

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

Writ Petition (WP) No. 7737 of 2022

Purushottam S/o Trimbak Vyas

Versus

The Akola Urban Co-operative Bank Ltd., Akola and another

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

Court's or Judge's Order

Shri Shankar Borkute, Advocate for the petitioner.

Shri V.R.Deshpande, Advocate for the respondent no.1.

CORAM : ANIL S. KILOR, J.

DATED : 7th JUNE, 2023.

In the present writ petition, the judgment and order dated 12th October, 2022 passed by District Judge, Akola, dismissing the application filed by the petitioner under Section 34 of the Arbitration and Reconciliation Act, 1996 (in short referred to as “Arbitration Act, 1996”) for setting aside the order dated 20th July, 2015, is under challenge.

2. The Commissioner for Co-operation and Registrar of Co-operative Society has referred the dispute as regards the election held in January, 2015, filed by the petitioner to the Arbitrator and accordingly the award was passed by the Arbitrator holding that the

arbitration proceeding is not tenable and directed the petitioner to pay Rs.1,00,000/- as compensatory costs.

3. Since the term of the election which was in dispute is already over, this matter has become infructuous. Nonetheless, the learned counsel for the petitioner submits that the point raised in this petition is in respect of compensatory costs of Rs.1,00,000/-.

4. It is submitted that the amount of Rs. 1,00,000/- includes the Arbitration Fees. He further points out that 50% of the Arbitration Fees would be Rs.47,000/-, whereas the petitioner is directed to pay Rs.1,00,000/-.

5. Shri Deshpande, learned counsel for the respondent-bank fairly makes a statement that as the petitioner has failed to pay Rs.1,00,000/- as directed by the Arbitrator, the Bank has deposited Rs. 47,000/- which was directed to be paid by the petitioner. It is submitted that accordingly, the recovery proceeding was filed.

6. Considering the fact that the matter has become infructuous as far as the election is concerned, the only dispute about the amount to be paid by the petitioner as compensatory costs is pressed in service, I have perused the record and the impugned judgment and order.

7. From the record it appears that the dispute was filed before the Commissioner who referred it to the Arbitrator and the Arbitrator has held that the election dispute filed by the petitioner is not tenable and imposed compensatory costs of Rs.1,00,000/-.

8. The record further shows that the petitioner had raised objection to the appointment of Arbitrator and before deciding the same the award was passed.

9. In the circumstances, I am of the opinion that the compensatory costs imposed by the Arbitrator is unwarranted and therefore the award needs to be modified by directing the petitioner to pay costs of Rs.47,000/- as Arbitration Fees. Accordingly, I pass the following order.

- i. The writ petition is partly allowed;
- ii. The impugned judgment and order dated 12th October, 2022 passed by the District Judge, Akola is hereby quashed and set aside and thereby the award passed by the Arbitrator is modified to the following effect that, the applicant - Shri P.T.Vyas shall pay Rs.47,000/- towards arbitration fees to the respondent bank, as the bank has already paid the said amount on behalf of the petitioner, within a period of four weeks from today.

iii. Needless to mention that the Bank shall withdraw the proceedings filed for recovery of Rs.1,00,000/- against the petitioner, in case, the petitioner deposits of Rs.47,000/- as per the modified award, within stipulated period.

[ANIL S. KILOR, J.]