AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.14646 OF 2023

Bhagwan Dnyanu Sose, since deceased through LRs & Ors. … Petitioners

V/s.

The State of Maharashtra & Anr. … Respondents

Mr. Ashish S. Gaikwad with Mr. AnirudhR. Rote, Ms. Anjali S. Kolapkar and Ms. Kavita A. Gaikwad for the petitioners.

Smt. M.P. Thakur, AGP for respondent No.1-State.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 26, 2025

<u>P.C.</u>:

1. The Petitioners in the present Writ Petition are members of Respondent No.2 - Cooperative Society. On 27 April 2015, the Petitioners applied for a loan of ₹20 lakh, and on 23 June 2015, executed various documents in favour of Respondent No.2, including a mortgage deed and a promissory note. The record indicates that upon the Petitioner's default in repaying the loan amount, Respondent No.2 issued a demand notice for the sum of ₹27,61,886/- together with interest at the rate of 20% per annum from 31 May 2018. The notice explicitly called upon the Petitioner to discharge the outstanding liability. When the Petitioner failed to do so, Respondent No.2 filed Dispute No.350 of 2018 before the competent Cooperative Court, seeking recovery of the aforesaid amount with further interest at 17%. The cardinal principle governing disputes of this nature is that a creditor is entitled to initiate legal proceedings upon non-payment of dues, provided the transaction is duly evidenced and the borrower is afforded notice and an opportunity to comply.

2. Upon the institution of proceedings, the Cooperative Court caused summons to be issued to the Petitioners. Learned Judge of the Cooperative Court, after duly examining the office copies of the summons and corresponding postal receipts, recorded a finding that the Petitioners had been served. Service of process is a fundamental requirement that ensures compliance with the principles of natural justice; once evidence is produced showing due service, the Court is justified in proceeding ex parte if the party concerned fails to appear. Accordingly, finding no infirmity with the mode or manner of service, the Cooperative Court proceeded ex parte when the Petitioners remained absent on the scheduled date.

3. Having satisfied itself about the due execution of the promissory note, loan documents, and the correctness of the account extract, the Cooperative Court concluded that the Petitioners had indeed availed a loan of ₹10 lakh at 19% per annum. The Court further noted that the amount recoverable as of the date of filing the dispute stood at ₹27,61,886/-. In light of the unrebutted documentary evidence, the Court rendered a decree directing the Petitioners to pay the said amount with continuing interest at 17% from 1 June 2018 onwards. It is a well-settled proposition of law that where the borrower executes a promissory note and allied security documents, and there is no rebuttal to such evidence, the onus shifts to the borrower to demonstrate any illegality or material defect in the transaction. The Petitioners, having chosen not to appear and contest, cannot subsequently question the validity of the loan agreement or the rate of interest except on grounds that strike at the root of the transaction or allege fraud, which too must be substantiated.

4. Being aggrieved by the aforesaid determination, the Petitioners challenged the judgment and order of the Cooperative Court before the Cooperative Appellate Court. Upon re-appreciation of the evidence, the Appellate Court affirmed the findings rendered by the Court below, thereby confirming the decree of recovery. This concurrent finding by two courts of competent jurisdiction ordinarily commands deference unless it is shown that the finding is vitiated by a material irregularity or manifests a patent error of law. The Appellate Court found neither irregularity nor any jurisdictional error in the decision of the Cooperative Court, and hence, refused to disturb the well-reasoned findings.

5. Learned Advocate for the Petitioners now contends that the mortgage executed in favour of the Cooperative Credit Society was in respect of agricultural land and thus contravenes statutory provisions relating to the mortgage of such property. Additionally, it is urged that the Petitioners are illiterate and did not fully comprehend the import of the loan application or the attendant documents. It is further submitted that the Petitioners were not afforded proper service of summons, and hence, both courts below should have granted them a fresh opportunity of hearing. However, these objections, raised at this belated stage, merit a circumspect inquiry. The record discloses that the Cooperative Court took pains to ascertain whether summons had been duly served, and upon being satisfied, proceeded in accordance with law. So also, no material was placed on record by the Petitioners to demonstrate coercion, misrepresentation, or any statutory bar concerning the mortgage of agricultural property. In the absence of cogent evidence to establish that the transaction was void ab initio or contravened any prohibitory provision of law, it cannot be gainsaid that the Petitioners' belated contentions, premised on illiteracy or misunderstanding, suffice to unsettle concurrent findings of fact. It is incumbent upon any litigant alleging procedural irregularities or statutory violations to set forth a prima facie case at the earliest opportunity; having failed to do so, the Petitioners cannot now seek to reopen the settled issues.

6. Upon a meticulous examination of the record, it is manifest that the Trial Court—acting on the strength of the postal receipts and acknowledgments evidencing service—rendered a definitive conclusion that the Petitioners were duly served with summons. Further, in paragraph 6 of its judgment, the Appellate Court has re-affirmed this factual finding. Such a conclusion, grounded in contemporaneous documentary proof, is not amenable to challenge absent a demonstrable legal or factual infirmity. The Petitioners have neither raised a substantive challenge to the mode of service nor established that any procedural requirement was dispensed with. Consequently, this Court sees no reason to interfere with the concurrent findings of fact recorded by the Courts below in respect of service of summons.

7. In regard to the validity of the mortgage of agricultural land in favour of the Cooperative Credit Society, no statutory provision has been brought to the notice of this Court that proscribes the creation of a mortgage on agricultural land for the purpose of securing a loan. The reliance placed on the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI Act") is misplaced, for the reason that the Respondent No.2-Credit Society is governed by the Maharashtra Cooperative Societies Act, 1960 and the Transfer of Property Act, 1882. Neither enactment places a bar on mortgaging agricultural land to secure borrowings from a Cooperative Society. In the absence of a specific legal embargo, the Petitioners' contention that the mortgage is invalid or impermissible under law remains unfounded.

8. The Petitioners have further submitted that, being illiterate, they were unable to comprehend the loan documents that they signed. This ground, however, stands squarely negated by the ratio enunciated by the Hon'ble Supreme Court in *Bihar Electricity Board, Patna v. Green Rubber Industries & Ors.*, reported in 1990 (1) SCC 731, wherein the apex court unequivocally held that upon executing a written instrument, a person is presumed to be aware of its contents, and cannot, in the absence of compelling evidence, evade liability by pleading ignorance. The record herein reveals no material indicating coercion, fraud, or misrepresentation at the time of execution of the loan and mortgage documents.

Accordingly, it cannot be gainsaid that both the Cooperative Court and the Cooperative Appellate Court were justified in passing the award in favour of Respondent No.2-Cooperative Credit Society. There is no patent illegality or infirmity warranting interference with the impugned orders.

9. For the foregoing reasons, the Writ Petition stands dismissed. There shall be no order as to costs.

(AMIT BORKAR, J.)