

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1793 OF 2024

Priti Sundeep Patel, Thr. Her C.A. Sanjay Petitioner
N. Ghuge

V/s.

State of Maharashtra, Thr. GP, A.S. High Respondents
Court Bombay & Ors.

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Mr.K.V. Tembe a/w Mr.D.S. Mahamuni, for the Petitioner.
Ms.V.R. Raje, AGP, for Respondent-State.
Ms.Neha Bane h/f Mr.Subhash Bane with Mr.D.A. Nalwade, for
Respondent Nos.3 and 4.

CORAM : R.M. JOSHI, J.

DATE : 09th SEPTEMBER 2024

P.C:-

. Heard.

2. The Petition takes exception to the order dated 29th
June 2022 passed in Revision Application No.441 of 2018.

3. The facts which lead to the filing of the Petition can
be narrated in brief as under:-

The Petitioner claims himself to be the member of
the Society and owner of the subject flat. The execution

proceedings were initiated for the recovery of the dues under judgment and award dated 13th January 2016. Pursuant thereto the subject flat was attached. The Petitioner raised objection before Respondent No.3 with regard to the said attachment unsuccessfully. Thereafter Revision proceedings were filed bearing No.441 of 2018 before Respondent No.2. Since, the Revisional Authority refused to entertain the Revision and passed order dated 29th June 2022, present Petition came to be filed.

4. The learned counsel for the Petitioner has drawn attention of this Court to the fact that previously a proceeding was filed under Section 101 of the Act against the Original owner of the subject flat. Since no recovery certificate was issued against said owner, dispute bearing No.CC/1/30/2014 came to be filed before the Co-operative Court. The Co-operative Court by passing order dated 23rd October 2017 allowed the dispute. Consequently award was passed and the same was put for execution. It is his submission that, the petitioner was not party to the said dispute and as such question of challenging the said order did not arise. It is his further contention that, the Co-

operative Court while passing judgment and award has not specifically granted interest on the cash credit facility of Rs.15 lakhs and Rs.12 lakhs each for the period prior to the filing of the dispute. According to him unless such specific order is passed, there cannot be recovery of the interest as claimed by the Respondent. To support his submission reliance is placed on the judgment of the Full Bench of this Court in case of *Union of India V/s. Dalpat Gaurishankar Upadyay*¹ and judgment of the Supreme Court in case of *Dwaraka Das V/s. State of Madhya Pradesh and Another*²

5. The learned counsel for the contesting Respondents supported the impugned order. It is his submission that, unless the order passed by the Co-operative Court and award is challenged, it is not open for the Petitioner to raise the above arguments.

6. There is no dispute about the fact that, the order passed by the Co-operative Court has not been challenged till date and has practically attained finality. There is further no

1 Suit No.975 of 1988 decided on 2nd April 1992 of Bombay High Court.

2 1991 (I) OLR (SC) 388

denial about the fact that, the execution proceedings the subject flat is already attached. In the light of these facts if, the order passed by the Co-operative Court is considered then the same reveal that the Co-operative Court has directed the opponents to pay interest at the rate of 19% per annum as agreed to the Disputant Bank. For ready reference the operative part of the order is reproduced herein below :

- “1. The Dispute is allowed with costs.*
- 2. The Opponent/Opponents are directed to pay the cash credit facility amount Rs.15 lacs and Rs.12 lacs availed by M/s.Pacific Mfg. And M/s. Roll ball Corporation @ 19% per annum as agreed to the Disputant Bank.*
- 3. Award be drawn up accordingly.”*

7. Thus, apart from the fact that, the Petitioner herein has not challenged this order, the question arises as to whether there is any substance in the contention of the Petitioner that there is no interest granted by the Co-operative Court for the period prior to the filing of the dispute. As recorded herein above the order of the Co-operative Court is clear and unequivocal to say that the interest at the rate of 19% would be as agreed to the Disputant Bank. The said order is thus is absolutely clear to cover even the interest for the period prior to the filing of the

dispute. In respectful view of this Court, the judgment cited supra have no application to the facts of the present case, considering the peculiarity of facts involved herein.

8. The only issue sought to be canvased on behalf of the Petitioner, therefore sans merit. This Court finds no reason or justification to cause any interference in the impugned order. As a as result of this, the Petition stands dismissed.

9. All Interim and Civil Applications are disposed of.

(R.M. JOSHI, J.)