

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CIVIL REVISION APPLICATION NO. 128 OF 2014

Mula Pravara Electric Co-operative
Society Ltd.

**....Petitioner
(Ori. Defendant)**

Versus

The Maharashtra State Electricity
Distribution Company Limited

**....Respondents.
(Ori. Plaintiff)**

Mr. V.D. Hon, Senior Counsel for petitioner.

Mr. P.M. Shah, Senior Counsel i/b. Mr. S.S.Dande, Advocate for
respondent.

CORAM : T.V. NALAWADE, J.
DATED : 27th November, 2015.

ORDER :

1. The proceeding is filed to challenge the order made on preliminary issue, of jurisdiction framed in Special Civil Suit No. 5/2011 which is pending in the Court of Civil Judge, Senior Division, Shrirampur, District Ahmednagar. In a suit filed by present respondent, Electricity Distribution Company, a Company of the State Government for recovery of the amount of Rs. 23,16,98,49,078.85 (Rupees Two thousand three hundred sixteen Crore ninety eight lakhs forty nine thousand seventy eight and paisa eighty five) in respect of electricity supplied to present applicant, the present applicant had filed application at

Exh. 63 for framing preliminary issue. Applicant had contended that the suit is barred by section 91 of the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as 'the Act' for short) and the dispute mentioned in the plaint is covered by section 91 of the Act. The trial Court framed the preliminary issue by the order dated 10.4.2014. Opportunity was given to both the sides even to lead evidence on the preliminary issue and then the preliminary issue is decided against the present applicant and it is held that the suit is tenable in Civil Court. Both the sides are heard.

2. It is the case of present applicant, Society that Society used to purchase electricity from erstwhile Maharashtra State Electricity Board and later on from the present plaintiff Company and it used to supply the electricity to its members. It is contended that the dispute between the plaintiff and the defendant is in respect of recovery of alleged due amount, aforesaid amount and that dispute is touching the business of the society. The applicant contended that as the plaintiff is also its member, in view of provision of section 91 of the Act, the jurisdiction of Civil Court is barred. By making such contention, prayer was made to frame preliminary issue as provided under section 9A of Civil Procedure Code.

3. The trial Court has held that the plaintiff is not member of Society and the electricity was supplied to the society, which was consumer of the plaintiff and it is simple suit for recovery of money in respect of the said supply.

4. The learned Senior Counsel for present petitioner, defendant took this Court through some record and submitted that the amount of Rs. five lakh was paid as share capital by M.S.E.B. in 1973 and so, it is the member of the Society. The learned Senior Counsel also took this Court through Bye-laws of the Society and submitted that the persons, who are consumers of the Society are also members. He took this Court through Bye-law No. 1.7 (1). He took this Court through some record showing that the connection of electricity was given to the plaintiff's office by Society at a place. The learned Senior Counsel further submitted that as per the Bye-laws of the Society with regard to the management [Bye-law No. 9 (1) (a)] the nominee of M.S.E.B. is accepted in Board of Directors and it also shows that plaintiff is member of the defendant Society. The learned Senior Counsel then took this Court through the license given by the State Government to the Society under the Indian Electricity Act, 1910.

5. It is not disputed that the defendant, Society was purchasing electricity from plaintiff, a Government Company and it was distributing the electricity in villages. This Court has carefully gone through the objects of the Society and the provisions regarding kinds of members. The main object of the Society was to make electric energy available to the members and others in the area of operation and in furtherance of this object, Society can undertake one or more activities mentioned in the object. In Bye-laws, four kinds of members are mentioned. Bye-laws do not show that a category of members was created which was to supply, sell the electricity to Society. It appears that under the license, liberty was given to the Society to purchase the electricity from present plaintiff or from any State Government generating station. Thus, there is nothing on the record to show that as member of the Society the plaintiff was supplying electricity to the Society. The plaintiff has come with the positive case that Society was its consumer and nothing else. There is no record whatsoever available with the Society in this regard and so, it is not possible to infer that the plaintiff was supplying the electricity due to its membership of the Society. Only because a Bye-law provides that nominee of the plaintiff can be one of the Directors, inference is not possible from this circumstance that as a member of the Society, the plaintiff was

supplying the electricity. As per the Bye-laws, there were so many other similar directors like nominee of Rural Electrification Corporation, a nominee of the State Government, who shall not be below the rank of Registrar of the Cooperative Societies etc.

6. The learned Senior Counsel for respondent, plaintiff placed reliance on some reported cases which were cited before the trial Court also. They are as under :-

(i) 1994 Mh.L.J. 1756 [Belganda Sahakari Sakhar Karkhana Ltd. Vs. Keshav Rajaram Patil],

(ii) 2009 (1) Mh.L.J. 358 [Shri. Ganpati Zilla Krishi Audyogic Sarvaseva Sahakari Society Vs. A.S. Lahoti Family Trust].

In the first case cited supra when a member of Society had entered in to the contract with the Co-operative Society , a sugar factory and had undertaken work of construction of godown, this Court held that this transaction was not between the Society and its member, but it was transaction between the Society and Contractor, though the Contractor was also a member of the Society. This work allotted to the Contractor was not touching the business of sugar factory. In the second case cited supra when a suit was filed by the trust against the society in respect of some amount due and it was some loan given by the trust, this Court held that this transaction was not touching the

business of the Society and so, the dispute does not fall under section 91 of the Act.

7. The learned Senior Counsel for respondent placed reliance on one more case reported as **2013 (1) Mh.L.J. 104 BOMBAY HIGH COURT [Alok Agarwal and Ors. Vs. Punam Co-operative Housing Society Ltd. and Ors.]**. In this matter when there was suit filed for removal of encroachment of open space made available for enjoyment of the members of the Society, it was held that the suit was maintainable in the Civil Court though the person who was member of the Society had made encroachment. In this case, the Division Bench of this Court has referred the observations made in the old case of this Court reported as **AIR 1952 Bombay 445 [Shyam Co-operative Housing Society Ltd. Vs. Ramibai Bhagwansing Advani]**, which are as under :-

"The dispute must be between the society and the member as a member or qua a member. The learned Chief Justice held that it must be a dispute in which the member must be interested as a member and it must relate to a transaction in which the member must be interested as a member. From this perspective it was held that it was not every dispute between the society and a member that would fall within the purview of the provisions of section 54 of the Bombay Co-

operative Societies Act, 1925. The learned Chief Justice held that for instance, there may be many disputes between the society and its members in which the members are not concerned as members at all and they are in the same position as strangers."

8. The aforesaid discussion of law shows that there can be dispute between a member and Society, but that dispute may not touch the business of Society due to nature of dispute or nature of transaction. If the conditions laid down in section 91 of the Act are not fulfilled, it cannot be said that the dispute needs to be decided only under the Act and not by Civil Court. Ordinarily, the jurisdiction is with the Civil Court in view of the provision of section 9A of Civil Procedure Code, unless ouster of jurisdiction is made out, the Civil Court can go ahead with the matter by presuming that it has the jurisdiction. In view of this position of law, this Court holds that the trial Court has not committed any error in holding that the Civil Court has jurisdiction.

9. The facts of the present case show that the suit is filed for recovery of huge amount of Rs. 23,16,98,49,078.85 (Rupees Two thousand three hundred sixteen Crore ninety eight lakhs forty nine thousand seventy eight and paisa eighty five).

The suit did not make progress till the plaintiff requested the trial Court to make partial decree in view of the provision of Order XII, Rule 6 of C.P.C. Only after filing of this application, the application was moved by the defendant for framing of preliminary issue. Written statement was filed on 7.4.2011 and the application for framing preliminary issue was filed on 13.3.2014. It is clear that the defendant is playing all tactics to see that the decision of the suit is delayed.

10. In the result, the revision stands dismissed.

11. The learned Senior Counsel for the revision applicant, petitioner requested for stay to the proceeding before the trial Court for some time by submitting that this Court had given interim relief on 14.8.2014. It appears that after giving interim relief by this Court, in the present matter also not much progress was made and first time interest was shown by the respondent when the matter came before this Court on 17.11.2015 and so, the matter was taken up for hearing. In view of these circumstances, this Court holds that the proceeding pending before the trial Court cannot be stayed anymore. The said request for stay is refused.

[T.V. NALAWADE, J.]

ssc/