# IN THE COURT OF JUDGE CO-OPERATIVE COURT SOLAPUR

**Co-op. Case No- 21/2022**

*Shri Tanaji Ananda Mane & others* *:- Disputants*

**Vs.**

*Ratanchand Saaha Co-op. Bank Ltd Mangalvedha* *:- Opponent*.

## Order below exhibit 5

This is application for temporary injunction

## Briefly stated the case of disputants as under

1. That, the disputants have filed dispute for declaration and injunction. The disputants are members of opponent Bank which is registered co-operative society under the provisions of MCS Act 1960. The officers and office bearers of opponent Bank have shown to have disbursed loan of Rs- 14,50,000/- to disputants on 5th of May 2020. It is contended by disputants that on 5th of May 2020 the disputant no 1 had never submitted any loan demand application to the opponent Bank. As per such alleged loan application the disputants have never received any loan amount from opponent Bank. So also in connection with such loan demand application dated 5th of May 2020 the disputants have never signed any promissory note, loan Bond, loan Agreement etc. Though it is so the opponent bank has shown to have disbursed loan of Rs-14,50,000/- to disputants on 05/05/2020. The disputants since have not received any such loan amount they never accepted any liability to make repayment there of.

2. It is further contended by disputants that though the opponent bank has not obtained any recovery certificate under section 101 of MCS Act 1960, adamantly, forcefully & on the basis of false and forged documents it is illegally trying to recover the amount from disputants. The said action of opponent bank is illegal.

3. It is further contended by disputants that on 5th of January 2020 when the disputants had been to the opponent Bank for demanding documents pertaining to alleged loan, the manager of the opponent Bank had refused to acknowledge the application and therefore the disputant was constrained to send the same by registered post. The said application was duly received by opponent Bank. Despite that the opponent Bank has not satisfied the demand of disputant regarding the documents demanded by him. From time to time the manager of opponent Bank gave evasive replies to disputants and avoided to supply the documents demanded by him, which itself shows that the opponent Bank had the intention to cheat the disputants.

4. It is further contended by disputants that the opponent bank has prepared bogus loan documents to show disbursement of loan of Rs-14,50,000 to the disputants on 05/05/2020. It is submitted that since the year 2014 to 2019 for four times the disputant had taken loans from opponent Bank but same was repaid by him as per rules. It is alleged that the officers and servants of the opponent Bank have shown bogus loan in the name of disputant by misusing blank documents bearing signatures of disputants, which documents they had taken from disputant during the period from 2014 to 2019. The officers of opponent Bank have filled in the contents there of in the handwriting of some

third persons and shown bogus loan in the name of disputant. In fact the disputant no 1 has never received any loan amount from opponent Bank on 5th of may 2020 nor he had signed any loan documents. As per the loan demand application dated 5th of May 2020 disputant has never received any loan amount either in cash or through cheque. The disputants as such do not owe any amount to the opponent Bank. The officers and office bearers of the opponent Bank have shown bogus loan to cover up their misappropriation and financial irregularities. The opponent bank is trying to recover bulky amount from disputants on the basis of false loan account statement. It is submitted that on 25th of January 2022 the manager and other servants of opponent Bank had called upon the disputant in opponent Bank and forced him to repay the loan amount. The opponent Bank has no right to recover any amount from disputant. In spite of that the opponent bank is trying to illegally recover the amount from disputants forcefully. Therefore the disputant is constrained to file this dispute for claiming relief of permanent injunction against the opponent Bank. It is contended by disputants that the opponent bank has no legal right to recover any amount from them. The opponent Bank if succeeds in its said illegal act then disputants will suffer great monetary loss. The disputants have contended that they have prima facie case and balance of convenience is also lying in their favour & therefore the relief of injunction needs to be granted in their favour. The temporary injunction as prayed by disputants if not granted against the opponent Bank then disputants will suffer an irreparable loss. Accordingly with these contentions the disputants have lastly prayed for issuing temporary injunction against opponent Bank restraining it from recovering any amount from disputants in any manner till decision of the dispute on merits.

5. On receiving show cause notice of this application the opponent bank has

appeared in the matter and filed it's reply at Exh 12. The opponent bank has contended that the dispute as well as application for temporary injunction filed by disputants is/are false. The disputant has admitted receipt of the loan amounts however he did not repay the same and therefore recovery proceeding as well as action under the provisions of Securitization Act had been initiated by opponent Bank against him. To avoid hammer of said action present false dispute has been filed by disputants. It is submitted that in the year 2020 the disputant has taken loan amount of Rs- 14, 50,000/- from opponent Bank. Said amount had been transferred to his savings account on 5th of May 2020 and thereafter the disputant has withdrawn the same from time to time. Therefore his contention that he has never received any loan amount from opponent bank is false. On 12th March 2020 the disputant had submitted loan demand application and on 18th of March 2020 the board of directors of the opponent Bank had passed the resolution sanctioning him to the loan and accordingly loan sanction letter had been given to disputant no 1 and thereafter on 5th of May 2020 the disputants had executed required loan documents in favour of opponent Bank. It is submitted that the disputants have failed to make repayment of the loan amount & therefore from time to time the opponent Bank has given to disputant demand notices as well as letters. Despite receipt of the same the disputant has not made repayment and therefore action for recovery had been initiated by the opponent Bank. The disputant since has not replied the demand notice the opponent bank has initiated action for attachment of his property through Collector. Keeping anger in mind of the said action present false dispute has been filed by disputants against the opponent Bank. Therefore in the above circumstances it cannot be said that the action of opponent bank is illegal in any manner. The opponent Bank denied that it has prepared any bogus loan documents as alleged by disputants. The present dispute has been filed only with intention to create obstacles in the recovery process. Whenever the disputant had submitted applications to the opponent Bank, due acknowledgements there off were given by opponent Bank to him. The disputant never cooperated in the recovery action of the opponent Bank. The disputants have executed necessary loan documents in favour of opponent Bank in connection with amount of Rs-14,50,000/-. The disputants though have alleged that the opponent Bank had obtained the signatures of disputant no 1 on blank documents, he did not file any complaint anywhere against the opponent Bank till today and therefore his contention that false documents are prepared by the bank can not be accepted. It is submitted that the disputant no 1 has withdrawn the sanctioned loan amount from his saving account. This dispute has been filed by disputants after issuing notices by opponent bank under the provisions of Securitization Act 2002 and therefore same is not legally maintainable. Accordingly with these contentions the opponent bank has lastly played for dismissing the application with cost.

6. Heard argument of learned Advocate Shri V.V.Deshmukh for disputants and learned Advocate Shri V.V.Nagne for opponent bank at length. Perused the documents produced on record by both sides.

7. In the light of rival contentions of the parties and submissions made by both sides learned Advocates, following points arise for my determination and i have recorded my findings thereon for the reasons as under

| ***Points*** | ***Findings*** |
|---|---|
| 1. Whether disputants have made out prima facie case ? | ***In the negative.*** |
| 2. Whether balance of convenience is lying in their favour ? | ***In the negative.*** |
| 3. Whether disputants would suffer an irreparable loss | |

if temporary injunction as prayed by them is not granted against the opponent bank ? *In the negative.*

4. What order ? *Application rejected.*

## Reasons

8. *As to points no 1 to 3* :- In the instant case the disputants are coming with a negative theory. Their contention is that from the year 2014 to 2019 from time to time the disputant no 1 had taken loan amounts from opponent bank. The disputant was making repayment thereof regularly however since the year 2020 due to Covid-19 pandemic his business has suffered a set back and therefore he could not make repayment and his loan account went in to arrears. Despite that from time to time the disputant had made repayment. It is further contention of disputants that though his previous loan was due, the officers and office bearers of opponent bank have shown to have disbursed loan of Rs 14,50,000/- to him on 05/05/2020 on the surety ship of opponents no 2 & 3. It is the contention of disputants that the disputant no 1 had never demanded said loan amount to opponent bank, nor the bank had disbursed the same to him. So also the disputants have never executed any loan documents in connection with said loan amount to opponent bank. According to disputants the officers of opponent bank have prepared false and bogus loan documents of the alleged loan of Rs 14,50,000/- dated 05/05/2020 by misusing their earlier blank loan documents which the opponent bank had taken/obtained from them during the period from 2006 to 2014. It is the contention of disputants that they since have never received said loan amount they are not obliged to repay the same. The opponent bank has not obtained any recovery certificate against disputants under section 101 and therefore the bank has no legal right to ask for recovery of said loan amount.

9. As against this the opponent bank has contended that on 12/03/2020 the disputant had submitted loan demand application to the opponent bank, same was approved by board of directors on 18/03/2020 and thereafter loan sanction letter had been given to disputants and thereafter on 05/05/2020, the disputants have executed required loan documents in connection with loan of Rs 14,50,000/-. The sanctioned loan amount had been transferred to the saving account of disputant no 1 and thereafter from time to time he has withdrawn the same through withdrawals. The opponent bank had no reason to prepare bogus loan documents for loan of Rs 14,50,000/- as alleged by disputants. The opponent bank had initiated action for recovery against disputants and therefore keeping anger in mind of the said action this false dispute has been filed against opponent bank.

10. The learned Advocate for disputants Shri V.V.Deshmukh submitted that on 05/05/2020 the disputants have not taken any loan from opponent bank. They came to know about such alleged loan only when they had been served with demand notice by opponent bank on 11/01/2022. The said notice had been replied by disputants by flatly denying receipt of any such loan by them from opponent bank. It is further submitted by learned Advocate that the bank is alleging loan transaction of dated 05/05/2020 however during said period there was lock down due to covid-19 pandemic. There were total restrictions on the persons to come out of the house and therefore it is just unbelievable that on 05/05/2020 the disputants had demanded any loan amount to opponent bank or that they have received the same from it. The learned Advocate further submitted that though such bulky loan has been allegedly disbursed no security by way of mortgage etc has been taken by opponent bank from disputants and

therefore this is sufficient to infer that there is no factual loan transaction took place on 05/05/2020 and whatever transaction has been shown on that date is fake one. The disputants are not the beneficiaries of the loan dated 05/05/2020 and hence they can't be held liable for repayment.

11. The learned Advocate for opponent bank Shri V.V,Nagne on the contrary submitted that the loan was demanded by disputant no 1 on 12/03/2020 and after same had been sanctioned, disbursed to him by transferring the same to his saving account, from where he had withdrawn the same from time to time, the disputants have executed required loan documents in connection with loan of Rs 14,50,000/- and therefore they can't deny the receipt thereof now. The disputants have utilized the loan amount however failed to repay the same and hence recovery action had been initiated by opponent bank and therefore keeping anger in mind of that this false dispute is filed. The disputants have no prima facie case. The dispute has been filed with intention to avoid legal action and hence the application be rejected with cost.

12. As said earlier the disputants are comming with a negative assertion of non-receipt of any loan from opponent bank on 05/05/2020. The opponent bank on the contrary has come up with a case that on the said date loan of Rs 14,50,000/- had been disbursed by it to disputant no 1 on the surety ship of other disputants. The copies of loan documents produced by opponent bank along with list Exh 14 will show that on 12/03/2020 the disputant no 1 had applied for loan of Rs 14,50,000/- to opponent bank on the surety ship of disputants no 2 & 3 . It furthers appears that as per the loan demand made by disputant no1, the loan had been sanctioned to him and the sanction of the loan had been duly intimated to disputant no 1 on 18/03/2022. This letter states that the disputant no

1 has been sanction Agri loan of Rs 14,50,000/- with interest @ Rs 16 % p.a with repayment duration of 60 months. That apart, the contents of letter dated 05/05/2020 given by disputant no 1 to opponent bank shows that in the said letter the disputant had admitted receipt of loan of Rs 14,50,000/- from opponent bank and assured for executing registered mortgage Deed of his property in favour of opponent bank within period of 15 days. It further appears that instead of obtaining mortgage deed from disputant no 1, the opponent bank seems to have got executed an indemnity bond therein taking an undertaking from disputant that he will execute mortgage deed of his property within period of 60 months. The copies of further loan documents such as hypothication Karjrokha, continuing letter, promissory note, Karjrokha, Kararnama etc prima facie and clearly proves that in all the said loan documents the disputant no 1 has admitted to have received loan of Rs 14,50,000/- from opponent bank with interest @ Rs 16 % p.a. Furthermore the copies of documents produced by opponent bank along with list Exh 11 prima facie shows that sanctioned loan amount of Rs 14,50,000/- had been transferred to the saving account of disputant no 1 on 05/05/2020 and thereafter from said date till 27/07/2021 from time to time the amounts had been withdrawn by disputant as per his requirement. There are zerox copies of withdrawal challans produced by opponent bank along with list Exh 14 which prima facie shows that under these challans, the disputant no 1 has withdrawn the amounts from his saving account. In such circumstances the contention of disputants that the disputant no 1 has never received any loan amount from opponent bank on 05/05/2020 can not be accepted. The learned Advocate for disputants tried to submit that the signatures on the documents produced by opponent bank along with list Exh 14 and the signatures on the documents produced by disputants along with list Exh 4 are totally different and therefore no reliance can be placed upon the said copies produced vide list Exh

14. This argument can not be accepted. At this juncture there is no evidence in the form of expert opinion etc to say that the signatures on documents produced along with list Exh 14 are not of disputants. Therefore mare denial can not be held sufficient. The facts and circumstances on record makes it clear that heavy amounts are due from disputants to opponent bank. It seems that immediately after receiving demand notices from opponent bank the disputants have filed this dispute with a prayer of injunction, which prima facie shows that this is the counter blast action initiated by disputants against the recovery action initiated by the opponent bank. In my opinion at this juncture the disputants have failed to prove that there is any prima facie case in their favour for granting injunction against the opponent bank. In the absence of any prima facie case there is no question of there being any balance of convenience lying in favour of disputants nor they will suffer any irreparable loss if the temporary injunction is not granted in their favour and against the opponent bank. Accordingly with this discussion the points are answered by me in the negative. Resultantly in answer to point no 4 i proceed to pass the following order,

***Order***

1. Application for temporary injunction stands rejected.
2. No order as to cost.

10/5

Date :- 10/05/2022

(U.M.Kulkarni)
Judge
Co-op. Court Solapur.