

MPBalekar

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 16397 OF 2023

Bhimdev Maruti Nikam,

Age :-70 years, Occ.:- Retired, Residing at :- at
post Jhargadwadi, Tal Baramati, Dist. Pune.

... Petitioner

V/s.

**1. Pune District Central Cooperative
Bank Limited,**

A Co-operative Bank which is registered
under the provisions of Maharashtra Co-
operative Societies Act, 1960, having its
Registered Office At :- Laximpeth, Pune
– 411002.

**2. Shrirang Appasaheb Kakade (since
deceased) through his legal
representatives**

A. Sanjay Shrirang Kakade,

Age : Adult, Occ.:- Service

B. Mahendra Shrirang Kakade,

Age : Adult, Occ.:- Service

C. Lilavati Shrirang Kakade,

Age : Adult, Occ.: Service

All R/at : At Post Nimbut Tal
Baramati, Pune.

... Respondents

Mr Srivallabh S. Panchpor with Ms. Pratibha Gavhane,
and Ms. Mahima Sharma for the petitioner.

Mr. Vilas V. Tapkir for respondent No.1.

Ms. Kavita N. Solunke, Additional G.P. with Mr. S.L.
Babar, AGP for State.

CORAM : AMIT BORKAR, J.

RESERVED ON : DECEMBER 16, 2025

PRONOUNCED ON : DECEMBER 19, 2025

JUDGMENT:

1. By this writ petition under Article 227 of the Constitution of India, the petitioner, who was working as a Cashier in a Co-operative Bank, challenges the judgment and award passed by the Courts below. The petitioner faces an allegation of misappropriation of funds. The Courts below have directed the petitioner to refund the alleged misappropriated amount together with interest. The legality and correctness of those findings are under challenge.

2. The facts leading to the filing of the present writ petition may be stated thus. In March 1993, Respondent No.1 instituted Dispute No. 69 of 1993 before the Co-operative Court at Pune. The dispute sought recovery of an amount of Rs. 18,83,178/- from the petitioner and respondent No.2. The allegation was that the petitioner, in collusion with Respondent No.2, misappropriated a sum of Rs. 16,75,000/-. It was stated that as on 14 September 1992, the cash-in-hand was shown as Rs. 19,13,787.45 at the close of business. On the next morning, that is on 15 September 1992, only an amount of Rs. 2,38,787.45 was found in the strong room.

3. Prior to the filing of the dispute, Crime Register No. 137 of 1992 had already been registered against the petitioner and Respondent No.2 for offences punishable under Section 408 read with Section 34 of the Indian Penal Code, 1860. Both were

prosecuted in the said criminal case. By judgment dated 28 August 2008, the petitioner and Respondent No.2 came to be acquitted of the said charges.

4. On 7 May 2010, the State preferred an appeal before the Sessions Court. The Sessions Court reversed the order of acquittal and convicted the petitioner for the said offence. On 11 June 2010, the petitioner filed Criminal Revision Application No. 296 of 2010. The revision application was admitted and the petitioner was granted bail. The criminal revision remains pending for adjudication.

5. On 15 September 2018, the Co-operative Court at Pune allowed the dispute by its judgment and award of the same date. The Court directed the petitioner and Respondent No.2 to jointly and severally pay an amount of Rs. 5,88,996/- along with interest at the rate of 11 percent per annum.

6. Aggrieved by the said judgment and award, the petitioner preferred an appeal before the Co-operative Appellate Court. An appeal was also filed by the Bank. The appeal filed by the petitioner came to be dismissed. The appeal filed by the Bank was allowed. The Appellate Court modified the award and directed the petitioner and Respondent No.2 to jointly and severally pay an amount of Rs. 18,13,772/- with interest at the rate of 11 percent per annum. Being dissatisfied with the said decision, the petitioner has approached this Court by filing the present writ petition.

7. The learned Advocate appearing for the petitioner submitted that the Bank failed to establish the fact of misappropriation.

According to him, there is no cogent evidence on record to show that the petitioner, in collusion with Respondent No.2, had misappropriated the amount. He submitted that the Courts below failed to consider that the safety vault could be opened by a duplicate key, which was available with the Head Office. On this ground, the petitioner could not have been fastened with liability. He contended that liability was wrongly inferred merely because the petitioner was working as a cashier and Respondent No.2 was the Manager. He further submitted that on the date of the incident, the Recovery Officer of the Bank was residing in the guest house situated on the first floor of the same branch. The Courts below, according to him, ignored the admissions elicited in the cross-examination of defendant No.1, wherein it was admitted that the security guard had not seen the petitioner visiting the branch after office hours. Placing reliance on the judgment of the Supreme Court in *Dr. N. G. Dastane vs. Mrs. S. Dastane*, (1975) 2 SCC 326, he submitted that in civil proceedings a fact is said to be proved on the test of preponderance of probabilities. He argued that the Courts below misapplied this principle while holding the petitioner guilty of misappropriation along with Respondent No.2. On these grounds, he prayed for setting aside the impugned judgment and award.

8. Per contra, the learned Advocate appearing for the respondent Bank supported the impugned judgment and award. He submitted, first, that it is an admitted position that the disputant is a Co-operative Bank duly registered under the Maharashtra Co-operative Societies Act, 1960. Opponent No.1 and

Opponent No.2 were employees of the disputant Bank. Opponent No.1 was working as a Cashier and Opponent No.2 was working as Manager-cum-Agent at the Baramati Main Branch. The Head Office of the disputant Bank is situated at Laxmipeth, Pune. He submitted that Opponent No.1 has, in his cross-examination, admitted that as a Cashier it was his duty to maintain all necessary registers relating to cash received by the Bank and cash in hand. He further admitted that Opponent No.2, being the Manager-cum-Agent, was responsible for overall supervision and control of the staff of the branch. It was further submitted that both the opponents have admitted that on 14 September 1992 they kept an amount of Rs. 19,13,787.45 in the strong room of the Baramati Main Branch. Opponent No.1 also admitted that he made corresponding entries of the said amount in all the registers as cash in hand.

9. It is also an admitted fact, according to the learned Advocate, that on 15 September 1992 both the opponents opened the strong room before commencement of business hours. At that time, only an amount of Rs. 2,38,787.45 was found in the cash box. A shortage of Rs. 16,75,000/- was thus noticed. He then submitted that in his cross-examination, Opponent No.1 admitted that on 14 September 1992 he himself had kept cash of Rs. 19,13,787.45 in the strong room safe deposit vault and had sealed the same. On the next day, at about 10.45 a.m., he found that the cash did not tally and that an amount of Rs. 16,75,000/- was missing. He further admitted that he informed the Divisional Officer about the shortage. He also admitted that the Bank lodged

a complaint against him for misappropriation and that he was not aware as to who had committed the theft. The learned Advocate pointed out that Opponent No.1 further admitted that he was the custodian of one key of the strong room. He admitted that unless the key with him and the key with Opponent No.2 were simultaneously operated, the strong room could not be opened. He also admitted that both the opponents had overall control over cash transactions of the branch. Opponent No.1 further admitted that the keys of the branch were with the Agent and that after the Agent's arrival, the keys were handed over to the security guard for opening the branch. Thereafter, access to the branch was possible. He admitted that the watchman had not noticed any incident of theft. He also admitted that there was no dacoity in the Bank on 14 September 1992 or 15 September 1992 and that he did not know who had committed the theft.

10. The learned Advocate further submitted that in paragraph 8 of the dispute, the Bank specifically pleaded that Opponent No.1 had prepared an anamat challan for an amount of Rs. 16,75,000/- and had debited the said amount to the suspense account. On that basis, the cash on hand was reconciled in the Bank's records. To deny this, Opponent No.1 took a defence that the Divisional Manager had obtained his signature on the anamat challan by coercion and force and that he had not accepted responsibility.

11. He submitted that though the Bank has not produced the anamat challan on record in the present proceedings, as the same was produced before the Criminal Court, Opponent No.1 has admitted that he had written and signed such a document. He has

failed to establish the circumstances in which the signature was obtained. There is no evidence on record to support the plea of coercion or force. In such circumstances, the admission of signing the anamat challan clearly amounts to acceptance of liability to repay the amount. The learned Advocate submitted that the finding of the Trial Court that the defence of the opponent survives merely because the anamat challan was not produced on record is neither legal nor sustainable.

12. In so far as the enhancement granted by the Appellate Court is concerned, he submitted that the second witness of the disputant Bank examined in the case produced on record the Bankers Indemnity Insurance Policy at Exhibit 112, covering the period from 1 July 1992 to 1 July 1993. The witness deposed that the amount received from the insurer was from a Government Insurance Fund managed by the Government of Maharashtra. As per the terms of the policy, if misappropriation by an employee is proved, the Bank is required to refund the amount to the Insurance Company. He submitted that the opponents cannot lawfully contend that they are not liable to make good the loss caused to the Bank. Acceptance of such a contention would result in unjust enrichment of the opponents, to which they have no legal entitlement. He pointed out that there was no cross-examination of this witness on this aspect. The evidence of the second witness has thus remained unchallenged and intact. On these grounds, the learned Advocate for the respondent Bank submitted that no case for interference under Article 227 of the Constitution of India is made out and that the writ petition deserves to be dismissed.

13. I have considered the rival submissions with due care. I have also gone through the pleadings, evidence on record, and the findings recorded by both the Courts below.

14. The petitioner seeks to assail concurrent findings holding him liable for misappropriation of Bank funds. His principal defence is that the Bank failed to prove misappropriation. According to him, mere shortage of cash cannot lead to an inference of guilt. He emphasized that the strong room could be opened with a duplicate key available with the Head Office. He also relied upon the fact that no witness had seen him entering the branch after office hours and that there was no incident of dacoity or forcible entry. He contended that the Courts below misapplied the principle of preponderance of probabilities and proceeded on suspicion rather than proof.

15. These submissions, though attractive at first blush, do not withstand closer scrutiny.

16. It is not in dispute that the petitioner was working as a Cashier and Respondent No.2 as Manager-cum-Agent of the Bank. Their duties were clearly defined. The petitioner was responsible for custody of cash and maintenance of cash registers. Respondent No.2 had supervisory control. Both have admitted that on 14 September 1992, a sum of Rs. 19,13,787.45 was kept in the strong room and corresponding entries were made showing the said amount as cash in hand. This admission is of significance. It establishes lawful custody and exclusive control of the cash with the petitioner and Respondent No.2 at the close of business on that

date.

17. It is also admitted that on the next morning, before commencement of business hours, the strong room was opened by both of them and only Rs. 2,38,787.45 was found. There was a clear shortage of Rs. 16,75,000/-. The petitioner himself admitted this shortage. He further admitted that he informed the Divisional Officer and that a police complaint was lodged against him. These are not disputed facts. The issue is whether these admitted facts reasonably lead to an inference of misappropriation.

18. The petitioner attempted to argue that since the strong room could be opened by duplicate keys available elsewhere, the possibility of theft by a third person cannot be ruled out. This argument is purely speculative. There is no evidence on record to show that any duplicate key was used or that any unauthorized person entered the branch. The petitioner admitted that the strong room could be opened only by simultaneous operation of two keys, one with him and one with the Manager. No evidence has been led to show loss, misuse, or unauthorized access to either of these keys.

19. Equally important is the admitted position that there was no dacoity, no forcible entry, and no disturbance noticed by the watchman. The petitioner himself admitted that the watchman had not noticed any untoward incident. These circumstances rule out external interference. When large cash is kept in a secured vault under joint custody and the next morning it is found missing without any sign of break-in, the inference naturally points

towards misappropriation by those in charge of custody.

20. The petitioner relied on cross-examination to contend that no one had seen him in the branch after office hours. This submission misses the point. Misappropriation need not necessarily occur after office hours. The crucial factor is custody and control. Once the petitioner admits that he had custody of cash and control over entries and keys, absence of direct evidence of movement after hours does not dilute responsibility.

21. The reliance on the principle laid down in the case of *Dr. N.G. Dastane* is misplaced. There is no quarrel with the proposition that civil liability is determined on preponderance of probabilities. However, the Courts below have not ignored this principle. They have applied it correctly. In civil proceedings, direct proof of misappropriation is rarely available. Courts must draw reasonable inferences from proved facts. Here, the proved facts are admitted custody, admitted shortage, absence of external intrusion, and exclusive control with the petitioner and Respondent No.2. On a balance of probabilities, the inference of misappropriation is not only possible but inevitable.

22. The defence regarding the anamat challan also deserves consideration. The Bank pleaded that the petitioner prepared an anamat challan for the shortage amount and adjusted the same in the suspense account. The petitioner admitted signing such a document. His defence is that the signature was obtained under coercion. This plea is wholly unsupported by evidence. No complaint was lodged. No contemporaneous protest was recorded.

No witness was examined to support the plea of force. A bald assertion of coercion, without proof, cannot displace an admission in writing. Once the petitioner admits execution of the document and fails to prove coercion, the legal consequence follows. The admission strengthens the Bank's case of liability.

23. The Trial Court erred in discarding the effect of this admission merely because the original challan was not produced before it. The Appellate Court rightly corrected this approach. An admitted act does not lose its evidentiary value merely because the document is produced in connected criminal proceedings.

24. The submission regarding acquittal in the criminal case also does not advance the petitioner's case. Standards of proof in criminal and civil proceedings are different. An acquittal does not wipe out civil liability. The subsequent conviction by the Sessions Court further weakens the petitioner's defence, though even without it, civil liability stands independently established.

25. As regards the enhancement of the amount by the Appellate Court, the evidence of the Bank's witness on the indemnity insurance policy assumes importance. The witness clearly deposed that the amount received from the insurer was from a Government-managed fund and that the Bank is bound to refund the same if misappropriation by an employee is proved. This evidence has gone unchallenged. In such circumstances, the Bank cannot be denied recovery of the full loss. Otherwise, the petitioner would retain the benefit of loss caused by his own act, resulting in unjust enrichment.

26. In exercise of jurisdiction under Article 227, this Court does not reappreciate evidence as a Court of appeal. Interference is warranted only when findings are perverse or based on no evidence. In the present case, the findings are based on admissions, documentary material, and consistent circumstances. They are reasonable and lawful. No perversity or jurisdictional error is demonstrated.

27. The submissions advanced on behalf of the petitioner do not create any doubt, much less a substantial one, warranting interference. The conclusions reached by the Appellate Court are sound in law and on facts.

28. The writ petition, therefore, fails. The rule stands discharged. No further interference is called for.

29. At this stage, the learned Advocate for the petitioner seeks extension of the stay granted during pendency of the writ petition. However, for the reasons recorded in the judgment, the request for continuation of the stay is rejected.

(AMIT BORKAR, J.)