

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
WRIT PETITION NO.3278 OF 2025**

1. Shri. Mansing Anandrao Patil,
Age: 40 Years, Occupation: Agriculture,
R/o. Banpurikar Colony, Kalyani Plot,
Shaniwar Peth, Karad, Taluka: Karad,
District: Satara,
2. Smt. Alka Anandrao Patil,
Age: 50 Years, Occupation: Agriculture,
R/o. Banpurikar Colony, Kalyani Plot,
Shaniwar Peth, Karad,
Taluka: Karad, District: Satara,
3. Shri. Pratapsinh Anandrao Patil,
Age: 35 Years, Occupation: Agriculture,
R/o. Banpurikar Colony, Kalyani Plot,
Shaniwar Peth, Karad, Taluka: Karad,
District: Satara,
4. Shri. Vishwas Raghoji Patil,
Age: 40 Years, Occupation: Agriculture,
R/o. Banpurikar Colony, Kalyani Plot,
Shaniwar Peth, Karad, Taluka: Karad,
District: Satara,
5. Smt. Kusum Vishwas Patil,
Age: 48 Years, Occupation: Agriculture,
R/o. Banpurikar Colony, Kalyani Plot,
Shaniwar Peth, Karad, Taluka: Karad,
District: Satara,
6. Shri. Vaibhav Vishwas Patil,
Age: 40 Years, Occupation: Agriculture,
R/o. Banpurikar Colony, Kalyani Plot,
Shaniwar Peth, Karad, Taluka: Karad,
District: Satara,
7. Shri. Anandrao Raghoji Patil,
Age: 58 Years, Occupation: Agriculture,
R/o. Banpurikar Colony, Kalyani Plot,
Shaniwar Peth, Karad, Taluka: Karad,
District: Satara.

..Petitioners

Versus

1. Shri. Sanjay Ramrao Patil,
Age: 54 Years, Occupation: Agriculture,

R/o. A/p. Saidapur, Near Cha. Shivaji Maharaj Putla,
Karad, Taluka: Karad, District: Satara,

2. Shri. Sanjay Bhargav Jadhav,
Age: 56 Years, Occupation: Agriculture,
R/o. A/p. Saidapur, Taluka: Karad,
District: Satara,
3. Jivanrekha Nagari Sahakari Pat Sanstha Ltd.,
Jaywant Plaza, Near S.T. Stand, Shaniwar Peth,
Karad, Taluka: Karad, District: Satara. ..Respondents

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Mr. Utkarsh Desai, Advocate for Petitioners.

Mr. Drupad Sopan Patil, Advocate for Respondents.

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CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : 18th SEPTEMBER, 2025.

PRONOUNCED ON : 01st OCTOBER, 2025.

JUDGMENT:-

1. Rule. Rule made returnable forthwith. With consent of parties, matter is taken up for final hearing at admission stage.
2. The present Writ Petition takes exception to order dated 30.11.2024 passed by learned Member, Maharashtra Co-operative Appellate Court, Mumbai Bench at Pune in Revision Application No.60/2024, thereby upsetting order dated 04.09.2024 passed by learned Judge, Co-operative Court, Satara on application Exhibit-14-A filed by respondent nos.1 and 2 under Order VII Rule 11 of Code of Civil Procedure and ultimately rejecting plaint in Co-operative Case No.284/2023.
3. The petitioners filed dispute in Co-operative Case No.284/2023 before Co-operative Court at Satara contending that respondent no.3 is

Co-operative Society registered under provisions of Maharashtra Co-operative Societies Act, 1960 (for the sake of brevity hereinafter referred as 'MCS Act, 1960'). The petitioners and respondent nos.1 and 2 are its members. On 22.10.2014, respondent no.1 borrowed loan of Rs.15,00,000/- from Society. The respondent no.2 was guarantor for said loan. The loan amount was to be repaid by 22.04.2019. Since respondent no.1 failed to repay loan, respondent no.3-Society adjusted petitioners' Fixed Deposits worth Rs.20,00,000/- alongwith interest against loan account of respondent no.1.

4. According to petitioners, they had made fixed deposit of Rs.20,00,000/-. They were not guarantors for loan borrowed by respondent no.1. The FDRs of petitioners were kept in possession of Society for the reason that petitioner no.7 had recommended to disburse loan to respondent no.1. According to petitioners, Society had no right to withhold or adjust FDRs of petitioners against dues of loan advanced to respondent no.1. The petitioners, therefore, prayed for recovery of amount of Rs.35,82,071/- from respondents alongwith interest @ 10% per annum w.e.f. 22.10.2022 till realization of amount.

5. The respondent nos.1 and 2 appeared in dispute and filed application at Exhibit-14A seeking rejection of plaint/dispute under Order VII Rule 11 of Code of Civil Procedure on the ground that petitioners have no cause of action to file dispute against them under Section 91 of MCS Act, 1960. The Co-operative Court rejected said

application. However, Co-operative Appellate Court allowed Revision Application filed by respondent nos.1 and 2, thereby rejected plaint in Co-operative Case No.284/2023 under Order VII Rule 11 of Code of Civil Procedure.

6. Mr. Utkarsh Desai, learned Advocate appearing for petitioners submits that petitioners as well as respondent nos.1 and 2 are members of Society. As per bye-laws of Society, one of the object of Society is to receive deposits from members and advance loan from corpus. Similarly, Clause No.14 defines active members, who are participating directly in business of Society. The members are required to hold atleast one share and must have borrowed loan of Rs.5000/- or more during last five years or had made deposits atleast for one year during last five years. He would, therefore, submit that receiving deposits from members and advancing loan to members is part of business of Society. The petitioners had kept Fixed Deposits with respondent no.3-Society. The Fixed Deposits of petitioners have been adjusted against loan given to respondent no.1, although such deposits were not marked as security towards loan or petitioners were not guarantors to such loan. Therefore, dispute instituted under Section 91 of MCS Act, 1960 was maintainable.

7. The Co-operative Appellate Court while allowing respondents' application seeking rejection of plaint adopted erroneous interpretation of Section 91 of MCS Act, 1960. The appropriation of petitioners' FDRs

against loan account of respondent no.1 without their consent is cause of action to file suit. The said transaction cannot be treated as independent or beyond scope of Section 91 of MCS Act, 1960. He would, therefore, urge to allow Writ Petition and set aside impugned order passed by Co-operative Appellate Court.

8. Per contra, Mr. Drupad Patil, learned Advocate appearing for respondents would support impugned order. He would submit that Section 91 of MCS Act, 1960 is specified jurisdiction with Co-operative Court to decide dispute between Society and its members, Society and any one claiming through member or if such dispute is in respect of Management or business of Society. Looking to the conspectus of claim and prayers in present dispute, Co-operative Court may have jurisdiction to entertain the same under Section 91 of MCS Act, 1960 against Society. However, dispute between petitioners and respondent nos.1 and 2 does not fall within scope of Section 91(1) of MCS Act, 1960. He would point out that it is not contention of petitioners that they were surety or guarantors to loan borrowed by respondent no.1 or they had direct or indirect relation with loan transaction between respondent no.1 and Society. The petitioners may recover FDR amount from Society, if that has been wrongly appropriated. However, petitioners cannot have any claim against respondent nos.1 and 2, who are borrowers and guarantors of loan obtained from Society. He would, therefore, urge that Co-operative Appellate Court has rightly

invoked jurisdiction under Order VII Rule 11 of Code of Civil Procedure and rejected dispute while entertaining Revision Application filed by respondent nos.1 and 2. According to Mr. Patil, even assuming that dispute is maintainable against Society, plaint has to be rejected against respondent nos.1 and 2 for want of cause of action. He would submit that plaint can be rejected against some of the parties to suit against whom there is no cause of action and proceeding can be continued against those parties against whom cause of action can be made out from averments in plaint. In support of his contentions he placed reliance on observations of this Court in case of ***Chetana Shankar Manapure and Another Vs. Bandu s/o Tanaji Barapatre***¹.

9. Having considered submissions advanced by learned Advocates appearing for respective parties and on perusal of material tendered before this Court, it can be observed that petitioners approached Co-operative Court claiming relief of recovery of Rs.35,82,071/- alongwith interest from respondents. It is undisputed that respondent no.1 had borrowed loan from respondent no.3-Society. On his failure to repay loan, Society appropriated dues against petitioners' FDRs kept with Society. The petitioners have specifically pleaded that they are unconcerned with loan borrowed by respondent no.1. They are neither sureties nor guarantors of loan or their FDRs with Society were not pledged against loan. It is also undisputed that petitioners and respondent no.1 and 2 are members of Society.

¹ 2020 (4) Mh.L.J. 481.

10. Bye-laws of respondent no.3-Society throw light on object of Society. The main object of Society is to promote well being of members and achieve economical development by means of co-operation by accepting deposits from members and providing credit facility to them. The active members are also required to participate in business of Society, make deposits or obtain credit. The aforesaid Clauses in bye-laws clearly depicts that business of Credit Society functions on deposits made by members and advances of credit out of such deposits.

11. The Chapter IX of MCS Act, 1960 deals with settlement of disputes. Section 91(A) of MCS Act, 1960 provides for constitution of Co-operative Court for adjudication of disputes prescribed under Section 91 of MCS Act, 1960. Section 91 mandates that **any dispute touching** Constitution, conduct of general meetings, **management or business of Society** shall be referred by any of parties to dispute, if both parties thereto are member, past member or person claiming through member, past member or deceased member of society or society which is member of society. Sub-Clause (3) of Section 91 specifically bars jurisdiction of Civil Court to entertain any such or other proceeding in respect of any dispute referred to in sub-section (1). Explanation (2) further elaborates term dispute. Clause (i) of Explanation (2) reads thus:

“(i) a claim by or against a society for any debt or demand due to it from a member or due from it to a member, past

member or the nominee, heir or legal representative of a deceased member, or servant or employee whether such a debt or demand be admitted or not;”

12. In light of exhaustive definition of dispute, dispute raised by any member against Society touching to its business would definitely fall within jurisdiction of Co-operative Court. In present case, petitioners are members of Society. The respondent nos.1 and 2 are also members of Society. The petitioners lodged claim for recovery of amount towards deposits made by them with Society in pursuance to their membership with Society. The dispute pertains to business of Society, as Society is formulated for collection of deposits and advancing credits to its members. In that view of matter, there is no room to contend that present dispute is beyond scope of jurisdiction of Co-operative Court.

13. The Co-operative Court while dealing with application filed by respondent nos.1 and 2 under Order VII Rules 1 and 2 of Code of Civil Procedure observed that disputant is not only depositor, but also member of opponent-Society. It is contention that amount deposited by disputants is illegally appropriated by opponent-Society. Therefore, member/depositors of Society have right to raise dispute against opponent-Society before Co-operative Court under Section 91 of MCS Act, 1960. Resultantly, rejected application filed Exhibit-14A. However, Co-operative Appellate Court relying upon observations of this Court in case of ***Sham Co-op. Housing Society Ltd., Vs. Ramibai Bhagwansingh***

*Adwani*² recorded finding that plaint is liable to be rejected. The Co-operative Appellate Court observed that though disputants are members of Society, transaction does not arise qua their membership right. Even one consider fact ahead that “as a depositor disputants are entitled for recovery of deposit amount, but disputants also did not asked amount under FDR to be refunded as a matter of right, as their status as depositors.” The Co-operative Appellate Court observed that as disputants denied status as surety to loan, thus transaction under which disputants urged for refund, does not arise through their status as surety.

14. Apparently, Co-operative Appellate Court misconceived facts of present case, so also misapplied legal principles enumerated by this Court in case of *Sham Co-op. Housing Society Ltd.* (supra). In case of *Sham Co-op. Housing Society Ltd.* (supra) a public trust had advanced an amount of Rs.4.00.000/- to defendant-Society. The business of Sham Co-op. Housing Society Ltd. was buying, selling, hiring, letting, developing land in accordance with co-operative principles and advancing loan to members for building and purchasing property. The loan was advanced by Public Trust to Society. In those facts, this Court took view that advancing loan to Society and claim for refund of amount would not fall within business of Society.

15. In present case, as can be gathered from objects of Society, Society is in business of raising corpus from deposits of members and
2 AIR 1952 Bom. 445.

advancing credits. The petitioners/members had made deposits to fulfill object of Society, as they are obliged under bye-laws. Essentially, in present case, dispute between petitioners and respondent-Society touches to business of Society. The Co-operative Court constituted under Section 91-A of MCS Act, 1960 has jurisdiction to adjudicate dispute. In this backdrop, order of Co-operative Appellate Court rejecting plaint on ground that dispute does not fall within ambit and scope of Section 91 of MCS Act, 1960 cannot be countenanced.

16. Mr. Drupad Patil, learned Advocate appearing for respondents would submit that even it is accepted that dispute is maintainable by petitioners/members against Society, dispute against respondent nos.2 and 3 would not fall within ambit and scope of Section 91 of MCS Act, 1960. He would further submit that from reading of entire plaint, cause of action is not discernible against respondent nos.1 and 2 for maintaining dispute. By inviting attention of this Court to pleadings in dispute, he would submit that petitioners have specifically pleaded that they were neither sureties nor guarantors of subject transaction or their FDRs with Society were unconcerned with loan transaction between Society and respondent nos.1 and 2. In wake of aforesaid pleadings, claim for recovery of deposited amount of petitioners from Society may go on, but there is no cause of action to continue dispute against respondent no.1-borrower and respondent no.2 alleged guarantor of loan.

17. The learned Advocate appearing for petitioners submits that partial rejection of plaint is not permissible. If respondent nos.1 and 2 want to contend that they are wrongly joined as parties, they can have different remedy under law. However, in application under Order VII Rule 11, they cannot seek partial rejection of plaint.

18. Perusal of contents of dispute suggest that Society appropriated amount of FDRs of petitioners against loan advanced to respondent no.1. The respondent nos.1 and 2 i.e. borrower and alleged guarantor are added as party to dispute. The petitioners have contended in paragraph no.4 that their FDR receipts were not pledged against loan or there was no written agreement with Bank to that effect. It is only because petitioner no.7 had recommended for disbursement of loan in favour of respondent no.1, their original FDRs were kept in possession of Society. According to petitioners, Society has wrongly appropriated their FDRs against loan. Therefore, they are entitled for recovery of amount from Society as well as borrowers and guarantors.

19. In light of aforesaid pleadings, Co-operative Court will have to delve into question as to whether FDRs of petitioners were kept in possession of Bank only because of recommendation of petitioner no.7 to disburse loan in favour of respondent no.1 or otherwise. It would be an issue before Court to decide during course of trial. If Co-operative Court comes to conclusion that FDRs were pledged by petitioner no.1, action of Bank would be justified. However, in case Co-operative Court

accepts case of petitioners that appropriation of FDR amount was without any authority, decree for recovery of amount will have to be passed. Since amount is appropriated against loan advanced to respondent no.1, it cannot be said that petitioners have no cause of action against him.

20. However, case of respondent no.2 i.e. alleged guarantor falls on different footing. He is not borrower of loan or he is not directly benefited by action of Bank regarding appropriation of FDRs of petitioners against loan account. Assuming that petitioners succeeds in suit, no decree can be passed against respondent no.2. Even in his absence, dispute can be effectively adjudicated. It would be dispute between Society and respondent no.1, in case question arises as to recovery of loan amount on account of default of borrower. The petitioners who are seeking recovery of amount from Society cannot have any cause of action against respondent no.2.

21. Another question posed before this court is as to whether plaint can be rejected against one of defendant or whether rejection of plaint against one of defendant would amount to partial rejection of plaint. In case of *Church of Christ Charitable Trust & Educational Charitable Society Vs. Ponniamman Educational Trust*³, Supreme Court accepted that plaint could be rejected as against some of defendants. In case where there is no cause of action against some of defendants, plaint

³ (2012) 8 SCC 706.

deserves to be rejected against them and it cannot be said that rejection of plaint against one of defendant would amount to rejection of plaint in part. The rejection of plaint in such case would amount to rejection of plaint as whole against defendants against whom no cause of action to satisfy requirement of statutory provision was made out.

22. Although subsequent two judgments of Supreme Court in cases of *Sejal Glass Limited v. Navilan Merchants (P) Ltd.*⁴ and *Madhav Prasad Aggarwal v. Axis Bank Ltd.*⁵ took view that plaint cannot be partially rejected, such a view is taken in absence of reference to judgment in case of *Church of Christ Charitable Trust & Educational Charitable Society* (supra).

23. In similar facts, Single Judge of this Court in case of *Chetana Shankar Manapure and Another* (supra) relying upon observations of Full Bench of Madhya Pradesh High Court in case of *Jabalpur Bus Operators Association v. State of M. P.*⁶ observed that law laid down in case of *Church of Christ Charitable Trust & Educational Charitable Society* (supra), which is judgment prior in point of time needs to be followed because subsequent Co-ordinate Benches of equal strength were not apprised of earlier judgment. It is accordingly held that rejection of plaint against co-defendants is permissible, when it is shown that no cause of action can be ascertained against him from contents of plaint.

⁴ (2018) 11 SCC 780.

⁵ (2019) 7 SCC 158.

⁶ AIR 2003 MP 81.

24. In light of aforesaid legal position, in facts of present case, since there is no cause of action against respondent no.2, plaint is liable to be rejected against him. Hence, following order:

ORDER

- a. Writ Petition is partly allowed.
- b. The impugned order 30.11.2024 passed by learned Member, Maharashtra Co-operative Appellate Court, Mumbai Bench at Pune in Revision Application No.60/2024, is hereby quashed and set aside.
- c. The application Exhibit-14-A filed in Co-operative Case No.284/2023 before Judge, Co-operative Court, Satara is partly allowed.
- d. The plaint to the extent of respondent no.2/defendant no.2 is rejected under Order VII Rule 11 of Code of Civil Procedure. The Co-operative Court may proceed in Co-operative Case No.284/2023 as against respondent/defendant nos.1 and 3.
- e. Rule is made absolute in above terms.

(S. G. CHAPALGAONKAR)
JUDGE