

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
FIRST APPEAL NO.1119 OF 2008

Janata Sahakari Bank Ltd.,
Pune Branch at Aurangabad,
through its Branch Managar ..Appellant

Versus

- 1] Municipal Council, Jintur,
through its Chief Officer,
Jintur, Dist.Parbhani
- 2] Deogiri Pratishthan,
through its Secretary,
M.I.D.C. Railway Station
Road, Aurangabad ..Respondents

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Mr.S.V.Natu, advocate for appellant

Mr.S.J.Salunke, advocate for respondent no.1

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CORAM : M.T. JOSHI, J.

DATE : MARCH 02, 2015

ORAL JUDGMENT :

Heard both sides.

2] Aggrieved by the decree passed against the
appellant – original defendant no.2, directing it
to pay Rs.6,72,000/- to the plaintiff i.e. present

respondent no.1 with interest at the rate of 12%, present appeal is preferred.

3] The facts on record would show that present appellant had issued a bank guarantee for performance of contract by respondent no.2 i.e. original defendant 1. As, according to the plaintiff - Municipal Corporation, there was breach of the contract, bank guarantee was invoked. The decree was passed against respondent no.2/defendant no.1 for Rs.3,03,916/- while, against present appellant, it was for Rs.6,72,000/-.

4] Upon hearing both sides and upon considering the ratio laid down by the Division Bench of this Court in First Appeal No.417 of 2000, copy of which is accepted on record and marked as "X" for the purpose of identification, it is found that the appeal of the present appellant was allowed on

the sole ground for want of statutory notice under Section 164 of the Maharashtra Co-operative Societies Act, 1960. In the present proceedings also, the same plea was taken in the trial Court. Issue were framed, however, learned trial Judge held that the provisions of the "Bombay Public Trust Act" would not be applicable in the present case.

5] In view of the direct finding of the Division Bench that for want of statutory notice under Section 164 of the Maharashtra Co-operative Societies Act, 1960, the suit could not be proceeded, present appeal will have to be allowed.

6] Hence, the following order :-

A] The appeal is allowed without any order as to costs throughout.

B] The judgment and decree passed by learned trial Court directing present appellant to pay an amount of Rs.6,72,000/- with interest at the rate of 12% per annum is, hereby, set aside.

C] Instead, the suit of present respondent no.1 - Corporation, as against present appellant, is hereby dismissed without any order as to costs throughout.

D] The amount deposited by present appellant be refunded to it with interest accrued thereon, if any, after the appeal period is over.

[M.T. JOSHI, J.]

kbp