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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4361 OF 2011
WITH
CIVIL APPLICATION NO. 1581 OF 2014
IN
WRIT PETITION NO. 4361 OF 2011
WITH
CIVIL APPLICATION NO. 1582 OF 2014
IN
WRIT PETITION NO. 4361 OF 2011
WITH
CIVIL APPLICATION NO. 1583 OF 2014
IN
WRIT PETITION NO. 4361 OF 2011
WITH
CIVIL APPLICATION NO. 1584 OF 2014
IN
WRIT PETITION NO. 4361 OF 2011
WITH
CIVIL APPLICATION NO. 1587 OF 2014
IN
WRIT PETITION NO. 4361 OF 2011
WITH
CIVIL APPLICATION NO. 1585 OF 2014
IN
WRIT PETITION NO. 4361 OF 2011
WITH
CIVIL APPLICATION NO. 1586 OF 2014
IN
WRIT PETITION NO. 4361 OF 2011
WITH
CIVIL APPLICATION NO. 1588 OF 2014
IN
WRIT PETITION NO. 4361 OF 2011

The Maharashtra State Coop. Housing Finance Corporation Ltd., Bombay, Through Its Branch Manager … Petitioner

V/s.
The President, Sushilnagar Sahkari Grah Nirman Sanstha Niyamit & Ors. ... Respondents

Ms. Gaurangi Patil with Ms. Mayureshwari Kordey i/by G. P. & Associates for the petitioner.

Mr. Hrishikesh S. Shinde for respondent Nos.10, 15, 23, 27, 35, 37, 52, 45A, 45B.

CORAM : AMIT BORKAR, J.

DATED : APRIL 28, 2025

P.C.:

1. Challenge in this writ petition filed under Article 227 of the Constitution of India is to the judgment and award passed by the Cooperative Appellate Court, whereby the Appellate Court dismissed the petitioner's Appeal No.138 of 2022. The appeal arose from the judgment and award dated 25th September 2002 passed by the Cooperative Court, Solapur in Dispute No.513 of 1990, by which the dispute filed by the petitioner for recovery of loan amount disbursed in favour of respondent No.1-society and its members was dismissed.

2. The facts and circumstances giving rise to the present writ petition are as under: The petitioner is a bank which had sanctioned and disbursed loan facilities to respondent No.1-society and its members for the purpose of construction of their houses. The land on which the houses were to be constructed belonged to the society, and each member was allotted an individual plot for construction. Towards the construction of these houses, a loan amount of ₹11,03,000/- was sanctioned and disbursed to the society in stages. The loan disbursement commenced on 3rd February 1977. As per the agreement between the parties, the applicable rate of interest was 10.75% per annum initially, later revised to 13.25% per annum.

3. According to the petitioner-bank, the respondents committed defaults in payment of regular installments towards repayment of the loan. Consequently, the petitioner issued a demand notice dated 21st May 1990, calling upon the respondents to pay the balance outstanding amount. Despite issuance of such notice, the respondents failed to clear the outstanding dues. Hence, the petitioner was constrained to file Dispute No.513 of 1990 before the Cooperative Court.

4. The respondents resisted the dispute by filing their written statement. It was their case that the total amount disbursed by the bank was ₹9,30,000/-, and not ₹11,03,000/- as claimed by the petitioner. They further contended that they had already repaid ₹4,35,173/- and in addition, had deposited another sum of ₹5,29,308/-, which, according to them, had not been properly accounted for by the petitioner-bank. Thus, it was contended that the respondents had actually paid an amount exceeding their liability and no further amount remained due and payable. On this basis, the respondents prayed for dismissal of the dispute.

5. The Cooperative Court, upon appreciation of the evidence placed on record, dismissed the dispute. The Trial Court found that as per the demand notice dated 21st May 1990, the total outstanding amount claimed by the petitioner-bank was ₹3,33,544/-. However, the respondents had already deposited a total amount of ₹9,44,398/- towards the loan account. Hence, the Court recorded a finding that the respondents had paid an amount in excess of ₹14,398/- over and above the claimed dues. Relying on these findings, the Cooperative Court concluded that no amount was due from the respondents and accordingly dismissed the dispute filed by the petitioner.

6. Aggrieved by the dismissal of the dispute, the petitioner preferred an appeal before the Cooperative Appellate Court. The Appellate Court, however, upon reappreciation of the material on record, found no infirmity in the reasoning assigned by the Cooperative Court. The Appellate Court accepted the finding that the respondents had paid more than the claimed outstanding amount. Consequently, the Appellate Court dismissed the petitioner's appeal by confirming the judgment of the Cooperative Court.

7. It is relevant to note that during the pendency of the present writ petition, it has been brought to the notice of this Court that several respondents have expired. The bank has placed on record that it is not in possession of information regarding the names and addresses of the legal representatives of the deceased respondents. However, by way of abundant caution, the petitioner-bank has published a public notice in the newspaper *Business Standard* (Pune Edition) dated 4th April 2025, inviting the legal representatives to participate in the proceedings. Despite the said public notice, no appearance has been entered on behalf of all respondents.

8. Upon careful perusal of the record, it emerges that the demand notice referred to in paragraph 15 of the Cooperative Court's judgment makes mention of an amount of ₹3,33,544/-, which represented the balance of installments. On a close reading of the demand notice dated 21st May 1990, it is evident that the bank had reserved unto itself the right to recover the entire outstanding loan amount upon the borrower committing default in the payment of three installments. Thus, the expression contained in the notice was referable only to the defaulted installments and not to the entire outstanding loan amount.

9. However, the Cooperative Court appears to have proceeded under the mistaken impression that the amount of ₹3,33,544/- reflected the entire dues recoverable from the borrower. In paragraph 16 of its judgment, the Trial Court took into consideration two amounts of deposits made by the respondents — one amounting to ₹5,29,308/- and the other to ₹4,15,090/-, aggregating to ₹9,44,398/-. The Trial Court, on the basis of this material, recorded a finding that the total disbursement made by the petitioner-bank was ₹9,30,000/-, and since the borrowers had paid ₹9,44,398/-, an excess payment of ₹14,398/- had been made by them. On this basis, the dispute was dismissed. The Appellate Court, without undertaking an independent and critical re-evaluation of the evidence, simply affirmed the finding of the Trial Court by assigning similar reasons.

10. In my considered view, the approach adopted by the Appellate Court is legally unsustainable. It was incumbent upon the Appellate Court, as the final fact-finding authority, to adjudicate upon the material placed on record and ascertain the principal sum adjudged as on the date of filing of the dispute. It was equally necessary for the Appellate Court to determine the agreed rate of interest, the rate of pendente lite interest, and the rate of future interest, if any, payable by the borrowers. The Appellate Court ought to have considered the payments made by the borrowers not in isolation, but in the context of the total liability including the accrued interest up to the relevant date.

11. The absence of such a critical adjudication renders the impugned judgment legally infirm. A judicial authority exercising appellate jurisdiction is required not merely to endorse the findings of the Trial Court but to apply its own mind independently to the evidence and legal issues arising in the case. In the present matter, such an exercise appears to have been lacking.

12. In these circumstances, the proper course would be to remand the matter to the Cooperative Appellate Court with a direction to re-adjudicate the dispute afresh, keeping in view the observations made herein. The Appellate Court shall undertake a proper exercise to ascertain (i) the principal sum due, (ii) the contractual rate of interest agreed between the parties, (iii) the deposits made by the respondents, and (iv) the net balance payable, if any.

13. In view of the above, and so as not to prolong the proceedings indefinitely, it would be appropriate that the Cooperative Appellate Court shall proceed to adjudicate the matter against the surviving respondents and in relation to the deceased respondents, shall pass appropriate orders as permissible in law, bearing in mind the absence of representation despite substituted service.

14. For the reasons stated above, I am of the opinion that interest of justice would be best served if the Cooperative Appellate Court is directed to reconsider the dispute afresh, uninfluenced by the observations made either by the Trial Court or by the Appellate Court in their earlier decisions.

15. Having regard to the fact that the original loan transaction is of the year 1977 and the dispute is pending since 1990, it would be appropriate to direct that the Cooperative Appellate Court shall decide the appeal expeditiously, preferably within a period of six months from the date of receipt of this order.

16. In the result, the writ petition stands allowed to the extent indicated above. The judgment and order passed by the Cooperative Appellate Court is set aside. The matter is remanded to the Cooperative Appellate Court for fresh decision in accordance with law and in the light of the observations made in this judgment.

17. It is made clear that all contentions of both the parties are kept open to be agitated before the Appellate Court without being prejudiced by any observations contained in this judgment.

18. There shall be no order as to costs.

19. All pending interlocutory applications do not survive. The same stand disposed of.

(AMIT BORKAR, J.)