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THE MAHARASHTRA STATE CO-OP. APPELLATE COURT,
MUMBAI BENCH AT AURANGABAD.

(Before Smt.S. R. Pawar, Member)

Appeal. No.1/2018

(Arises out of the Judgment and Award dated 21.12.2018 passed by the Ld. Judge, Cooperative Court, Latur in dispute bearing no.21/2015.)

1) *Mahadeo Dattopant Nagargoje,*
Age : 45 Years, Occu. Agril.,
R/o. Wadgaon Gundha,
Tq. & Dist. Beed.

2) *Abhimanyu Kashinath Chavan,*
Age : Major, Occu. Agril.,
R/o. Wadwani, Tq. Wadwani,
Dist. Beed.

...Appellant

VERSUS

1) *The Beed District Central Bank Ltd.,*
Head Office Rajuri Ves, Beed,
Tq. & Dist. Beed.
Through its General manager,
Babasaheb Shrimantrao Deshmukh,
Age : 52 Years, Occu. Service,
R/o. Canal Road, Bansinagar,
Near Ambika Chouk, Tq. & Dist. Beed.

2) *Gajanan Gramodyog Audyogik*
Sahakari Sanstha Maryadit,
Wadgaon, Gundha, Tq. & Dist. Beed.
Through its President / Secretary,

- 3) *Sunil Ganpatrao Nagargoje,*
Age : Major, Occu. Agril.,
R/o. Wadgaon Gundha,
Tq. & Dist. Beed.
- 4) *Radhakisan Pandharinath Lahamge,*
Age : Major, Occu. Agril.,
R/o. Wadgaon Gundha,
Tq. & Dist. Beed.
- 5) *Mahadeo Annabhau Lahamge*
Age : Major, Occu. Agril.,
R/o. Wadgaon Gundha,
Tq. & Dist. Beed.
- 6) *Vaijinath Pandharinath Ghavane,*
Age : Major, Occu. Agril.,
R/o. Wadgaon Gundha,
Tq. & Dist. Beed.
- 7) *Kalyan Chandar Nagargoje,*
Age : Major, Occu. Agril.,
R/o. Wadgaon Gundha,
Tq. & Dist. Beed.
- 8) *Satish Dattopant Nagargoje,*
Age : Major, Occu. Agril.,
R/o. Wadgaon Gundha,
Tq. & Dist. Beed.

....Respondents

Mr. S. G. Jadhavar, Ld. Advocate for the applicants.
Mr. M. R. Choudhari, Ld. Advocate for respondent no.1.
Respondents no.2 to 8 are deleted.

AURANGABAD.
DATE 07.12.2018.

ORAL JUDGMENT

(Dictated and pronounced in the open court)

1) *Being aggrieved and the dissatisfied by the Judgment and Award dated 21.12.2016 passed by the Ld. Judge, Cooperative Court, Latur in dispute bearing no.21/2015, the present appeal has been filed by the appellants, who were the opponent nos.1 & 9 before the trial court.*

The original dispute has been filed by the respondent no.1 herein against the respondent nos.2 to 8, as well as present applicants for recovery of loan amount.

2) *By the impugned judgment, the dispute filed by the disputant was decreed by the trial court, and thereby the Ld. trial judge ordered the respondent nos. 2 to 9 as well as present appellants "to pay jointly and severally an amount of Rs. 35,69,825/- alongwith interest @ 16% p. a. from the date of filling of dispute till realization of claim".*

3) *In order to appreciate the correctness of the impugned Judgment, one must know the cause of action for filing the dispute.*

The facts in nutshell are as under ; (for the sake of brevity parties are referred as per dispute)

4) *By filling the dispute it is contended by the disputant that, it is the District Central Cooperative Bank and the opponent no.1 is*

Gramodyog Sahakari Sanstha both the disputant and opponent no.1 are the society registered under the provisions of M.C.S. Act 1960. The opponent no.1 (respondent no.2) is the member of disputant (respondent no.1) society and the opponent nos.2 to 9 are the managing committee members of the opponent no.1 society.

5) *It is the contention of the disputant that, "the opponent no.1 Society has applied for loan of Rs.6,75,000/- in the year 2000 to the disputant bank. Considering the loan application the board of director of disputant has sanctioned the loan upon certain terms and conditions. The opponent no.1 accepted all the conditions including "the condition that the board of director of opponent no.1 will have to execute the independent guarantee bond" and accordingly they passed resolution and after that, the loan amount was disbursed in favour of opponent no.1. After, executing all the necessary loan documents.*

It is contended that, after availment of loan, neither the borrower nor its sureties take care to repay the loan amount. In spite of persistent demand on the part of the disputant bank, and thus the dispute was filed by the disputant for recovery.

6) *The record of trial court shows that, in the said matter pursuant to the summons issued by the trial court, as the opponents did not appear, the Ld. trial judge has marked ex parte order against them. Immediately thereafter on the very next date the opponents have appeared before the trial court and filed an application for setting aside the ex parte mark and taking their W. S. on record. The said application was allowed by the Ld. trial judge. The W. S. is marked as*

"Exhibit 14" by the trial judge. Thereafter, issues were finalized and bank has lead his evidence on affidavit. As the opponents absent "No cross order" passed against them on 28.11.2016, on the same date disputant has filed evidence closer pusis, the matter is adjourned for argument on 21.12.2016 & on the same date. On 21.12.2016 the Ld. trial judge passed the judgment.

7) *Aggrieved by the said judgment & award, the present appeal has been filed by the appellant on the ground that, 'the judgment passed by the Ld. Trial Judge is not legal and valid, the Ld. Trial Judge pronounced the judgment without verifying the record. Though, the opponents have filed the written statement on record. The Ld. trial judge did not refer at all their defenses. On the contrary in para 3, of judgmentit is mentioned that, "opponents absent & proceed exparte". It is further pointed out that on 28.11.2016 the disputant's witness filed evidence on record, on the date document was exhibited "No cross order" passed against all the opponents. The disputants evidence was closed and without giving an opportunity of the opponents to lead their evidence, matter was adjourned for final hearing on 21.12.2016, and the roznama dated 21.12.2016 indicated that, on the said date advocate for appellant was not present and without giving an opportunity to either party of being heard. Only one page judgment was pronounced wherein the dispute filed by the disputant was decreed.*

8) *Mr. S. G. Jadhavar, Ld. Advocate for the appellants has scanned the reasons recorded by the Ld. Trial Judge and concludes the same as illegal. Relying upon the proceeding of trial court and the*

roznama written therein, he has pointed out that, the judgment is not passed by following process of law, same is ex-fecia illegal, without giving the opportunity to the present appellant of being heard, and thus, interference of this court is warranted.

9) *Summons of the appeal duly served upon the respondent, in response the respondent no.1 who is only contention party has appeared before this court through Ld. Advocate Mr. M. R. Choudhari. Advocate for the applicant has filed pursis at "Exhibit 9" stating that rest of the respondents were the opponents before the trial court, they are the formal parties in the proceeding, and they need not be served in the matter, thus, the summons were not issued upon them.*

10) *Mr. M. R. Choudhari, Ld. Advocate for respondent no.1 has supported the reasons recorded by the Ld. Trial Judge, and concludes the same as legal and valid. He further submitted that, there is no perversity or illegality in the order passed by the Ld. Trial Judge. On these grounds, he urged for dismissal of appeal with costs.*

11) *Considering the pleadings of parties, documentary evidence produced on record, the reasons assigned by the Ld. Judge, the grounds raised in appeal memo and the arguments canvassed by Ld. Advocates for appellant and respondent no.1, following points arise for my considertion, and I record my findings to the said points for the reasons assigned there under;*

POINT

FINDINGS

1) *Whether the Judgment and Award :*

dated 21.12.2018 passed by the Ld.

Judge, Cooperative Court, Latur in

No

dispute bearing no.21/2015 is in

accordance with law ?

2) *Whether the judgment passed by :* **Yes**
trial judge interfere with ?

3) *Whether the matter is required to :* **Yes**
be remanded back to trial court ?

4) *What order what judgment ?* : **As per final order.**

REASONS

POINT NO.1 TO 3 :-

12) According, the appellant, the trial court has totally failed to appreciate the nature of the transaction and the role of present appellants in the same. The trial court has not followed due procedure which resulted into miscarriage of justice. The findings arrived at by the trial court are not supported by the evidence on record. The Ld. trial judge did not bother to perused the record and proceeding while passing the judgment in the matter. Mr. Jadhavar, Ld. advocate for the appellant has pointed out to this court that, all the opponents have appeared before the trial court on 23.6.2015, they have filed an application "Below Exhibit 14" alongwith their written statement for setting aside the exparte mark against them. On the said application the disputant has filed say, and the trial judge has passed order on 5.9.2015. The application filed by the appellants was allowed, and accordingly the written statement filed by the opponent nos.2 to 8 was

taken on record by the Ld. trial judge. He further pointed out that, at that time the opponent no.1 society was under liquidation and liquidator did not appear before the court. The opponents have taken specific defense that, "they have not executed a single document in favour of society and accepted their personal liability towards the recovery of amount". They denied that they have executed the document on behalf of borrower society in their personnel capacity, and urged for dismissal of dispute against them. They also relied upon the complaint filed by the disputant bank against them before the judicial magistrate first class Beed.

Mr. Jadhavar further pointed out that, the written statement filed by the opponent nos.2 to 8 runs 11 pages, and the Ld. trial judge did not consider the same. No opportunity of cross examining the witness of disputant as well as, to lead the evidence and further to argue the matter, was provided to them, thus, interference of this court is warranted.

13) While re-appreciating the matter, I have gone through the entire record of trial court which runs to 645 pages. The judgment passed by the Ld. trial judge is passed in a very casual manner of half page judgment. In para, 3 of judgment in a single line the Ld. trial judge stated that, "the summons of dispute served upon opponent nos.1 to 9 as they remained absent, matter proceed exparte against them". It appears that, the Ld. trial judge did not touch even the proceeding and not bothered to verify the record.

14) Be it as it may, after perusal of roznama dated 5.9.2015 it is evident that, in the roznama also it is reflected that, trial judge has

allowed the application filed by the opponent nos.2 to 9 for setting aside exparte mark order and accepting W. S. Thereafter, nowhere it is mentioned that, when issues were finalized ? from the judgment it appears that, the Ld. trial judge has framed issues. From 19.12.2015 till 25.10.2016 the roznama reflected that, "the disputant had filed continuous applications for adjournment for filling the evidence. On 25.10.2016 the matter is adjourned for evidence of disputant on 28.11.2016, thus, it appears that till 28.11.2016 there is no progress at all in the matter.

15) *On 28.11.2016 the roznama is recorded as under*

The representative of disputant as well as adv. present.

Exhibit-23 The witness filed evidence affidavit

Exhibit-24 Application for production of document.

Exhibit-26 to 44 Documents.

Examination chief taken on record.

Opponent's cross closed.

Disputant close case.

Adjourn for argument.

The next roznama recorded as under,

21.12.2016

The disputant's Advocate present,

Decision passed, dispute allowed

Award passed, matter disposed off.

16) *After perusal of these two dates roznama it is evident that, the Ld. trial judge has open the trial on 28.11.2016 and pass the judgment on 21.12.2016. No proper opportunity was given to the*

appellants / opponents to cross examine the witness of disputant or to lead their evidence, so also to argue their case on merits. It is unfortunate to state that, the defenses taken by the opponents were not at all considered. Indeed, issues itself were not property framed.

17) *Admittedly, the subject matter of dispute is recovery of societies dues, no where it is mentioned by the trial court that, "when the loan was availed by the opponent no.1 Society ? and further there are no findings at all, how the opponent nos.2 to 9 are responsible for repayment ? Even though one presume that, the matter proceed exparte then also it is not expected from the trial court to pass the judgment in such casual manner. The Ld. trial judge has to gave findings as to how all the opponents are liable for repayment. The entire approach of the Ld. trial judge is hasty, drastic & illegal which is resulted into miscarriage of justice. It appears that judgment is passed only for the sake to take disposal points.*

In such circumstances I have no other option than to set aside the judgment and award, and to remand the matter back to the trial court for fresh hearing with direction to the Ld. trial judge to frame proper issues considering the defense of opponents, and then to proceed further as per law. The appellants are liberty to cross examine the witness of disputant and further to lead their own evidence.

Considering the above observations I record my findings to point nos.1 to 3 accordingly.

POINT NO.4 :-

18) *In view of my findings recorded to point nos.1 to 3,*

appeal bearing no.1 of 2018 is partly allowed. The Judgment and Award dated 21.12.2018 passed by the Ld. Judge, Cooperative Court, Latur in dispute bearing no.21/2015 is set aside. Parties are directed to appear before the trial court on 23.1.2019. Trial judge is directed to take the matter on board and proceed further as per law. In the peculiar circumstances there shall be no cost of appeal.

Considering the above findings following judgment is passed.

ORDER

- 1) Appeal bearing no.1 of 2018 is partly allowed.*
- 2) The Judgment and Award dated 21.12.2018 passed by the Ld. Judge, Cooperative Court, Latur in dispute bearing no.21/2015 is set aside and matter is remanded back to the trial court for fresh hearing.*
- 3) Parties are directed to appear before the trial court on 23.1.2019. Trial judge is directed to take the matter on board and proceed further as per law.*
- 4) R & P sent back to the trial court.*

Sd/-

Place : Aurangabad.

(Smt. S. R. Pawar)

Member

Date :- 7th December, 2018.

*Maharashtra State Cooperative
Appellate Court Mumbai
Bench Aurangabad.*

Dictated and pronounced in the open Court.

Order dictated on : 07.12.2018.
Order transcribed on : 07.12.2018.
Order ready on : 07.12.2018.