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Decided On – 13.02.2024

Duration – Y M D

IN THE COURT OF JUDGE CO-OPERATIVE COURT SOLAPUR

(Before Shri U.M.Kulkarni)

Exh-56

Co-op. Case No- 40/2017

Shri Veershaiva Nagari Bigarsheti Sah. Pat. Sanstha Mardt.

Mangalvedha Tal-Mangalvedha, Dist-Solapur

:- Disputant

Versus

1. Shri Satyawan Manik Shinde

Age-44 years, Occup-Agri.

2. Shri Sambhaji Vithoba Shinde

Age-44 years, Occup-Agri.

3. Shri Sharad Manik Shinde

Age-34 years, Occup-Agri

All R/o-Bathan , Tal-Mangalvedha, Dist-Solapur

:- Opponents.

Claim :- Dispute for recovery of Rs 4,01,660/-

Appearance

Adv Shri S.M.Havnale for disputant.

Adv Shri M.D.Marda for Opponent No 1.

Opponents No 2 & 3 Exparte.

J U D G M E N T

(Delivered On 13.02.2024)

This is a dispute for Recovery of Rs 4,01,660/- from opponents.

Briefly stated facts of the dispute are as under.

1. It is contended that, the disputant is an urban Co-operative credit Society registered under the provisions of MCS Act 1960 and it is doing the business of advancing loans to its members. The opponents are members of disputant. The opponent No 1 had demanded loan amount to disputant by submitting loan demand application on 05.04.2013 & as per his said demand the disputant society had sanctioned to him loan of ₹ 2,50,000/-. From the said sanctioned loan amount, an amount of Rs 1,60,000/-, Rs 38,000/-, Rs 5,000/-, Rs 20,000/-, & Rs 11,000/- totaling amount of Rs 2,34,000/- has been disbursed to opponent No 1 on 15.05.2013, 31.08.2013, 04.10.2013, 16.11.2013, & 29.03.2014 respectively. The remaining amount has not been received/taken by opponent. The opponents No. 2 & 3 are stood as a guarantor's to opponent no 1 for the said loan amount. The opponents had agreed to pay interest @ Rs 16% per annum on the said loan amount. They had further agreed to repay the loan amount within stipulated period by monthly instalments in default they had further agreed to pay penal interest as per the bylaws of disputant. Acknowledging the receipt of said loan amount all the opponents have executed Promissory note, Karjrokha, Kararnama and such other documents in favour of disputant on 15.05.2013.

2. It is further contended by disputant that the opponent No 1 had utilized the loan amount but failed to repay the same as per the agreed terms. All the opponents are jointly & severally liable to repay the loan of disputant. Time and again the disputant society had demanded repayment of outstanding loan amount from opponents but they didn't respond to that. As per the loan account maintained by disputant society in the name of opponent No 1 an amount of ₹ 4,01,660/- is due and outstanding to it from him. The opponents No 2 & 3 are guarantors to opponent No 1 & hence they

are also jointly & severally liable to repay the loan of disputant. It is further contended that the disputant is a co-operative society and opponents are its members, the dispute is touching the business of disputant and therefore it falls under section 91 of MCS Act 1960 and this Court has jurisdiction to try and decide the same. Accordingly with these contentions disputant society has lastly prayed for allowing the dispute and passing award for an amount of ₹ 4,01,660/- in its favour and against the opponents No 1 to 3 jointly and severally by awarding further interest @ Rs- 16% p.a. on the said amount from 16/02/2017.

3. The opponents No 2 & 3 are duly served with summons of the dispute but failed to appear in the matter and hence dispute proceeded further Ex-party against them as per order passed below Exh 1.

4. The opponent No 1 in response to dispute summons has appeared in the matter & filed his written statement at Exhibit 23. The opponent has denied all the allegations of disputant contending same as false. The opponent No 1 has denied to have made loan demand application to disputant. He further denied to have executed mortgage Deed in favour of disputant on 06.03.2013 as alleged. The opponent denied to have received any loan amount from disputant. The opponent has further denied to have executed any loan documents in favour of disputant as alleged. The opponent denied that the loan documents bears his signatures & handwriting as alleged. There is overwriting on the date, amount etc mentioned in the loan documents. There was no loan demand made by opponent & hence there is no question to make any repayment of the loan by him. The opponent has no concern with the alleged loan transaction. The disputant society has never made any demand for repayment to opponent nor he has received any demand notice from disputant at any time. The opponent is not liable to repay the suit amount to disputant.

5. During pendency of dispute the opponent has got amended his written statement vide Exh 47. In the said written statement the opponent has contended that, the date of loan demand application mentioned by disputant is 05.04.2013 whereas the date of mortgage obtained from opponent is anterior to 06.03.2013 & this itself

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makes it clear that the loan is bogus. The rate of interest mentioned in the loan documents & mortgage Deed is different. So also the amount of loan mentioned in both the said documents is different. In the mortgage Deed, clause 3 it is mentioned that in the event the loan goes in default, the society will charge interest @ Rs 2 % p.a. on the loan amount & hence the disputant society can't charge interest more than Rs 2 % p.a. The dispute is based on false documents & it is filed by concealing true facts & hence liable to be dismissed. Accordingly with these contentions the opponent has lastly prayed for dismissing the dispute by awarding him compensatory cost of Rs 25,000/- from disputant society.

6. On the basis of above pleadings of the parties, following issues are framed below Exh 25. I have reproduced the said issues along with my findings thereon for the reasons recorded as under,

ISSUES

FINDINGS

1. Does disputant society proves that it is entitled to recover an amount of Rs 4,01,660/- along with further interest @ Rs 16 % p.a. & penal interest @ Rs 3 % p.a. from opponents No 1 to 3 jointly & severally ?

In the negative.

1A. Do opponent No 1 proves that the disputant society is not entitled to charge interest at the rate more than 2 % p.a. on the suit loan amount as contended ?

In the negative.

2. Do opponent proves that he is entitled for compensatory cost Of Rs 25,000/- as prayed in W.S. ?

In the negative.

3. What order & award ?

As per final order.

5. Heard learned Advocate Shri S.M.Havnale for disputant society & learned Adv Shri M.D.Marda for opponents No 1. Perused the record.

R E A S O N S

6. As to Issue No 1 :- It is the case of disputant society that as per demand made by opponent No 1 it had sanctioned to him loan of Rs 2,50,000/- & out of the said amount, it disbursed to him amount of Rs 1,60,000/- on 15.05.2013, Rs 38,000/- on 31.08.2013, Rs 5,000/- on 04.10.2013, Rs 20,000/- on 16.11.2013 & Rs 11,000/- on 29.03.2014 respectively. Thus according to disputant society it has in total disbursed amount of Rs 2,34,000/- to opponent No 1. Rest of the amount is not taken by opponent. It is further case of disputant society that the opponents No 2 & 3 are stood as a guarantors to opponent No 1 for the said loan & they had agreed to pay interest thereon @ Rs 16 % p.a. It is further case of disputant society that in connection with said sanctioned loan amount of Rs 2,50,000/- the opponents have executed loan documents such as promissory note, Karjrokha, Kararnama, etc in its favour on 15.05.2013. The loan was agreed to be repaid within stipulated period but they have failed to repay the same along with due interest thereon & as per the loan account maintained by disputant in the name of opponent No 1, an amount of Rs 4,01,660/- is due & outstanding to it from him & all the opponents are jointly & severally liable to repay the said amount to disputant. However in spite of making repeated demands the opponents did not respond & hence the dispute.

The opponent No 1 in his written statement has denied demand as well as receipt of alleged loan amount by him from disputant. He also denied to have executed loan documents in favour of disputant for the alleged loan. He also denied that he is liable to repay the suit amount to disputant as alleged.

7. Needless to mention that in order to succeed in the matter the disputant society at the out set must prove alleged disbursement of loan amount of Rs 2,50,000/- by it to opponent No 1 & the subsequent default in repayment thereof by him. It is only

on proof of said fact the disputant society can be held entitled to for the award against opponents.

8. In order to prove the dispute contentions, the disputant society had examined its Chairmen **Shri Shrishail Malkappa Havnale at Exh 13**. He deposed on oath on the line of dispute averments. He had proved & got Exhibited loan documents such as loan demand application at Exh 14, Promissory Note at Exh 15, Karjrokha at Exh 16, Kararnama at Exh 17, Extract of suit loan amount at Exh 18 & copy of resolution of his authorization to depose on behalf disputant at Exh 19. There was however no cross examination of him by opponents. It appears that after, filing closing of the evidence by disputant society, the opponent No 1 had filed his written statement in the matter along with application to set aside No W.S. order. The said application of opponent was allowed & his written statement at Exh 23 was taken on record & thereafter the issues are framed in the matter below Exh 25. Thereafter the disputant society has adduced oral evidence of its Manager **Shri Sangameshwar Gurupad Burkul at Exh 26**. He also has deposed on oath on the line of dispute averments. However he also **has not been** cross examined by opponent No 1 though granted opportunity. Therefore it is evident that the evidence produced by disputant society in support of its claim has remained unchallenged by opponent No one.

8. However still, in the attending facts on record, the question is whether above evidence produced by disputant society can be said to be sufficient to hold that it is entitled to recover suit claimed amount from opponents ? This is so because I find there is discrepancy in the pleadings of disputant & evidence produced on record by it. From the averments made in para No 3 of the dispute application it is crystal clear that, on 15.05.2013 itself the disputant society did not disburse entire loan amount of Rs 2,50,000/- to opponent No 1. As per the case of disputant as pleaded, on 15.05.2013 it had only sanctioned loan of Rs 2,50,000/- to opponent No 1 but on that it only disbursed amount of Rs 1,60,000/- to opponent No 1 & remaining amount it has allegedly disbursed to him on 31.08.2013, 04.10.2013, 16.11.2013 &

29.03.2014 respectively. However the documentary evidence produced on record by disputant society is not in consonance with its own pleadings. There is variance in pleading & proof. All the loan documents at Exh's 15 to 17 which are referred above mentions that the entire loan amount of Rs 2,50,000/- has been paid by disputant to opponent No 1 on the date of execution of said loan documents itself, by opponents. The contents of loan documents runs contrary to the pleadings made. From the averments made in the dispute application & looking to the contents of loan documents it is crystal clear that though entire sanctioned loan amount of Rs 2,50,000/- had not been disbursed by disputant to opponent on 15.05.2013, it has got executed loan documents for the said loan amount of the said date from opponents. The entire consideration mentioned in the loan documents was not passed to opponent No 1 on the date of execution thereof by him. Therefore If amount of Rs 1,60,000/- only had been disbursed by disputant to opponent on 15.05.2013 then the loan documents must have been of the said amount & not different. In my considered opinion there was no reason for disputant society to obtain from opponents loan documents for an amount of Rs 2,50,000/-.

9. In the dispute application what is alleged is that on 15.05.2013 the disputant society has disbursed amount of Rs 1,60,000/- to opponent No 1. If that was the fact then to justify the said stand no voucher or chalan of dated 15.05.2013 is brought on record by disputant society. Furthermore in the dispute application though it is alleged that on subsequent dates i.e. on 31.08.2013, 04.10.2013, 16.11.2013 & 29.03.2014 respectively, remaining amounts are disbursed by disputant society to opponent No 1, no vouchers or chalans to prove said disbursement of the amounts, are brought on record by disputant. Therefore it is difficult to accept the contention of disputant society that on the aforesaid dates the amounts of Rs 38,000/-, Rs 500/-, Rs 20,000/- & Rs 11,000/- respectively have been actually paid by it to opponent. Furthermore in the dispute application itself it is alleged by disputant that on aforesaid all the dates it has, in total disbursed amount of Rs 2,34,000/- to opponent, remaining amount has not been taken by opponent.

This further proves that though there was no disbursement of total loan of Rs 2,50,000/- to opponent on 15.05.2013, the disputant society has got executed loan documents for the sanctioned amount from him. There is no documentary evidence (except loan documents Exh's 15 to 17) produced by disputant to prove actual disbursement of said amount by it to opponent. Therefore in my considered opinion the loan documents on record at Exh 15 to 17 can not be said to be sufficient to hold that amount of Rs 2,50,000/- mentioned therein had been actually disbursed by it to opponent. Therefore it can't be said that disbursement of loan of Rs 2,50,000/- by disputant to opponent No 1 is proved. Consequently therefore the disputant society cant be held entitled to recover said amount from opponents. It is true that the loan account Extract at Exh 18 produced by disputant society do show that an amount of Rs 4,01,660/- is due & outstanding to it from opponent. However if the actual disbursement of the suit loan amount is not proved by disputant than certainly merely on the basis of entries in the loan account extract which are not supported by any vouchers or chalan, the disputant society can't be held entitled to recover said amount from opponents. It is well settled legal position that mere entries in the account books are not sufficient to fasten liability on the person unless corroborated by further evidence. Therefore relying on the loan account Extract Exh 18 the opponents can't be held liable for the suit claim of disputant. It is true that the opponent No 1 has not cross examined the witnesses of disputant with regard to any documentary evidence brought on record by disputant. However in my opinion when the pleading & evidence of disputant society itself runs contrary to each other then the fact that there is no cross examination of witnesses by opponent, is of no consequence. Therefore I hold that the disputant society can't be held entitled to recover the suit claimed amount from opponents. Hence with this discussion the issue is answered by me in the negative.

9. As to Issue No 2 :- The burden of this issue was kept on opponent No 1. In his amended written statement he has contended that in mortgage Deed clause 3 it is specifically mentioned that in the event the loan is defaulted by opponent then

disputant society will charge interest @ Rs 2 % p.a. on the loan amount & therefore in the light of said clause the disputant society is not entitled to charge interest more than said rate. As far as this defence is concerned the opponent No 1 did not enter in to the witness box to prove the same. More over the mortgage Deed is not exhibited & hence same can't be read in evidence. The opponent did not secure any admission from the witness of disputant society as per his defence. Therefore I hold that the opponent No 1 has failed to prove his said defence & hence the issue is answered by me in the negative.

10. As to Issue No 3 :- The opponent No 1 has contended that by filing this false dispute he is unnecessarily harassed by disputant society & therefore he should be awarded compensatory cost of Rs 25,000/- from disputant society. It must be mentioned here that as per Section 35-A of Cpc, the court may award compensatory cost to the objector from the party lodging the claim if it is found that such party has knowingly made or lodged false or vexatious claim against the objecting party & such claim later on has been disallowed, withdrawn or abandoned against the objecting party. However as per the proviso to said provision the amount of compensatory cost shall not exceed Rs 3,000/-. Therefore first thing is that there arise no question of awarding cost of Rs 25,000/- to opponent from disputant. Further more awarding compensatory cost under said provision is totally discretionary. The said provision is not mandatory. The discretion has to be exercised judiciously. Therefore in the attending facts & circumstances on record I don't find the claim of opponent regarding compensatory cost of Rs 25,000/- is just & reasonable. Therefore I hold that opponent No 1 can not be held entitled to said cost from disputant. Hence with this discussion I have recorded my finding on this issue in the negative.

11. As to Issue No 4 :- In view of my respective findings on the issues No 1 to 3 as recorded above in answer to this issue, in the result I proceed to pass the following order,

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O R D E R

1. The dispute stands dismissed.
2. No order as to cost.
3. Award be drawn up accordingly.

Date :- 13.02.2024


(U.M.Kulkarni)

Judge

Co-op. Court Solapur