

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11059 OF 2014**

**Shiv Jyoti Sahakari Patpedi Maryadit
Vs.**

..Petitioner

Umaji Tukaram Kale & Ors.

..Respondents

Mr. Sampatrao Pawar for the Petitioner

Mr. S. A. Sawant for the Respondent Nos.1 to 3

CORAM : R. M. SAVANT, J.

DATE : 10th June, 2015

P.C.

1 There is a concurrent finding recorded by the Courts below on the issue of jurisdiction. Both the Courts below i.e. the Co-operative Court and the Co-operative Appellate Court have held that having regard to the nature of the dispute that is raised by the Respondent Nos.1 to 3 i.e. the original Disputants, the Co-operative Court would have jurisdiction to try and entertain the dispute. The Respondent Nos.1 to 3 are the members of one Yerla Sahakari Patpedi Maryadit (hereinafter referred to as the said Patpedi). It seems that the proceedings under Section 17 of the Maharashtra Co-operative Societies for amalgamation of the said Patpedi with the Petitioner society were initiated. The said Patpedi was amalgamated with the Petitioner society by an order passed by the Commissioner for Co-operation dated 12-8-2004. The said order was taken exception to by the Respondent Nos.1 to 3 by filing an Appeal under Section 152 before the Appellate Authority i.e. the Hon'ble Minister for Co-operation Government of Maharashtra. The said Appeal was allowed by the

Appellate Authority by order dated 12-7-2007 and the order of amalgamation passed by the Commissioner of Co-operation came to be set aside. The Petitioner herein has filed a Writ Petition No.6023 of 2007 challenging the said order dated 12-7-2007 in this Court. The said Writ Petition was admitted by a Learned Single Judge of this Court by order dated 4-6-2008 and stay was granted resulting in the order of amalgamation passed by the Commissioner of Co-operation being still in operation.

2 On the apprehension that the Petitioner society in view of the amalgamation of the said Patpedi with the Petitioner society would take steps to dispose of the property originally belonging to the Patpedi that the Respondent Nos.1 to 3 herein filed the dispute in question being Dispute No.CC-II/173 of 2012 and the principal relief sought was to restrain the Petitioner society from dealing with the property of the said Patpedi. As indicated above, the said dispute has been filed on the basis that the Respondent Nos.1 to 3 are the members of the said Patpedi and therefore have interest in the assets of the said Patpedi. In the said dispute, an application for injunction came to be filed by the Disputants. Upon which the Petitioner society raised an issue as regards the maintainability of the Dispute on the touchstone of Section 91 of the Maharashtra Co-operative Societies Act. The Co-operative Court in view of the dispute as regards the maintainability of the dispute framed the following issue “whether the dispute is tenable under

Section 91 of the Maharashtra Co-operative Societies Act” and answered the said issue in the affirmative. The Co-operative Court adverted to the facts which have been stated herein above and thereafter recorded a finding that having regard to the said facts that the Disputants are deemed members of the society formed out of amalgamation and therefore fall within the ambit of Section 91 and especially the categories mentioned in Clause (a) to (e) thereof. The Co-operative Court accordingly held that the said dispute was tenable.

3 The order of the Co-operative Court dated 20-3-2014 was taken exception to by the Petitioner by filing Revision Application No.30 of 2014. The Co-operative Appellate Court did not deem it appropriate to interfere with the answer rendered by the Co-operative Court as regards the tenability of the dispute and by reiterating the findings recorded by the Co-operative Court that the Respondents are the members of the society born out of the amalgamation of the two societies, and held that the Disputants fall within the categories mentioned in clause (a) to (e) of Section 91 of the said Act.

4 In my view, the orders passed by the courts below on the said preliminary issue do not suffer from any error or any other illegality or infirmity for this Court to interfere in its Writ Jurisdiction. The Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]