

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

Writ Petition No.1070 of 2018

The Akola District Central Co-Op. Bank Ltd., Thr. Its Chief Executive Officer, Shri Gajanan S. Pati
Vs

The Maharashtra State Co-Op. Cotton Gowers Marketing Federation Ltd., Thr. Its Zonal Manager, Akola

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri A.P. Tathod, Advocate for the Petitioner

Shri V.G. Wankhede, Advocate for the respondent No.1

CORAM : ANIL S. KILOR, J.

DATED : 08th March 2023

1. Heard.

2. In this petition, a challenge is raised to the judgment and order dated 29.09.2017 passed by Maharashtra State Co-operative Appellate Court, Mumbai Bench at Nagpur in Appeal Nos.30 of 2017 and 39 of 2017, dismissing the appeals and upholding the judgment and order dated 15.03.2017 passed by Judge, Co-operative Court, Akola in Dispute No.862 of 2004, partly allowing the Dispute and holding the petitioner as well as the respondent No.2 jointly and severally to pay Rs.30,84,502.30 along with interest at the rate of 12% p.a. w.e.f. 20.07.2002 till complete realization of the amount.

3. The facts of the case in brief are as under:

The respondent No.1 is the federation registered under the provisions of the Maharashtra Co-operative Societies Act, 1960.

The respondent No.2 is the co-operative society, who purchased press cotton bales from the petitioner-Federation.

4. The respondent No.2 accordingly, placed an order with respondent No.1-Federation for supply of the press cotton bales and accordingly, executed a contract.

5. In pursuance of the said contract, the respondent No.1 supplied 525 press cotton bales to the respondent No.2 from 20.07.2002 to 18.10.2002. However, the respondent No.2 failed to make payment of the same as per the terms of the contract and therefore, the respondent No.1 filed the Dispute for recovery of amount of Rs.30,84,502.50. The said Dispute was partly allowed. As the petitioner stood as a guarantor, the Co-operative Court directed the petitioner as well as the respondent No.2 jointly and severally to pay Rs.30,84,502.30 along with interest at the rate of 12% p.a. w.e.f. 20.07.2002 till complete realization of the amount.

6. The petitioner feeling aggrieved for the said judgment and order dated 15.03.2017 carried out an appeal before the Appellate Court in Appeal No.39 of 2017, which came to be dismissed and hence, this writ petition.

7. The only argument made by the learned counsel for the petitioner is that a proposal, in respect of waiver of interest or reduction of the amount of interest, is pending with the respondent No.1-Federation, however, there is no decision on the same from last six months.

8. It is pointed out that the letter (Exh.69) issued by the petitioner, acknowledging the fact that the petitioner stood as the guarantor to the transaction of the respondent No.2 does not refer to the interest rate and as such the petitioner is not liable to pay interest at the rate agreed by both the parties i.e. respondent Nos.1 and 2.

9. The learned counsel for the respondent No.1-Federation submits that petitioner, being guarantor, cannot deny the amount of interest. It is submitted that the contract discloses the rate of interest agreed between the parties and when the petitioner stood as the guarantor, he stood guarantor to the principal amount as well as to the interest amount. He accordingly, prays for dismissal of the present writ petition.

10. In the present matter, after going through the record, it is clear that the petitioner admitted the document Exh.69, wherein the petitioner has stated that bank/petitioner stood as the guarantor to the transaction taken place between the respondent Nos.1 and 2. Though Exh.69 does not refer to the interest amount, however, being guarantor, the petitioner is jointly and severally responsible for payment of principal amount as well as interest amount.

11. In the circumstances, considering the concurrent findings recorded by both Courts below, as regards joint and several liability of the petitioner, in this case, I do not find any merit for interference.

12. However, it is made clear that it is open for the respondent No.1-Federation to consider a request made by the petitioner as regards waiver or reduction of interest amount. In the circumstances, the writ petition is **dismissed**.

[ANIL S. KILOR, J.]