IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.

Writ Petition No. 557 of 2023

Shri Mungsaji Maharaj Sahakari Soot Girni Limited, a Co-operative Society registered under the Maharashtra Co-operative Societies Act, 1960 bearing Registration No. BULD/PRG/A/DH-6 having its Office at Anuradha Nagar, Sakegaon Road, Chikhali, District Buldhana- 443201 through its Authorised Signatory Shri Vishal S/o Gulabrao Mawal, aged about 45 Years, Resident of Santoshimata Mandir, Gandhi Nagar Ward No. 18, Chikhali, Buldhana-443201. **... Petitioner**

- Versus -

The Buldhana District Central Co-Operative Bank Limited District Buldhana through its Managing Director **... Respondent**

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Mr. C. S. Kaptan, Senior Advocate assisted by Mr. R. S. Kalangiwale, Advocate for the petitioner
Mr. H. D. Dangre, Advocate with Mr. A. P. Chaware, Mr. A. H. Patil, Advocates for the respondent

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CORAM : ANIL L. PANSARE, J.

Date of reserving judgment : 12-12-2024
Date of pronouncing judgment : 06-01-2025

JUDGMENT

Heard.

2. Issue Rule, returnable forthwith. Mr. H. D. Dangre, learned counsel waives service of notice for the respondent. With consent of learned counsels for the parties, the petition is taken up for final hearing.

3. The petition arises out of judgment and award dated 21-2-2022 passed by the Maharashtra State Co-operative Appellate Court, Mumbai Bench at Nagpur (hereinafter referred to as 'Appellate Court') in Civil Appeal No. 15/2020. The Appellate Court has quashed and set aside common judgment and award 5-12-2019 passed by the learned Judge, Co-operative Court, Akola in Dispute No. 879/2002 filed by the respondent and Dispute No. 240/2009 filed by the petitioner. The Co-operative Court had dismissed both the disputes.

4. Having heard both sides and having gone through the material placed before me, it transpires that the petitioner – Soot Girni had obtained mid term loan from the Maharashtra State Co-operative Bank Limited, Mumbai (hereinafter referred to as 'MSCBL'). The amount of Rs. 1.54 Crores was given by the MSCBL to the Soot Girni. This mid term loan was then taken over by the Buldhana District Central Co-Operative Bank Limited (hereinafter referred to as 'bank') under tri-party agreement. The MSCBL had debited an amount of Rs. 2,42,44,000/- in the account of the bank which were to be allegedly

recovered from the Soot Girni but was recovered from the bank. Accordingly, the bank had debited the said amount with interest in the account of Soot Girni, which has allegedly not repaid the amount.

5. In addition to above, the bank had advanced loan/limit under hypothecation loan, pledge loan and cash credit loan. Various amounts were sanctioned under the aforesaid heads from the year 1994-1995 to 1999-2000. According to bank, the due date for repayment was 30-9-2001. The Soot Girni did not repay the amount and accordingly the dispute was raised for an amount of Rs. 8,27,90,000/- including amount of interest receivable as on 31-8-2002 being Dispute No. 879/2002. The aforesaid amount included the mid term loan of Rs. 2.42 Crores (approximately) allegedly extended by the MSCBL.

6. Later on, in the year 2017, the bank had amended the dispute, thereby deleting the amount of loan allegedly given by the MSCBL to the Soot Girni. Accordingly, the claim was reduced to Rs. 5,19,92,149/-.

7. In the meantime, the Soot Girni had filed a dispute against the bank under Section 91 of the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as 'the Act of 1960') being Dispute

No. 240/2009 stating therein that it had borrowed working capital loan to the tune of Rs. 2.3 Crores (limit) from the bank under various heads viz. Hypothecation, pledge and cash credit etc. The Soot Girni had alleged that the bank had *suo moto* made payment of Rs. 2.40 Crores to MSCBL and debited the said amount in the account of Soot Girni which caused financial constraints. Soot Girni, therefore, could not repay the loan as scheduled. The accounts of Soot Girni were classified as N.P.A. Accordingly and in terms of the circular dated 11-8-2008 allegedly issued by the bank, the Soot Girni had tendered a proposal for one time settlement (OTS) for Rs. 4,31,75,198/-. The bank did not accept the proposal. The Soot Girni, therefore, sought declaration that the said proposal was in terms of circular dated 11-8-2008 with an injunction to restrain the bank from claiming any additional amount from it.

8. The Cooperative Court tried both the disputes together and common evidence was led by both the sides examining one witness each. The Cooperative Court noted that the bank failed to place on record the necessary documents viz. application filed by Soot Girni to obtain hypothecation loan on cotton as also pledge loan, loan renewal documents etc. According to Cooperative Court, except for the proof of

sanction of loan, the bank has not produced any document of actual disbursement.

9. The bank had relied upon the account books, Exhibit Nos. 87 to 90 for different loans. The Cooperative Court refused to consider these documents for two reasons. One is that, the witness had not brought original account book but the copies of ledger were exhibited without tallying entrees with original account book. Secondly, these copies were not supported by certificate as required under Section 40 of the Act of 1960.

10. The Cooperative Court then has taken into account the admissions given by the bank's witness in cross-examination. He admitted that prior to taking over the loan account from MSCBL, amount of Rs. 1.55 Crores was paid to the Soot Girni by the said bank. He further admitted that after taking over the loan, the bank had admitted to extend the amount of Rs. 2.30 Crores as working capital under various heads viz. hypothecation of cotton, pledge loan, process stock loan, goods store loan etc. He then admitted that though the aforesaid amount was sanctioned, it was not disbursed to the Soot Girni. He then admitted that during the period from November, 1995 to June, 1996, Rs. 2.42 Crores approximately was debited in the account

of Soot Girni but was not actually disbursed. He further admitted that not a single pie was given to the Soot Girni under the pledge loan.

11. Noting the aforesaid discrepancies with necessary details of the account entries, the Cooperative Court held that the bank failed to prove its claim.

12. On the point of OTS, which according to bank, was an admission at the hands of Soot Girni of disbursement of loan, the Cooperative Court observed that the proposal includes the amount allegedly given by the MSCBL. This claim was, by way of amendment, deleted by the bank and further the OTS having been not accepted by the bank, the Cooperative Court held that OTS has become infructuous.

13. The first Appellate Court, however, overturned the aforesaid finding on the ground that the Soot Girni had admitted sanction of disbursement of loan amount. This finding has been criticized by the petitioner

14. Mr. C. S. Kaptan, learned Senior Counsel appearing for the petitioner – Soot Girni submits that this findings of admission of disbursement is incorrect in as much as there is nothing on record to show that the Soot Girni has admitted disbursement of loan amount as alleged by the bank.

15. Mr. H. D. Dangre, learned counsel for the respondent – bank submits that this admission can be gathered from various documents including the OTS proposal, hypothecation deed, promissory note etc. executed by the Soot Girni.

16. In my view, if the Court has to act and render a finding on the basis of admission, the admission has to be in unequivocal terms. If inference is to be drawn from the documents, it will lie in the category of proving the claim. Viewed thus, unless there is a categorical admission, it will be impermissible for the Court to say that party has admitted the transaction. The Cooperative Court has noted, in detail, as to how the bank failed to prove disbursement of the amount. In fact, bank's witness has in clear terms admitted that though the debit entries were shown in the account of Soot Girni, the loan amount was not actually disbursed.

17. It appears that the Appellate Court has relied upon the pleadings made by Soot Girni in its Dispute No. 240/2009 as also the OTS submitted by it to hold that it has admitted disbursement of working capital limit (WCL) for Rs. 2.30 Crores as also acknowledgment of dues dated 16-5-1998 (Exhibit No. 44). Further, learned counsel for the bank has invited my attention to the chief examination of Shri Ganesh Surangalikar, the witness examined by Soot Girni. In the

concluding paragraph, he has deposed that though the bank has committed misappropriation and immoral act, the Soot Girni is ready to pay the amount in terms of OTS.

18. In my view and as rightly argued by Mr. Kaptan, learned Senior Counsel, the aforesaid evidence, pleadings and OTS cannot be said to be an admission at the hands of Soot Girni. What has been pleaded in Dispute No. 240/2009 is that it had borrowed working capital loan from the bank under the heads of hypothecation, pledge, cash credit limit etc. which was to the tune of Rs. 2.3 Crores approximately. The said amount is shown as the financial limit extended to the Soot Girni. Firstly, this cannot be termed as admission of disbursement of loan as claimed by the bank, which has put forth different set of facts as regards disbursement. Secondly, it is said to be financial limit granted by the bank to Soot Girni, which would otherwise mean that Soot Girni could have utilized the limit as per its convenience. There is no evidence as to how much of the sanctioned amount was utilized by Soot Girni. This cannot be said to be admission of outstanding loan as on 31-8-2002. Such pleadings and evidence, therefore, cannot be said to be an admission of disbursement of loan, as claimed by the bank.

19. What is relevant is that bank has claimed an amount of Rs. 5,19,92,149/- to be due and payable by Soot Girni as on 31-8-2002. It was therefore incumbent on bank to prove on its own footings the aforesaid claim by leading evidence. The bank has not placed on record any document of the year 2002 to show and prove that amount as claimed by it was due against the Soot Girni. All the documents that were placed on record, which the first Appellate Court has relied upon, were prior to 31-8-2002.

20. Further, Mr. Dangre, learned counsel failed to show any document, whether of the year 2002 or prior thereto, indicating the position of statement of accounts as on 31-8-2002. That being so, the pleading by Soot Girni that it had borrowed amount of Rs. 2.30 Crores approximately cannot be said to be an admission of the claim put forth by the bank.

21. The Appellate Court has also relied upon the statements of ledger, Exhibits 87 to 90. The Cooperative Court had assigned sound reasons to not rely on these documents, being not proved in accordance with the provisions of the Indian Evidence Act viz. the original ledger was not brought and the document did not bear certificate as required under Rule 34 of the Maharashtra Cooperative Societies Rules read with Section 40 of the Act of 1960. In addition, Mr. Kaptan, learned Senior

Counsel submits that the copies were also lacking certificate under Section 65B of the Indian Evidence Act.

22. Rule 34 of the Maharashtra Cooperative Societies Rules requires certification of extract of account by a person, who is authorized by the executive committee of the society by passing a resolution. No such resolution was placed on record nor was the authority letter produced. It appears that one Mr. Keshav Jadhav had signed the extract of ledger drawn up to the period 31-8-2002. The bank's witness has, however, admitted that Shri Keshav Jadhav had retired from bank's service in the year 1998-1999. He was, therefore, not in employment when the extract of account was said to be certified. The Appellate Court has failed to consider the requirement of the aforesaid certification before placing reliance on the said documents.

23. So far as the admission is concerned, I have already noted that the pleadings in Dispute No. 240/2009 cannot said to be admission of disbursement of loan as claimed by the bank. The first Appellate Court has taken aid of OTS as well. The question is whether the OTS can be said to be an admission at the hands of Soot Girni. The answer will be certainly in negative. The OTS has been tendered 'without prejudice' and, therefore, cannot be said to be an admission of the claim made by the bank.

24. On the point of effect of such proposal, Mr. Kaptan, learned Senior Counsel has relied upon the judgment of Hon'ble Supreme Court in the case of ***Chairman and MD, NTPC Ltd. Vs. Reshmi Constructions Builders and Contractors [(2004)2 SCC 663]***. The question before the Supreme Court was whether the dispute could be resolved in terms of arbitration clause. The contract was for construction where there was a condition to furnish 'no demand certificate' by the contractor before releasing final bill/payment in his favour. Accordingly, the contractor had issued 'no demand certificate' but under protest and without prejudice. The Supreme Court took note of ground realities that in a given case, where contractor has made huge investments, there may occur compelling circumstances for him to unwillingly submit 'no demand certificate'. Accordingly, the Supreme Court held that the dispute will be governed by arbitration clause as there exist triable issues including issue whether the 'no demand certificate' was obtained under coercion, which will have to be raised and proved before the arbitrator for obtaining the award. In doing so, the Supreme Court has delve upon the effect of terminology "without prejudice". The relevant finding, so far as the present case is concerned, finds place in paragraph no. 35 which reads thus :

> ***35.*** *Meaning of the words "without prejudice" came up for consideration before this Court in Supdt. (Tech. I), Central*

Excise v. Pratap Rai wherein it has been held: (SCC p. 117, paras 6-7)

> *"The Appellate Collector has clearly used the words 'without prejudice' which also indicate that the order of the Collector was not final and irrevocable. The term 'without prejudice' has been defined in Black's Law Dictionary as follows:*
>
> > *'Where an offer or admission is made "without prejudice", or a motion is denied or a bill in equity dismissed "without prejudice", it is meant as a declaration that no rights or privileges of the party concerned are to be considered as thereby waived or lost, except in so far as may be expressly conceded or decided. See, also, Dismissal Without Prejudice.'*

Similarly, in Wharton's Law Lexicon the author while interpreting the term 'without prejudice' observed as follows:

> *'The words import an understanding that if the negotiation fails, nothing that has passed shall be taken advantage of thereafter; so, if a defendant offers, "without prejudice", to pay half of the claim, the plaintiff must not only rely on the offer as an admission of his having a right to some payment.*
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> *The rule is that nothing written or said "without prejudice" can be considered at the trial without the consent of both parties - not even by a Judge in determining whether or not there is good cause for depriving a successful litigant of costs. ...The word is also frequently used without the foregoing implications in statutes and inter parties to exclude or save transactions, acts and rights from the consequences of a stated proposition and so as to mean "not affecting", "saving" or "excepting".*

In short, therefore, the implication of the term 'without prejudice' means (1) that the cause or the matter has not been decided on merits, (2) that fresh proceedings according to law were not barred."

As could be seen, once an offer is made ‘without prejudice’, it is meant as a declaration that no rights or privileges of the party concerned are to be considered as thereby waived or lost, except in so far as may be expressly conceded or decided. It further indicates that if the negotiation fails, nothing that has passed shall be taken advantage of thereafter. The rule is that nothing written or said “without prejudice” can be considered at the trial without the consent of both the parties. Accordingly, the Court held that the implication of term ‘without prejudice’ is that firstly, the cause or matter has been not decided on merits and secondly, fresh proceedings, according to law, were not barred.

25. Thus, unless both the parties or at least the Soot Girni had given consent, the Court could not have treated OTS as admission. That apart, the Cooperative Court had appreciated that by way of amendment, the bank had deleted the amount of loan allegedly given to Soot Girni by MSCBL, which was part of OTS proposal and thus was rendered infructuous. Most importantly, despite serious pursuation by Soot Girni to accept OTS, which includes filing writ petition before this Court for such acceptance, the bank has refused to accept the same. The bank, therefore, has chosen to pursue its original claim. Having chosen

to pursue its claim, the bank was under obligation to prove the claim on its own footing.

26. In fact both the Courts below have dismissed the suit filed by the Soot Girni. The bank has not challenged the aforesaid finding of the first Appellate Court. Thus, both the Courts below found no merit in the OTS submitted by the Soot Girni. In the circumstances, the reliance on OTS or certain documents which were prior to the date of lodging claim was not sufficient to prove bank's claim.

27. In addition, Mr. Kaptan, learned Senior Counsel has relied upon the judgments in the cases of ***Bank of Baroda, Bombay Vs. Shree Moti Industries, Bombay and others [2009(1) Mh.L.J. 282]*** and ***Chandradhar Goswami and others Vs. Gauhati Bank Ltd. [AIR 1967 SC 1058]*** to contend that bank was under obligation to prove its claim on the date of filing of dispute by producing books of account and proving the amount outstanding on the date of filing of suit. The bank, however, has not placed on record any document showing status of loan accounts as on 31-8-2002. I did not come across any evidence, oral or documentary, showing status of loan account as on 31-8-2002.

28. Another important judgment relied upon by Mr. Kaptan is ***Life Insurance Corporation of India and another Vs. Ram Pal Singh***

Bisen [(2010) 4 SCC 491] wherein the Supreme Court held that balance sheets of the bank/society cannot be considered for the purposes of liability because mere admission of document does not prove contents thereof. Thus, the documents, Exhibits. 87 to 90 could not have been relied upon by the first Appellate Court as a proof of liability of Soot Girni.

29. Mr. Kaptan has also relied upon the judgment of Hon'ble Supreme Court in the case of ***Sitaram Bhau Patil Vs. Ramchandra Nago Patil (dead) by L.Rs. and another [(1977) 2 SCC 49]*** wherein the Court held that the admission, even if, proved, must be confronted to the person at the stage of cross-examination before being used against the said person. In the present case, so called admission, viz. the OTS proposal was not confronted with the Soot Girni's witness. As such, learned counsel Mr. Dangre has pointed out from the chief examination of the witness that he showed willingness to pay amount in terms of OTS but the same cannot be said to be confrontation of document. Had the OTS been confronted to the witness, he would have assigned reasons for giving such proposal, which then could have been considered by the Court to decide the issue. In any case, the bank having refused to accept OTS which was given 'without prejudice' and further the bank having dropped the claim related to disbursement of

amount by MSCBL, which was part of OTS and further the suit based on OTS filed by petitioner having been dismissed, the same could not have been acted upon by the first Appellate Court.

30. The last but important judgments which have been relied upon by Soot Girni is on the scope of interference by the Appellate Court. The Supreme Court in the cases of ***Madhusudan Das Vs. Smt. Narayanibai (deceased) by L.Rs. and others [(1983) 1 SCC 35]*** and ***Laxmibai (dead) through L.Rs. and another Vs. Bhagwantbuva (dead) through L.Rs. and others [(2013) 4 SCC 97]*** held that finding of fact of trial Court based on oral evidence should not ordinarily be disturbed by the first Appellate Court unless trial Court's approach in appraisal of evidence appeared materially erroneous.

31. As such, this principle of law will be applicable where the dispute is decided mainly on oral evidence, however, in the present case, the finding of the Cooperative Court on the point of debit entries without actual disbursement having been based on oral evidence, the first Appellate Court, before upsetting the findings, ought to have assigned reasons as to how these findings are apparently erroneous. The bank's witness has, in categorical terms, admitted that debit entry was made without actual disbursement. That being so and in absence of any documentary evidence to show status of loan account as on 31-8-

2002, the first Appellate Court committed serious error of law in appreciating the evidence and effect thereof, which the Cooperative Court has rightly dealt with.

32. Mr. Dangre has invited my attention to the judgment of Hon'ble Supreme Court in the case of ***Garment Craft Vs. Prakash Chand Goel [(2022) 4 SCC 181]*** on the scope of interference by the High Court under Article 227 of the Constitution. The Supreme Court has reiterated the well settled principle that High Court exercising supervisory jurisdiction under Article 227 does not act as a Court of first appeal to reappreciate, reweigh evidence or facts upon which determination under challenge is based. The Supreme Court further held that the finding of the Civil Court can be interfered with only when there is an error apparent on face of record or where there is perversity in the finding or where finding is unsupported by evidence.

33. In the present case and as noted above, the Cooperative Court's finding was based on appreciation of evidence. The first Appellate Court has ignored the said appreciation on the ground that Soot Girni has admitted certain part of the loan amount. The said reasoning is apparently erroneous in as much as there is no such admission by Soot Girni of the disbursement of loan as noted by the first Appellate Court. At the cost of repetition, I would say that on the point

of disbursement of loan amount as claimed by the bank, neither is there any admission by Soot Girni nor is any document submitted and proved by bank to show disbursement as claimed by it.

34. Put altogether, the bank failed to place on record the documents to show status of the loan account and liability of Soot Girni as on 31-8-2002. The bank's witness has admitted in cross-examination that some debit entries were made in the account of Soot Girni without disbursement of loan. The pleadings of Soot Girni in Dispute No. 240/2009 coupled with the statements in OTS cannot be treated as admission of the claim made by the bank inter alia, because suit based on OTS was dismissed. The Cooperative Court's finding that the statements of account, Exhibit Nos. 87 to 90 cannot be relied upon for want of certification under Section 40 of the Act of 1960 read with Rule 34 of Maharashtra Cooperative Societies Rules was in consonance with law and, therefore, these documents could not have been relied upon by the first Appellate Court as proof of disbursement of loan.

35. For the aforesaid reasons, I am of the considered view that the first Appellate Court has rendered a perverse finding. Writ petition is accordingly allowed. Judgment and award dated 21-2-2022 passed by the Maharashtra State Co-operative Appellate Court, Mumbai Bench at Nagpur in Civil Appeal No. 15/2020 is quashed and set aside.

Common judgment and award dated 5-12-2019 passed by the learned Judge, Co-operative Court, Akola in Dispute No. 879/2002 and Dispute No. 240/2009 is restored.

36. Rule is made absolute in above terms. No order as to costs.

(Anil L. Pansare, J.)

37. At the request of learned counsel Mr. Dangre, the order shall take effect on 10-2-2025.

(Anil L. Pansare, J.)

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