

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD****WRIT PETITION NO. 8236 OF 2014**

M/s. Industrial Equipment,
Through Partners,

1. Sachin s/o Madhukar Mule,
Age: 45 years, Occ: Business,
2. Madhukar Haribhau Mule,
Age:___years, Occ: Business,

Both R/o. Shivneri, Bansilal Nagar,
Aurangabad.

...Petitioners

versus

1. Bombay Mercantile Co-operative
Bank Ltd., CIDCO, Branch Aurangabad.
Through its Branch Manager.
2. Ramesh s/o Digambar Shahapurkar,
Age: Major, Occ: Business,
R/o. Bhagyalaxmi-Pandurang Colony,
Aurangabad.
3. Saroj Jayendra Parekh (Died)
Through L.Rs.
4. Jayendra C. Parikh,
Age: Major, Occ: Business,
R/o. Harikrupa, Bansilal Nagar,
Aurangabad.
(Petition is dismissed as against
Resp. Nos. 2 & 4 as per order
dt. 19/12/2014).

...Respondents

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Mr. B.S. Shinde, Advocate h/f Mr. V.P. Latange, Advocate for
petitioners.

Mr. A.D. Kasliwal, Advocate for respondent No.1.

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CORAM : N.W. SAMBRE, J.

DATE : 24TH MARCH, 2015

ORAL ORDER :

. The respondent-bank filed Dispute No. ARB/BMC/40/2010 for recovery of Rs.46,17,262/- before the Arbitrator in view of the provisions of Section 84 and 85 of the Multi-State Co-operative Societies Act, 2002 (hereinafter shall be referred to 'the Act' for the sake of brevity). In paragraph-11 of the said Dispute, the respondent bank made a statement that in view of the provisions of Section 84 of the said Act, the claim is within limitation, as period is to be computed from the date on which one of the member of the petitioner-firm expired.

2. In view thereof, the petitioner herein preferred objection before the Arbitrator as regards the tenability of the proceedings, as same according to him, is barred by limitation. The said application came to be decided by Arbitrator by an order dated 10/06/2014, wherein the Arbitrator observed that in view of the provisions of Section 85(1)(a), the dispute is within limitation.

3. Learned Counsel for the petitioner, while questioning the legality of the order dated 10/06/2014, would urge that the order

passed by the Arbitrator on the preliminary objection raised by the petitioner is contrary to the scheme of Sections 84 and 85 of the said Act. According to him, the said Arbitrator was expected of, to deal with the claim of the present petitioner, particularly having regard to the pleadings in paragraph-11 of the Dispute and after taking into account the date of death of one of the partner, and then to compute the limitation.

4. According to him, the order lacks said considerations which are required to be in the tune with the provisions of Section 84 and 85 of the said Act.

5. Mr. Kasliwal, learned Counsel for respondent-bank strenuously urged that an objection qua limitation is raised intentionally with an intention to frustrate the claim of respondent-bank and to delay the proceedings. He would further urge that once in paragraph-11 of the claim, it is specifically pleaded that the dispute is initiated within period of limitation after the date of death of one of the member, who was partner of the petitioner-firm, there is sufficient compliance of the provisions of Section 84 and 85 of the Act. He submits that the present petition is liable to be rejected.

6. Having considered the rival contentions of the parties, it

is required to be noted that learned Arbitrator while dealing with the claim of present petitioner has taken shelter of Section 85(1)(a) of the Act which reads thus :

“(1) Notwithstanding anything contained in the Limitation Act, 1963 (36 of 1963), but subject to the specific provisions made in this Act, the period of limitation in the case of a dispute referred to arbitration shall,-

(a) When the dispute relates to the recovery of any sum including interest thereon due to a multi-State co-operative society by a member thereof, be computed from the date on which such member dies or ceases to be a member of the society.”

7. No doubt, the claim in the present proceedings pertains to recovery of sum including interest thereon due to the respondent Multi-State Co-operative Society, however what is sought to be canvassed before this Court appears to be that the dispute is within limitation as was initiated within six years from the date of death of member, as is provided under sub clause (b).

8. Least that was expected of learned Arbitrator was to take into account the date of death of such member and to evaluate the scheme of Section 85 of the Act in the light thereof as to whether

notice dated 14/11/1996 for recovery could be covered under the said provisions, while going into dispute or while dealing with the preliminary objection.

9. The Arbitrator though has given finding by taking shelter of Section 85 (1)(a) of the Act, however but for referring the said Section has not discussed as to how the dispute is within limitation. As such, in my opinion, the order suffers from non-application of mind.

10. In view thereof, the order impugned is not sustainable.

11. The order dated 10/06/2014 passed by the Arbitrator in Dispute No. ARB/BMC/40/2010 below Exhibit-17 is hereby set aside.

12. The matter is remanded back to the Arbitrator for deciding the objection raised by the petitioner below Exhibit-17 i.e., whether the dispute is within limitation or not, afresh having regard to the above referred observations.

13. The writ petition stands disposed of in above terms.

[N.W. SAMBRE, J.]