

Received on : 05.01.2018
Registered on : 05.01.2018
Decided on : 30.12.2019
Duration : 01Y 11M 25Ds

IN THE COURT OF JUDGE CO-OPERATIVE COURT, AURANGABAD
(Presided over by Tushar B. Waje)

C.C.A. No.1/2018

CNR No.: MHCO20-000213-2016

Exh. No.49

Dhanvantari Mahila Nagri Sahakari Pat Sanstha, Ltd.,
Gangapur Road, Vaijapur, Tq. Vaijapur, Dist. Aurangabad,
Through its authorized Signatory namely
Tushar s/o. Gorakh Gadekar,
Age : 38 years, Occ : Service (Accountant),
R/o. Gangapur Road, Vaijapur,
Tal. Vaijapur, Dist. Aurangabad.

... DISPUTANT

V E R S U S

- 1) Mangalbai w/o. Nandkumar Ghodke,
Age : 36 years, Occ:- Agriculture and Business,
R/o. Malisagaj, Post. Chinchadgaon,
Tal. Vaijapur, Dist. Aurangabad.
- 2) Lankabai w/o. Narayan Channe,
Age : 40 years, Occ : Business,
R/o. Malisagaj, Post. Chinchadgaon,
Tal. Vaijapur, Dist. Aurangabad.
- 3) Mandabai w/o. Appasaheb Pawar,
Age : 35 years, Occu : Agriculture,
R/o. Malisagaj, Post. Chinchadgaon,
Tal. Vaijapur, Dist. Aurangabad.
- 4) Hansraj s/o. Dhondiba Ghodke,
Since deceased through his legal representatives :-

4-a). Dhruvat s/o. Hansraj Ghodke, (Abated as died).

4-b). Sopan s/o. Hansraj Ghodke,
Age : 50 years, Occu : Agriculture,
R/o. Malisagaj, Post. Chinchadgaon,
Tal. Vaijapur, Dist. Aurangabad.

4-c). Dilip s/o. Hansraj Ghodke,
Age : 36 years, Occu : Business,
R/o. Malisagaj, Post. Chinchadgaon,
Tal. Vaijapur, Dist. Aurangabad.

4-d). Popat s/o. Hansraj Ghodke,
Age : 28 years, Occu : Service,
R/o. Malisagaj, Post. Chinchadgaon,
Tal. Vaijapur, Dist. Aurangabad.

.... **OPPONENTS**

Claim for :- Recovery of an amount of Rs.3,14,903/-

Shri K.M. Bardapurkar, Ld. Advocate for the disputant.

Dispute proceeded *ex-parte* against opponent nos.1 to 3, 4-b to 4-d.

The proceedings of this dispute stand abated against deceased
opponent no.4-a.

J U D G M E N T

(Delivered on 30th day of December 2019)

This is the dispute for recovery of an amount of Rs.3,14,903/- from the
opponents.

2. The facts giving rise to the disputant's case, in nut shell, are summarized as
below:

According to the disputant society, it is a co-operative society registered
under the provisions of the Maharashtra Co-operative Societies Act, 1960 and
same is engaged in the banking business. The disputant society is having its

registered office at Vaijapur, Tal. Vaijapur, Dist. Aurangabad and it advances numerous types of loans to its members. The opponents are the members of the disputant society. Opponent No.1 was in need of loan for her dairy business. Therefore, in the month of August-2006 opponent no.1 applied to the disputant society for loan. On 04.08.2006, opponent no.1 submitted loan demand application to the disputant society. Opponent Nos.2 and 3 were given as guarantors for the said loan. In view of the demand made by opponent no.1, the disputant society had sanctioned her cash credit loan of Rs.50,000/- for the period of 12 months with interest @ 18% p.a. Opponent Nos.1 to 3 had also executed, cash credit agreement cum guarantee deed, demand promissory note, letter of continuity in favour of the disputant society. In addition to this, opponent no.4 namely Hansraj s/o. Dhondiba Ghodke had also executed registered mortgage deed bearing D.B. No.3405/2006, dated 29.08.2006 in favour of the disputant society and thereby mortgaged his agricultural property admeasuring 2 Hector 34 Are out of Gut No.46 of village Malisagaj, Tal. Vaijapur, Dist. Aurangabad, as a security for repayment of the loan amount availed by opponent no.1 from the disputant society.

3. It is contended by the disputant society that opponent no.1 despite of having availed loan, has failed to make repayment of the said loan amount within the stipulated period as agreed alongwith due interest thereon. Therefore, the disputant society on various occasions made demands for repayment of outstanding loan amount by the opponents. However, the opponents did not make the repayment of loan amount. It is further contended that the disputant society has maintained loan account in the name of opponent no.1 as per the loan account as on 31.08.2017 including interest an amount of Rs.3,14,903/- was due and outstanding to the disputant society from opponent no.1. Opponent Nos.2 and 3 are the guarantors for the loan availed by opponent no.1 and they had undertaken joint and several liability alongwith opponent no.1 to make repayment of

aforesaid outstanding loan amount to the disputant society. Whereas, deceased opponent no.4 namely Hansraj s/o. Dhondiba Ghodke had mortgaged his agricultural property in favour of the disputant society as a security for repayment of loan availed by opponent no.1. According to the disputant society, the mortgagor namely Hansraj Ghodke had died on 03.02.2013. Hence, his legal representatives i.e. opponent nos.4-a to 4-d are impleaded in the present dispute, as they have inherited the mortgage property after the demise of mortgagor i.e. opponent no.4 namely Hansraj Ghodke. In view of the default made by the opponents in making repayment of loan amount, the disputant society on 06.10.2017 has issued demand notices to the opponents by R.P.A.D. through its Ld. Advocate Shri K.M. Bardapurkar. The opponents despite of having served with the demand notices, have avoided to make repayment of outstanding loan amount. Therefore, the disputant society was constrained to file this dispute, wherein it has prayed for an award of an amount of Rs.3,14,903/- in its favour and against all the opponents jointly and severally by awarding future interest @ 21% p.a. from 01.09.2017 till its realization.

4. Opponent Nos.1 to 3, 4-b to 4-c despite of having duly served with the suit summons, have failed to appear in the present dispute. Therefore, the dispute proceeded *ex-parte* against them. Whereas, opponent no.4-a namely Dhruvat s/o. Hansraj Ghodke was reported to have been died. The disputant society has failed to bring his legal representatives on record. Hence, the proceedings of this dispute stand abated against deceased opponent no.4-a.

5. I have heard Ld. Advocate Shri K.M. Bardapurkar appearing for the disputant society. I have also perused the documents produced on record by the disputant. In view of pleadings of the disputant society following points arise for determination and I have recorded my findings thereon for the reasons discussed as under.

<u>Sr. No.</u>	<u>POINTS</u>	<u>FINDINGS</u>
1.	Whether the disputant society proves that as on 31.08.2017 an amount of Rs.3,14,903/- was outstanding to it from opponent nos.1 to 3, 4-b to 4-d jointly and severally ?	Partly affirmative, as an amount of Rs.3,14,903/- was outstanding to the disputant society as on 31.08.2017 from opponent nos.1 to 3 jointly and severally.
2.	Whether the disputant society is entitled for an award of an amount of Rs.3,14,903/- against opponent nos.1 to 3,4-b to 4-d?	Partly affirmative, as the disputant society is entitled for an award for an amount of Rs.3,14,903/- only against opponent nos.1 to 3.
3.	What order and award ?	As per final order.

REASONS

AS TO POINT NOS. 1 AND 2 :-

6. The disputant society in order to substantiate its claim has tendered oral evidence of its authorized representative namely Tushar s/o. Gorakh Gadekar as DW1 at Exh.27. In addition to this ocular testimony, the disputant society has relied upon various documentary evidence, which is being discussed at the relevant stage during the course of this judgment. The disputant society has closed its evidence by filing pursis at Exh.48.

7. The witness examined by the disputant society i.e. DW1 namely Tushar s/o. Gorakh Gadekar in his affidavit in lieu of examination-in-chief has deposed on oath about suit loan transaction on the lines of averments made in the dispute. He has categorically deposed about sanction and disbursement of cash credit loan of Rs.50,000/- by the disputant society to opponent no.1 with interest @ 18% p.a. This witness has further deposed about execution of requisite loan documents by

opponent nos.1 to 3 in favour of the disputant society against the receipt of suit loan amount by opponent no.1. The deceased opponent no.4 namely Hansraj s/o. Dhondiba Ghodke had also mortgaged his agricultural property admeasuring 2 Hecter 34 Are out of Gut No.46 of village Malisagaj, Tal. Vaijapur, Dist. Aurangabad in favour of the disputant society by executing registered mortgage deed bearing D.B. No.3405/2006, dated 29.08.2006 as a security for repayment of aforesaid loan amount availed by opponent no.1. This witness also deposed about the default committed by opponents in making repayment of outstanding loan amount to the disputant society.

8. The aforesaid oral as well as documentary evidence adduced by the disputant society has remained unchallenged and unshaken at the instance of the opponents. The present dispute has been proceeded *ex-parte* against the opponents, as there is no appearance of any of the opponents. The pleadings as well as the evidence of the disputant society have gone undenied at the instance of the opponents. The loan documents produced by the disputant society such as cash credit agreement cum deed of guarantee, demand promissory note, letter of continuity, registered mortgage deed etc. clearly goes to show disbursement of loan amount of Rs.50,000/- by the disputant society to opponent no.1 with interest @ 18% p.a. Opponent No.1 despite of having served with suit summons has failed to appear in the present dispute and thereby also failed to deny the receipt of said loan amount and the allegations of the disputant society regarding her default to make repayment of the loan amount. The statement of loan account at Exh.47 produced by the disputant society clearly shows that as on 31.08.2017 an amount of Rs.3,14,903/- was outstanding to the disputant society from opponent no.1. The entries in the loan account extract have remained unchallenged by the opponents. The opponent nos.2 and 3 had executed deed of guarantee at Exh.39 in favour of the disputant society in connection with the loan availed by opponent no.1. Opponent Nos.2 and 3 are proved as guarantors of the

suit loan amount, but opponent nos.2 and 3 have also failed to challenge their liability towards the disputant society. The mortgagor namely Hansraj s/o. Dhondiba Ghodke had died on 03.02.2013, so the disputant society has impleaded his legal representatives i.e. opponent nos.4-a to 4-d in the present dispute, as they have inherited the mortgaged property from the deceased mortgagor Hansraj Ghodke. Here it is pertinent to note that deceased mortgagor Hansraj Ghodke had only mortgaged his agricultural property in favour of the disputant society as a security for repayment of loan amount, but he had not incurred any personal responsibility for repayment of the said loan. Therefore, opponent nos.4-b to 4-d can not be personally held responsible for repayment of loan amount availed by opponent no.1. The responsibility of opponent nos.4-b to 4-d is only to the extent of the mortgaged property inherited by them from deceased mortgagor namely Hansraj Ghodke. In such circumstance opponent nos.1 to 3 are required to be held liable to make repayment of outstanding loan amount of Rs.3,14,903/- to the disputant society. The loan documents shows the agreed rate of interest as 18% p.a. Thus, the disputant society has proves its entitlement to get an award for an amount of Rs.3,14,903/- in its favour only against opponent nos.1 to 3 jointly and severally. Holding so, I answer point nos.1 and 2 as partly affirmative.

9. As a cumulative effect of my foregoing reasons and discussion on point nos. 1 and 2, I come to the conclusion that the present dispute deserves to be partly allowed. It will be just and proper to saddle the proportionate costs on opponent nos.1 to 3 for constraining the disputant society to file the instant dispute. Hence, in result thereof, I pass the following order.

ORDER

1. The dispute is partly allowed with proportionate costs.

2. Opponent Nos.1 to 3 do pay an amount of Rs.3,14,903/- jointly and severally to the disputant society alongwith interest thereon @ 18% p.a. from 01.09.2017 till realization of the entire amount.
3. The disputant society is at liberty to proceed against and deal with mortgaged property i.e. agricultural property admeasuring 2 Hecter 34 Are out of Gut No.46 of village Malisagaj, Tal. Vaijapur, Dist. Aurangabad for recovery of the aforesaid adjudged loan amount by following due procedure of law.
4. Opponent Nos.4-b to 4-d are not personally liable for repayment of aforesaid adjudged loan amount. Their responsibility is only to the extent of the above mentioned mortgaged property inherited by them from the deceased mortgagor namely Hansraj s/o. Dhondiba Ghodke.
5. The proceedings of this dispute have already been abated against deceased opponent no.4-a namely Dhruvat s/o. Hansraj Ghodke.
6. Award be drawn up accordingly.

Dictated and pronounced in the open Court.

Sd/-

(Tushar B. Waje)

Judge, Co-operative Court,
Aurangabad.

Place : Aurangabad
Date : 30.12.2019