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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.862 OF 2025

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Baburao Kamgonda Chougule & Anr. ... Petitioners

V/s.

Veershaiv Nagri Bigarsheti Sahakari
Patsanstha Maryadit & Anr. ... Respondents

Mr. Hrishikesh S. Shinde for the petitioners.

Mr. Suhas S. Inamdar for respondent No.1.

CORAM : AMIT BORKAR, J.

DATED : APRIL 9, 2025

P.C.:

1. Rule. Rule made returnable forthwith. By consent of the learned counsel for the parties, heard finally.
2. The challenge in the present writ petition is to the order dated 21st October 2024 passed by the Maharashtra State Cooperative Appellate Court, Mumbai, whereby the petitioners have been directed to deposit an amount of Rs.7,00,000/- with respondent No.1-Society as a pre-condition for hearing of the miscellaneous application filed by the petitioners for recalling of the award passed under Section 91 of the Maharashtra Cooperative Societies Act, 1960.
3. The factual matrix necessary for adjudication of the present petition is that the petitioners had preferred an application seeking

recalling of the award passed in favour of the respondent-Society for recovery of an amount allegedly disbursed to the petitioners. Considering the nature of the serious dispute raised by the petitioners in the recall application, the Cooperative Court, by its interim order, had directed the petitioners to deposit an amount of Rs.3,50,000/- as a condition for grant of stay of the execution of the award. The said order, however, came to be challenged by the respondent-Society before the Maharashtra State Cooperative Appellate Court. By the impugned order dated 21st October 2024, the Appellate Court has modified the said condition and enhanced the amount of deposit to Rs.7,00,000/-. Aggrieved thereby, the petitioners have approached this Court.

4. Learned counsel appearing for the petitioners would submit that the Cooperative Appellate Court was not justified in enhancing the amount of deposit from Rs.3,50,000/- to Rs.7,00,000/- without considering the prima facie case and the financial capacity of the petitioners. It is submitted that the recall application raises substantial issues which go to the root of the matter and, therefore, the adjudication of the same on merits ought not to be stifled by imposing onerous conditions.

5. Per contra, learned counsel appearing for the respondent-Society, on instructions, submits that the Society has no objection to the recall application filed by the petitioners being decided on its own merits without insisting upon the deposit of the enhanced amount as directed by the Appellate Court.

6. Having heard the learned counsel for the parties and having

perused the record, it appears that the impugned order directing the deposit of Rs.7,00,000/- as a condition for hearing the recall application may, in the facts and circumstances of the case, operate as a fetter on the petitioners' right to seek adjudication of their application on merits.

7. In view of the fair stand taken on behalf of the Society that it is agreeable for the decision of the recall application on merits without insisting upon the deposit as directed by the Appellate Court, the impugned order dated 21st October 2024 deserves to be quashed and set aside.

8. Accordingly, the impugned order dated 21st October 2024 passed by the Maharashtra State Cooperative Appellate Court, Mumbai, is hereby quashed and set aside.

9. The Cooperative Court shall now proceed to decide Miscellaneous Application No.17 of 2019 preferred by the petitioners, strictly on its own merits and in accordance with law, without being influenced by any observations made in the impugned order. Both the parties shall be afforded an opportunity of hearing before adjudication of the application.

10. It is further directed that during the pendency of the Miscellaneous Application No.17 of 2019 before the Cooperative Court, the award in question shall not be executed against the petitioners.

11. The Cooperative Court is requested to decide Miscellaneous Application No.17 of 2019 expeditiously, and in any event, within a period of four months from the date of receipt of this order.

12. It is clarified that this Court has not expressed any opinion on the merits of the controversy between the parties.

13. The writ petition stands disposed of in the aforesaid terms. No order as to costs.

14. Pending interlocutory application(s), if any, stand disposed of.

(AMIT BORKAR, J.)