is filed at a belated stage and if the Application is allowed, then the result would be delay in the disposal

of the case. Therefore, no interference under Articles 226 and 227 of the Constitution of India is warranted in the impugned Order.

8. The Writ Petitions are dismissed however, with no Order as to costs.

[MADHAV J. JAMDAR, J.]