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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 3578 OF 2014

1. Shridhar Vishnu Chaudhari,
Age: 61 years, Occu: Agri.,
R/o 362, Shivaji Nagar,
Jalgaon
2. Mohan Vishnu Chaudhari,
Age: 57 years, Occu: Agri.,
R/o 362, Shivaji Nagar,
Jalgaon
3. Mahesh Laxman Kolhe,
Age: 34 years, Occu: Business,
R/o Laxman Auto Parts,
Auto Nagar, Jalgaon

..PETITIONERS
(Orig. disputants)

VERSUS

Girna Urban Co-operative Credit Society Ltd.,
Jalgaon, Tq. and Dist. Jalgaon,
6, Panchmesh Plaza, near Girna Taki,
Jalgaon-1, through the Manager

..RESPONDENT
(Orig. Opponent)

**WITH
WRIT PETITION NO. 3626 OF 2014**

1. Mohan Vishnu Chaudhari,
Age: 57 years, Occu: Agri.,
R/o 362, Shivaji Nagar,
Jalgaon
2. Shridhar Vishnu Chaudhari,
Age: 61 years, Occu: Agri.,
R/o 362, Shivaji Nagar,
Jalgaon
3. Mahesh Laxman Kolhe,
Age: 34 years, Occu: Business,
R/o Laxman Auto Parts,
Auto Nagar, Jalgaon

..PETITIONERS
(Orig. disputants)

VERSUS

(2)

Girna Urban Co-operative Credit Society Ltd.,
Jalgaon, Tq. and Dist. Jalgaon,
6, Panchmesh Plaza, near Girna Taki,
Jalgaon-1, through the Manager

..RESPONDENT
(Orig. Opponent)

Mr P. S. Pawar, Advocate for petitioners;
Mr Vijay B. Patil, Advocate for respondent

CORAM : N.W. SAMBRE, J.

DATE : 30th November, 2015

ORAL ORDER :

The petitioners herein filed Dispute under section 91 of the Maharashtra Co-operative Societies Act, 1960 (for short "Act"), seeking various reliefs in relation to the loan transaction entered with respondent co-operative credit society/co-operative bank.

2. The Dispute underwent amendment on 15th May, 2013, at the behest of the petitioners, as they suffered recovery proceedings under section 101 of the Act, against which, learned Counsel appearing on behalf of the petitioners, submits that a revision under section 154 of the Act is pending.

3. In the said Dispute, an application seeking dismissal thereof came to be filed by the respondent – bank, on the ground that once the petitioners have suffered recovery certificate under section 101, in view of provisions of sections 91, 101 and 154 of the Act, the Dispute in question,

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at the behest of the petitioners, is not tenable, as the authority competent under the Act has already adjudicated the issue, by passing an appropriate order, against which a revision is pending.

4. The aforementioned application came to be allowed by the learned Judge, Co-operative Court, Jalgaon, by an order dated 24th January, 2014, thereby rejecting the plaint in the Dispute, in view of Rule 11 (d) of Order VII of the Code of Civil Procedure.

5. An appeal at the behest of the petitioners before the Co-operative Appellate Court, bearing Appeal No.7 of 2014, suffered dismissal on 11th March, 2014. Thus, the present petition.

6. Learned Counsel appearing on behalf of the petitioners, relying upon the judgment of this Court, in the matter of **Uttam s/o Pandurang Sabde & ors. vs. Osmanabad Janta Sahakari Bank Ltd., Tq. & Dist. Latur & anr.**, reported in **2009 (6) ALL MR 769**, would urge that if the proceedings, by virtue of Dispute under section 91 of the Act are prior in point of time than that of the proceedings under section 101 of the Act, the Dispute in such cases, is very much tenable, irrespective of the later proceedings. The learned Co-operative Court, by ordering rejection of plaint, has committed an error and acted contrary to the scheme of section 91 of the Act. As such, according to him, the order of rejection of plaint in the Dispute initiated by the petitioners is liable to be set aside.

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7. The petitions are opposed by the learned Counsel appearing on behalf of the respondent – bank, on the ground that, what is required to be considered is whether the Dispute initiated under section 91 of the Act, contain prayer which is in conflict with the proceedings under section 101 of the Act, for issuance of recovery certificate. According to him, the original prayers in the Dispute, were deleted by the petitioners after recovery certificate was issued and the same was restricted to the extent of the declaration that the dues of liability of the petitioners be assessed after calculating in detail and after deducting the amount already repaid.

8. It is required to be noted here that the proceedings under section 101 of the Act were duly attended by the petitioners and having suffered the recovery certificate, have already filed revision under section 154 of the Act, which is pending adjudication. As such, the prayer made in the Dispute under section 91 of the Act, is already sought to be canvassed in a revision under section 154 (2A) of the Act. Apart therefrom, it is required to be noted here that the learned Co-operative Court and Co-operative Appellate Court have taken into account the entire nature of proceedings initiated under section 91 of the Act, the prayers made therein and the effect of issuance of recovery certificate under section 101 of the Act and have reached to a conclusion that the proceedings under section 91 of the Act, in the form of Dispute, for the same relief for which the revision is pending, are not tenable.

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9. Once the petitioners have taken recourse to the provision of revision against the order of issuance of recovery certificate against them, in my opinion, all the issues, which they are entitled to canvass by virtue of the Dispute, are covered therein. It is also required to be taken note of the fact that by virtue of the amendment, the adjudication that is sought from the Co-operative Court, is already effected under section 101 of the Act, by the Registrar.

10. In that view of the matter, in my opinion, the view taken by the learned Co-operative Court and affirmed by the Appellate Court, appears to be in consonance with the provisions of sections 101 and 154 of the Act.

11. So far as the law laid down by this Court in the matter of Uttam Sabde (cited supra) is concerned, it appears that in the said matter, there was a direct conflict between the prayers made under section 91 and the one under section 101 of the Act. It is also required to be noted here that the prayers which are sought to be made in the Dispute under section 91, were already covered by the proceedings under section 101 of the Act, against which revision under section 154 of the Act is already pending. In view thereof, the law laid down in the matter of Uttam Sabde (cited supra), has hardly any application to the present case.

12. In view thereof, the concurrent findings recorded by both the Courts below, do not warrant any interference, in exercise of extraordinary jurisdiction of this Court.

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13. In the result, both writ petitions fail and stand dismissed with no order as to costs.

(N.W. SAMBRE, J.)

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