IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6678 OF 2015.

M/s. Jaya Vijaya Technocrafts thr. Its Proprietor
Shri Suresh Sakhalkar ...Petitioner.

Versus

Warna Sahakari Bank Ltd. thr. Its
Chairman/Secretary and Ors. ...Respondents.

Mr. S. S. Patwardhan a/w. Mr. Akshay Hardas for the petitioner.

Coram : Sharmila U. Deshmukh, J.
Date : 27th June, 2024.

P. C. :

1. By this petition, the challenge is to the judgment and award dated 22nd September, 2014 passed by the Maharashtra State Co-operative Appellate Court in Appeal No.113/2013 dismissing the appeal and thereby upholding the judgment and award dated 24th June 2013 passed by the Appellate Court in Dispute CCS/237 of 2003.

2. The facts of the case are that the respondent No.1 Bank had disbursed cash credit loan of Rs.10 lakhs on 7th August, 1999 to the present petitioner who was the sole proprietor. Respondent Nos. 2 to 4 were the guarantors. It was the contention of respondent No.1-Bank that the borrower and the sureties have executed necessary loan documents and had agreed to repay the loan with interest at the rate of 17.5% per annum with quarterly rest and had also agreed to pay penal interest @ 2% on default. The loan was to be repaid on 1st June 2000 and as there was default, as of 31st December 2000, the outstanding amount was Rs.8,63,838.90/-. As the petitioner failed to clear the outstanding loan amount , dispute came to be filed.

3. The petitioner herein resisted the dispute and denied the claim of the bank. The contention of the petitioner was that it was informed by the Bank that interest would be 15% per annum and his signatures were obtained on blank documents. It was further contended that delay interest was not agreed upon and that the entire cash credit amount was not credited to the account of the petitioner. It was further contended that the petitioner firm is going through financial crisis and in such circumstances he may be permitted to repay the loan by quarterly installments of Rs.25,000/- .

4. The parties went to trial. Respondent No.1-bank examined one witness and petitioner examined himself. The Trial Court on consideration of evidence on record decreed the Dispute along with interest at 12% per annum from 1st April 2003 i.e. from the date of filing of the suit till payment or realization thereof.

5. As against this Appeal No.113 of 2013 came to be filed before the Appellate Court. The Appellate Court re-appreciated the material on record and after considering the evidence dismissed the appeal.

6. Heard Mr. S. S. Patwardhan a/w. Mr. Akshay Hardas for the petitioner.

7. Learned counsel appearing for the petitioner would submit that it was specific case of the petitioner that his signatures were obtained on bank loan documents. He would further submit that by reason of financial constraint, permission was sought to repay loan by quarterly installment of Rs.25,000/-. He submits that the Appellate Court while rejecting the appeal has failed to consider the submissions of the petitioner as regards repayment of the loan by quarterly installments of Rs.25,000/-. He submits that the evidence on record has not been appreciated by the Appellate Court which warrants interference by this Court.

8. Considered the submissions and perused the record.

9. Perusal of the judgment of the Co-operative Appellate Court would indicate that what was sought to be disputed was that the interest amount was agreed at 15% per annum and the bank by playing fraud has disbursed loan at interest of 17.5% and in default interest at the rate of 2% . As it was specific case of fraud being alleged by the petitioner the burden was upon the petitioner to establish the same. From the material which has come on record, the burden which was cast upon the petitioner to prove the case of fraud is not discharged. The disbursement of the cash credit loan has not been disputed by the petitioner and what is only disputed is the rate of interest. The Appellate Court has perused the entire record including the loan documents which indicate that the petitioner has executed loan documents and has accepted the case of respondent No.1-bank. Once the contract has been executed in writing between the parties the same forms conclusive evidence of the arrangement between the parties. If any fraud is alleged the same is required to be proved by the person alleging fraud. In the present case as the execution of the loan document was duly proved as well as the promissory note and application shows that agreed interest was Rs.17.5% plus 2% penal interest, the Appellate Court has rightly rejected the appeal as dispute which was sought to be raised by the petitioner was only to the extent of the interest amount which has been charged. The submission that the offer of Rs. 25,000/- payment by quarterly installments has not been considered is irrelevant as any offer which has been made by the petitioner cannot be the subject matter of the dispute. Respondent No.1- bank has come with specific case of default in repayment of cash credit loan and sought money decree. It was then open for the petitioner in the execution proceedings to make the necessary payment to satisfy the decree. Said ground cannot form part of the challenge to the decree.

10. Upon perusal of the entire record, the Appellate Court has rightly appreciated the evidence on record and has arrived at a correct finding.

11. In light of the same, there is no warrant to interfere in the impugned judgment and award of the Co-operative Appellate Court in exercise of powers under Article 227 of the Constitution of India. Petition being devoid of merits stands dismissed.

[Sharmila U. Deshmukh, J.]