IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

903 WRIT PETITION NO. 7049 OF 2022

1. Saroj Dilip Gandhi,
Age: 60 years, Occu.: Business,
R/o.: Devendra Bunglow, Anand Rushiji Road,
Ahmednagar, Dist.: Ahmednagar

2. Suvendra Dilip Gandhi,
Age: 42 years, Occu.: Business,
R/o.: Devendra Bunglow, Anand
Rushiji Road, Ahmednagar,
Dist.: Ahmednagar

3. Vaibhav Dharmnath Khalate,
Age: 38 years, Occu.: Business,
R/o.: Shirala, Tal.: Pathardi,
Dist.: Ahmednagar **.. Petitioners**

Versus

. Bhaichand Hirachand Raysoni Multi State
Co-operative Credit Society Limited
(under liquidation) through Suresh
Sitaram Sapkale, Age: 42 years,
Occu.: Service, R/o.: E-2, 3, 4, 5,
Raymond Chaufuli, Ajintha Colony,
Jalgaon Road, Dist. Jalgaon **.. Respondent**

...

Advocate for the Petitioners : Mr. Shaikh Mazhar A. Jahagirdar
Advocate for Respondent : Mr. Anandsingh Sangramsingh Bayas

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CORAM : ARUN R. PEDNEKER, J.

DATE : 10th MAY, 2024

JUDGMENT:

1. Heard.

2. By the present writ petition, the petitioners are challenging the impugned order dated 17.01.2022, whereby the application filed by the Judgment Debtor at Exhibit 32 for adjustment of Rs.1,15,00,000/- in the loan account and for direction to issue the fresh account statement by the Bank is rejected, and also, challenges order dated 16.03.2022, whereby the applicant prayed in application at Exhibit 38, that the list of fixed deposits of the near relatives of the petitioner are given to the Bank and the same to be adjusted towards the loan account of petitioner no.1.

3. This court while issuing notice, on 06.10.2022, this court has recorded the submissions of the petitioners as under,

> ***"According to the petitioner he has transferred an amount of Rs. 1,15,00,000/- to the respondent/decree holder on 13.08.2018 and fixed deposit receipts totally amounting to Rs. 1,90,00,000/- are given to the respondent/decree holders. Thus, the petitioner has paid decretal amount, however, though the petitioner requested the Executing Court to adjust the said amount, applications filed by the petitioner in that behalf are rejected, since, the record of the respondent was not available for verification of the same. Order of civil prison is passed against the petitioners on 16.03.2022. The petitioners apprehends that any time said order can be executed."***

and, accordingly, this court noted the submissions of the petitioner as above and granted stay in terms of prayer clause "D".

4. Brief facts leading to the filing of the petition can be summarized as under:-

A. It is the contention of the petitioners that the respondent bank filed the execution petition bearing Arbitration Darkhast No.1999 of 2021 against the petitioners and three others contending therein that petitioner no.1 had been given a term loan of Rs.2,50,00,000/-, on 25.03.2014, through it's Navi Peth, Jalgaon branch office, on the condition of repayment within 48 months from the date of disbursement with interest thereon at the rate of 20% per annum.

B. The petitioners no.2 and 3 are the guarantors of the loan. Petitioner no.1 failed to repay the loan, as such, the matter was referred to the arbitrator and the award was passed, on 18.04.2015, against the petitioners and the guarantors.

C. The respondent / bank thereafter filed execution of the same before the Principal District Judge, Ahmednagar, which has been assigned to the C.J.S.D., Ahemednagar. Petitioner No.2 filed an application at Exhibit 32 and prayed for producing the account statement on record by the decree holder. It is contended that petitioner no.1 has deposited an amount of Rs.1,15,00,000/- by way of RTGS, on 13.08.2018 from Nagar Urban Co-operative Bank (Scheduled) Multistate Ltd., Ahemednagar after the arbitration decree and before filing of the execution petition. It is the contention of the petitioners that the respondent bank in it's reply submitted that the respondent society is in liquidation and the relevant papers has not been received. It is further contended by the petitioner that the bank in it's reply has stated that the entire documents in relation to the borrowers accounts are in the custody of the investigating officer as such it will not be possible to produce the record statement of account in the court.

D. The executing court by order dated 17.01.2022 was pleased to reject the application at Exhibit 32 and it held that the court cannot go beyond the decree. Thereafter, petitioner no.1 filed another application at Exhibit 38 seeking direction to the bank to adjust an amount of fixed deposit of around Rs.1,90,02,124/- submitted to the bank. The same was also rejected by the executing court, on 16.03.2022. Thus, against the order dated 17.01.2022, below Exhibit 32 and, 16.03.2022, below Exhibit 38, the present writ petition is filed, so also, the order of the executing court dated 16.03.2022, below Exhibit 28, whereby the executing court has also issued arrest warrant under Order XXI Rule 38 of the CPC against petitioners no.2 and 3 is also challenged.

5. It is the contention of the petitioners that the application at Exhibit 32 by petitioner no.2 was required to be allowed in view of provisions of Order 21 Rules 1 and 2 of the CPC and that it was necessary under Order 21 Rules 1 and 2 of the CPC to call for the account statement. It is further contention of the learned counsel for the petitioners that Exhibit 38 filed by petitioner no.1 so as to adjust the list of fixed deposit submitted to the respondent credit society towards the recovery amount ought to have been allowed as the respondent has neither disputed nor denied of such fixed deposit.

6. The learned counsel for the petitioners submits that, the respondent has come up with the case and the entire record of the respondent in respect of borrowers were in the custody of the earlier liquidator Shri Jitendra Kandare but after the complaints, the said record is in the custody of Daccan Police Station, Pune City, and, as such, it is not in a position to produce the same before the executing court.

7. It is further contention of the petitioners that since substantial amount of arbitration award has been deposited by the judgment debtor and unless the account statement and exact figure of amount if any remained to be recovered is brought before the learned executing court, the execution shall not be proceeded.

8. Per contra, the learned counsel appearing for the respondent have filed reply and has stated that the liquidator came to be appointed over the society and the liquidator has filed an affidavit in the matter. The liquidator submitted that the society has more than three lacs depositors who have deposited approximately Rs.740 Crores. The said society has nearly 264 branches spread over six states. The liquidator appointed on the said society, after taking charge, he has taken steps to collect the record from all these branches and audit work by collecting the necessary information is in progress. There are various criminal cases initiated against the managing committee members and there was hue and cry among the depositors for getting the refund of the deposit.

9. On affidavit it is stated that the petitioners obtained a loan of Rs.2,50,00,000/- in the year 2014. The petitioners failed to repay the loan amount as per the loan agreement, as such, the respondent filed recovery proceedings under section 84 of the Multi-State Co-operative Society Act. The learned counsel further submits that after following due

process of law and considering the documents on record passed the arbitral award dated 18.04.2015.

10. In the year 2018 the society filed the execution proceedings for the amount of Rs.4,86,98,690/- as per the award passed by the learned arbitrator. The liquidator has accepted that as a matter of record, petitioner no.1 has deposited Rs.1,15,000/- in her loan account by RTGS. The judgment debtors, since, 2018 made frivolous spurious objections with mala fide intention to delay and obstruct the execution of award.

11. The liquidator has also stated in his affidavit that the petitioner has filed various application for statement of account and the respondent / liquidator has replied to the same indicating that as on 23.03.2022, Rs.7,21,27,421/- is due against the petitioners.

12. Having considered the rival submissions, it is to be noted that the respondent / bank has accepted the payment of Rs.1,15,00,000/-. However, on perusal of the statement produced as regards the deposit of near relatives of petitioner no.1 with prayer to adjust the same in loan account, the petitioners seek to adjust the fixed deposit of third persons into the loan account of petitioner no.1. These are deposits of other customers. They may take steps to withdraw from

their fixed deposits and make payment into the loan account of the petitioner. The bank cannot accept the request of petitioner no.1 to adjust the amount deposited by other customers of the bank into the loan account of petitioner no.1 without having a specific request from the concerned depositors for liquidating their deposits and, further, requested the bank to transmit the same into the loan account of the petitioner. Merely by giving some statements of amounts deposited by other customers, the same cannot be adjusted towards the loan account of the petitioner without the concurrence of the depositors.

13. If the depositors are interested in liquidating their deposits and making payment into the loan account of the petitioner, the depositors are free to do so individually. The bank cannot on an application by the judgment debtor liquidate deposits of third person and, as such, something that is unlawful cannot be undertaken by the bank at the instance of the petitioners.

14. Payment of Rs.1,15,00,000/- is admitted by the bank. Admittedly, no other payment is made by the petitioner after taking loan of Rs.2,50,00,000/- in the year 2014. His only contention is that he has given the list of deposits of close relatives of petitioner no.1 to be liquidated and adjusted in the loan account of petitioner no.1. However, such an exercise cannot be undertaken by the bank unless those

individuals take necessary steps to liquidate their deposits and adjust their amounts in the loan account of the petitioner. The bank is under liquidation, as such, only the amount that may be available on liquidation of the deposits to the depositors could be adjusted to the loan account of petitioner no.1 and only on the specific request of the concerned customer.

15. It is the contention of the petitioners that in the execution proceedings all the contentions have to be decided by the executing court on merits and the executing court has failed to do so. However, in the instant case, the petitioner has not made out case of payment of loan amount. Admittedly, the petitioner has only paid Rs.1,15,00,000/- and he has to pay the remaining decretal amount along with accrued interest.

16. The liquidator has stated in it's affidavit that the decretal amount is Rs.2,86,81,589/- along with future interest and, as per the loan statement, amount of Rs.7,21,27,421/- is due against the petitioner as on 23.03.2022. The respondent / liquidator is directed to file the said statement of outstanding dues before the executing court before proceeding in the execution.

17. In view of the same, the writ petition stands dismissed with above observations. However, the petitioners will not be taken in civil prison for the period of ten (10) weeks from today.

[ARUN R. PEDNEKER, J.]

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