

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
WRIT PETITION NO.13988 OF 2016**

1. Latika Madhukar Asabe
Age: Adult, Occ:
2. Madhukar Laxman Asabe,
Age: Adult, Occ:
Nos.1 & 2 R/at: Mahud (B),
Tal: Sangola, Dist: Solapur. ..Petitioners

Versus

1. Sumitra Gramin Bigarsheti
Sahakari Patsanstha Ltd. Akluj,
A Co-operative Society registered
under the MCS Act, 1960, Branch,
Mahud, Tal: Malshiras, Dist: Solapur,
Through its Chairman/Secretary.
2. Raju Dattatray Tingare,
Age: Adult, Occ: Agriculturist,
R/at: Mahud (B), Tal: Sangola,
District : Solapur. ..Respondents

...

Mr. Pradeep Salgar, Advocate for Petitioners.

Mr. Abhijit Kulkarni, Advocate for Respondents.

...

CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : 08th OCTOBER, 2025.

PRONOUNCED ON : 14th OCTOBER, 2025.

JUDGMENT:-

1. Rule. Rule made returnable forthwith. With consent of parties, matter is taken up for final hearing at admission stage.
2. The petitioners impugn judgment and order dated 29.09.2015 passed by Maharashtra State Co-operative Appellate Court, Mumbai bench at Pune in Appeal No.15/2015, thereby upholding judgment and

order dated 15.10.2011 passed by Co-operative Court, Solapur in Dispute No.CC-1841/2008, thereby directing petitioners to pay respondent-Society an amount of Rs.5,13,046 alongwith interest @ 18% per annum w.e.f. 25.09.2008 till its realization.

3. The respondent no.1 is Co-operative Credit Society. The petitioners and respondent no.2 are members of Society. The petitioner no.1 obtained credit facility of Rs.2,00,000/- from respondent no.1-Society as per her loan application dated 01.09.2002 for purpose of business. The loan was sanctioned and disbursed on 26.09.2002. The petitioners failed to repay loan amount. The respondent no.1-Society instituted Co-operative Case No.1841/2008 before Co-operative Court at Solapur for recovery of amount of Rs.5,13,046/- from petitioners.

4. The petitioners were duly served with notice. They appeared before Co-operative Court. However, failed to file written statement. Eventually, on 27.10.2010 “No Written Statement” order was passed. The dispute proceeded without written statement of petitioners. The Co-operative Court recorded evidence of respondent no.1-Society and finally passed order dated 15.10.2011 against petitioners.

5. Aggrieved petitioners filed Appeal No.15/2015 before Maharashtra State Co-operative Appellate Court, Mumbai Bench at Pune. However, same has been dismissed vide order dated 29.09.2015.

The petitioners have filed present Writ Petition aggrieved by concurrent decisions.

6. Mr. Pradeep Salgar, learned Advocate appearing for petitioners submits that although dispute proceeded without written statement of petitioners, it was obligatory on part of Court to record satisfaction that disputant proves its case. The absence of defendants or their written statement, does not absolve Trial Court from satisfying itself of factual and legal veracity of plaintiff's claim. In fact, in such a case Court has greater responsibility and onerous obligation to satisfy that claim has been proved and substantiated and diligently ensure that plaint stands proved and prayers therein are worthy of being granted. In support of his contentions he relies upon observations of Supreme Court in cases of *Maya Devi Vs. Lalta Prasad*¹ and *Shantilal Gulabchand Mutha Vs. Tata Engineering and Locomotive Company Ltd. and Ors.*².

7. Mr. Salgar would further that Co-operative Court has not applied mind to pleading and evidence on record and blindly passed order in favour of Society, so also Appellate Court concurred with findings of Co-operative Court without independently appreciating material on record.

8. Per contra, Mr. Abhijit Kulkarni, learned Advocate appearing for respondent no.1-Society supports impugned order. He would submit

¹ AIR 2014 SC1356.

² (2013) 4 SCC 396.

that petitioners obtained loan of Rs.2,00,000/- in year 2002 and defaulted in repayment. The Society was compelled to institute proceeding before Co-operative Court under Section 91 of Maharashtra Co-operative Societies Act, 1960. Although petitioners were served with notice and caused appearance, cautiously chosen to not to file written statement. The Society recorded evidence of authorized officer and tendered into evidence relevant documents alongwith statement of accounts maintained in due course. The Co-operative Court after considering uncontested material on record, decreed suit. The Appellate Court re-appreciated evidence on record and concurred with findings recorded by Co-operative Court. He would further submit that although present Writ Petition is filed in year 2016, it was not moved till in execution, mortgage property was to be possessed by Society.

9. Having considered submissions advanced by learned Advocates appearing for respective parties and on perusal of material tendered into service, it can be observed that there is no dispute that petitioners were served with suit summons by Co-operative Court. However, they failed to file written statement after appearance and even does not participate in further proceeding. Perusal of Appeal Memo of petitioners before Co-operative Appellate Court indicates that petitioners tried to explain their non-participation in dispute stating that officials of Credit Society assured to dispute. It is, therefore, evident that petitioners were aware about recovery proceeding

instituted against them, but cautiously remained absent before Court. The petitioners have not tendered explanation about documents admitted in evidence by Co-operative Court. Therefore, apparently plea raised before this Court appears to be afterthought. The Co-operative Court has made reference to evidence affidavit and other documents, which are at Exhibits-14 and 22 on record alongwith account statement. Eventually, passed order accepting claim of respondent-Society. The Appellate Court has also discussed those documents in paragraph no.18 of judgment. The documents admitted in evidence are loan agreement, demand promissory note, surety bond etc. The Appellate Court has finally observed that claim in dispute is as regards to recovery of loan amount and documents in this regard were rightly admitted in evidence. The Co-operative Court is justified in passing Award on the basis of such documents.

10. In this background, although there cannot be dispute about preposition of law that even in case where proceeding is without written statement, Court has duty to ascertain sufficiency of evidence and acceptability of claim, it cannot be said that there must be elaborate discussion as to evidence on record. As rightly observed by Appellate Court when disputant-Society had placed on record documents of loan transaction right from loan application to last demand notice and account statement depicting amount due, Co-operative Court was justified in accepting case of disputant-Society.

Pertinently, it is not specifically contended on behalf of petitioners that claim of disputant-Society is based on false or fabricated documents. When they were served with suit summons and aware about contents of plaint, they could have refuted claim and raise necessary plea against disputant-Society. If they have cautiously chosen not to file written statement after appearance or participate in proceeding, their conduct itself shows that they had no defence.

11. In this background, this Court do not find any reason to invoke Writ jurisdiction under Article 227 of Constitution of India and disturb concurrent findings recorded by Courts below. No perversity in approach of Courts is discernible. The view taken by Courts is probable. In that view of matter, Writ Petition sans merit. Hence, dismissed.

12. Rule stands discharged.

(S. G. CHAPALGAONKAR)
JUDGE

13. At this stage, learned Advocate appearing for petitioners submits that petitioners may approach Hon'ble Supreme Court against this order. Therefore it is prayed that execution of impugned judgment and decree be kept in abeyance for a period of four weeks from today.

14. Although this Court is not inclined to grant any relief, considering ensuing Diwali Vacation from next week, interim

protection, as prayed for is granted for period of four weeks from today.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/October-2025