MHCO150006672018

IN THE COURT OF JUDGE CO-OPERATIVE COURT AT NASHIK, DIST-NASHIK.

CC NO.701/2018

Shree Vyankatesh Co-op. Bank ltd., Malegaon
Add:M.Y.Compound, Camp Road, Malegaon …..DISPUTANT

V/s.

Shri.Devidas Jaywantrao Hire …..OPPONENTS
R/o.S.No.M-16, Behind KBH Vidyalay,
Malegaon Camp, Tal.Malegaon, Dist.Nashik.
And Others.

ORDER BELOW EXH.5, 24 & 35
(Pronounced on 22/08/2019)

1] This is an application filed by the disputant bank for direction to opponent No.4 to deposit the amount of opponent No.1 lying with it in the disputed loan account on the ground that, opponent No.1 had obtained loan of Rs.2,00,000/- on 14/3/2007 from it. The said loan is to be repaid by opponent in sixty months by monthly installments. The loan repayment installments agreed to be deducted from salary of opponent No.1 and opponent No.4 promised to deposit the amount. Monthly installments was of Rs.4800/-. Inspite of this, monthly installments are not deducted and deposited by opponent No.4 in the disputed loan account. Also opponent No.1 failed to pay the installments and as on 19/11/2008 amount of Rs.4,05,022/- is outstanding on the loan account of opponent No.1.

2] Disputant bank repeatedly requested to the opponent to repay the loan amount at that time opponent No.1 promised to repay the outstanding loan amount from the monetary benefits which will be received by him as retirement benefits. Opponent No.1 had issued cheque of Dena Bank but after inquiry, it is learnt that opponent No.1 has given account number of his account with Maharashtra Bank for the purpose of receiving the retirement benefits. Accordingly, demand notice was issued to the opponents No.1 to 4 through advocate on 19/11/2018. Inspite of demand notice, opponents failed to repay the outstanding loan amount, opponent No.4 shows his inability to transfer the amount of opponent No.1 in the loan account without order of Court. If the amount is withdrawn by opponent No.1 then disputant bank will be not able to recover its outstanding from the opponent No.1. Hence, disputant bank prays for directions against opponent No.4 to deposit the amount of opponent No.1 in the loan account with disputant bank.

3] Show cause notice of this application is duly served to the opponents. Opponent No.1 & 4 appeared through advocate and opponent NO.1 objected this application on the ground more specifically mentioned in his reply. The defense of opponent No.1 in nutshell is that, disputant has not come with clean hands in this Court. Material facts are suppressed by the disputant. This dispute is collusive dispute filed by disputant in collusion with opponent No.4. This Court has no jurisdiction to issue any directions to the opponent No.4 as prayed by the disputant. As per the undertaking given by the opponent No.4, it is responsibility of opponent No.4 to deduct the amount from the salary of opponent No.1 and directly pay it towards the repayment of loan installments. Opponent No.4 fails to perform his duties. Therefore, opponent No.4 is personally liable to pay the outstanding amount. The disputant had also filed Criminal Summary Case bearing No.87/2009 u/s. 138 of the Negotiable Instrument Act against the opponent No.1 which was dismissed by Hon'ble Court. Opponent No.1 had repaid amount of Rs.2,52,000/- through opponent No.4 till 2013. Opponent No.1 in collusion with the opponent No.4 had deducted amount of Rs.15000/- in the month of December-2017 and amount of Rs.5000/- in the month of January-2018. This disputant has repaid total outstanding loan amount. Opponent No.1 had replied notice issued by the disputant and all the facts are explained to the disputant. This opponent No.1 had not given any assurance to the disputant bank in respect of the repayment of the loan amount from the monetary benefits which will be received by opponent No.1 after his retirement.

4] On 25/2/2019 PPF amount of Rs.2,55,697/- of opponent No.1 is transferred towards opponent No.4. Also on 14/2/2019 amount of Rs.4,02,690/- on the count of leave encashment, is transferred by Joint Director, Higher Education, Pune towards the opponent NO.4. These amounts are laying with opponent No.4. These amounts are the amounts of retirement benefits of opponent No.1 and opponent No.1 is entitled to withdraw these amount. This Court has no jurisdiction to attach these amounts. On these and other grounds, opponent No.1 prays to reject the application.

5] Opponent No.4 had filed its reply to this application and submitted that opponent No.1 is retired from the service and the amount of PPF and leave encashment is received to the opponent No.4 and out of which PPF amount of Rs.2,55,697/- is already paid to the opponent No.1 and at present the amount of Rs.4,02,690/-, which is received on the count of leave encashment of opponent No.1 is laying with the opponent No.4 and opponent No.4 requested this Court to pass appropriate order for disposal of this amount and opponent No.4 will be abide by any order passed by this Court.

6] The loan installments are not deducted from the salary of opponent No.1 due to the obstructions by opponent No.1. Opponent

No.1 himself is responsible for the dues of loan account. Opponent No.4 is not personally responsible to pay any amount.

7] Considering rival pleadings of parties following points arose for my determination and I give my findings thereon supported with the reasons as under:

	POINTS		FINDINGS
(1)	Whether prima-facie case is in favour of the applicant?	…	In the Affirmative
(2)	Whether balance of convenience is in favour of the applicant?	…	In the Affirmative
(3)	Whether irreparable loss would be caused to disputant if the order as prayed for is not passed?	…	In the Affirmative
(4)	What order?	…	As per final order.

REASONS

8] Heard learned advocate Smt.G.A.Udgirkar for disputant/applicant, learned advocate Shri.N.R.Shinde for opponent No.1 and learned advocate Shri.D.R.Keshwani for opponent No.4, at length.

9] Learned advocate for disputant argued that sanction and disbursement of loan is not specifically denied by opponent No.1. Also opponent No.1 has not filed on record any documentary evidence, which prima facie shows that loan amount is repaid by opponent No.1 and also opponent No.1 had not specifically objected the entries in the loan account extract filed in this Court. As per the loan account extract as on 5/2/2018 amount of Rs.4,05,022/- is outstanding on the loan account of the opponent No.1. As per the loan documents filed on record, installments of the loan are to be paid from the deduction of salary and it is fact that the loan installments are not deposited by opponent No.1 or opponent No.4 on time in the disputed bank and due to this default, the loan is not repaid within the stipulated time. Opponent No.1 is retired from his services and he has received the amount which is laying with opponent No.4 and if this amount is given by opponent No.4 to the opponent No.1 then the disputant bank will not be able to recover its outstanding amount as the charge of loan is not created upon any property of opponent No.1. Hence, it is necessary to direct opponent No.4 to deposit the amount directly to the disputant bank.

10] Learned advocate for the opponent No.1 argued that the present dispute is filed by disputant in collusion with the opponent No.4. There is no any cause of action to file this dispute. The present dispute is filed on the say of opponent No.4. As per the undertaking given by the opponent No.4, it is duty of the opponent No.4 to deduct the amount from the salary of the opponent No.1 and to repay the loan by installments and opponent No.4 fails to discharge his duty. Therefore, in view of Sec.49 of the M.C.S. Act,1960, opponent No.4 is personally liable to repay the outstanding amount. The amount which is laying with the opponent No.4 is the amount payable to the opponent No.1, as his pensionery and retirement benefits which cannot be attached. Hence, application required to be rejected.

11] Learned advocate for opponent No.4 specifically argued that opponent No.4 had given undertaking to deduct installments from salary of opponent No.1 and pay it to the disputant bank. This opponent No.1 is in service with the opponent No.4 and opponent No.1 himself is doing the work of preparation of pay-bills and he himself did not show deduction of installments of disputed loan transaction. Also opponent No.1 had obstructed the deduction and also filed various applications towards opponent No.4 requesting him not to deduct amount on various grounds. Copies of these documents are filed on record along with list Exh.47. Hence, due to conduct of opponent No.1 opponent No.4 was not in position to deduct installments towards disputed loan on time. Hence, opponent No.4 is not personally liable to pay any amount. The amount of PPF and other retirement benefits are already paid by opponent No.4 to the opponent No.1 and at present amount of Rs.4,02,690/- is with opponent No.4 and this amount is towards leave encashment of opponent No.1. Amount of leave encashment is not considered as retirement benefits and the leaves are credited on the basis of service of employees. Hence, the amount of leave encashment is as-good-as amount of salary. Hence, there is no any bar to attach this amount. Opponent No.4 is abide by the order of this Court in respect of payment of this amount.

12] Considering the pleading of parties and documents filed on record and the submissions of learned advocate of both parties, it is prima-facie seen that opponent NO.1 had obtained loan of Rs.2,00,000/- on 14/3/2007 from the disputant bank. From perusal of copies of loan documents filed on record along with list Exh.3, it is seen that opponent No.4 had given undertaking to deduct the amount of loan installments from salary of opponent No.1. As per the loan account extract filed on record, it is prima facie seen that as on 5/2/2018 an amount of Rs.4,05,022/- is outstanding on the loan account of opponent No.1. It is also prima-facie seen that loan account is duly maintained by the opponent No.1. It is also admitted fact that amount of leave encashment of Rs.4,02,690/- of opponent No.1 is laying with opponent No.4.

13] Opponent No.1 in his reply mentioned that he had repaid the disputed amount but in support of this statement, opponent has not filed on record any receipt of such payments. From the documents filed on record by the opponent NO.4 along with list at Exh.47, it is prima-facie seen that on various occasions opponent No.1 had objected deduction of installments and also opponent No.1 requested opponent No.4 not to deduct amount of installments of disputed loan transaction. As such, it is prima-facie seen that there is no any fault on the part of opponent No.4. And it is prima-facie seen that due to wrongful acts and omissions of payment of installments of opponent No.1, the disputed loan transaction is not settled in time. Therefore, opponent No.1 is liable to pay the amount.

14] In view of Sec.49 of the M.C.S. Act, 1960 if employer fails to deduct amount of installments and fails to pay it to the creditor, then he is personally liable to pay that amount. In my view, personal liability cannot be invoked by borrower on whose wrongful acts the employer was not able to deduct amount. Also it is the duty of borrower to see whether loan installments are deducted from his salary or not and if installments are not deducted then he has to point out that fact to the employer. Hence, opponent No.4 is not liable to pay any amount and it is liability of opponent No.1 to pay the outstanding amount.

15] It is admitted fact that the amount laying with opponent No.4 is the amount of leave encashment of opponent No.1. Learned advocate for opponent No.1 has not shown any provision which bars the Court from attachment of amount of leave encashment. Hence, it is held that this Court has jurisdiction to attach the amount of leave encashment.

16] The amount of leave encashment laying with opponent No.4 if kept with opponent No.4 then there will be loss to the opponent No.1 himself because the interest on the outstanding loan amount will continue and at the end of final adjudication of the dispute, if the dispute is allowed then burden of that interest will certainly lay upon the opponent No.1. Hence, in the interest of disputant bank and opponent No.1, it is necessary to direct the opponent No.4 to give this amount to disputant bank for depositing it in the disputed loan account and also it is necessary to order that this deposit should be subject to final outcome of this dispute. Accordingly, I answer points No.1 to 3 in affirmative and in answer to the point No.4 I proceed to pass following order.

ORDER

(1) Opponent No.4 is directed to transfer/pay amount of Rs.4,02,690/- (Rs.Four lakh Two thousand Six hundred Ninety only) to the disputant bank, which is laying with it towards leave encashment of opponent No.1, after deducting the mandatory taxes and file on record the details and bifurcation of taxes and amount paid to the disputant bank.

After payment of this amount to the disputant, opponent No.4 will presumed to be discharged from his liability of payment of this amount to the opponent No.1.

(2) After receipt of the amount, as per clause No.1 of this order, disputant society is directed to credit this amount in the disputed loan account and stop charging interest to the extent of that amount from the date of this order.

(3) The deposit as per clause No.1 of this order will be considered at the time of final adjudication of this dispute and if necessary appropriate order will be passed at the time of award in respect of this amount.

(4) No order as to cost.

Date:22/08/2019 (A.S.WANVE)
Place: Nashik. Judge,
Co-operative Court, Nashik

Note: Corrected and signed on 27/08/2019

DISTRICT COURTS MAHARASHTRA

Digitally signed by Anil Sahebrao Wanve
Date: 2019.08.27 17:50:58 +0530