

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.891 OF 2013

The Jawhar Urban Co-op. Bank Limited through
its Manager Madhukar T. Khandare and another ... Applicants
Vs.
Dattatraya Pandurang Phaltankar ... Respondent

Mr. V. A. Gangal, Senior Advocate with Mr. Ashok Gade for Applicants.
Mr. Vasant J. Amberkar for Respondent.

CORAM : R. G. KETKAR, J.
DATE : 6TH JULY, 2015

P.C. :

Heard Mr. Gangal, learned Senior Counsel for applicants and
Mr. Amberkar, learned Counsel for respondent at length.

2. Rule. Mr. Amberkar waives service for respondent. At the
request and by consent of the parties, Rule is made returnable forthwith
and the Application is taken up for final hearing.

3. By this Application under Section 115 of the Code of Civil
Procedure, 1908, original defendants have challenged the judgment and
order dated 04.10.2013 passed by the learned Civil Judge, Junior
Division, Jawhar below exhibit-29 in Regular Civil Suit No.30 of 2013.
By that order, the learned trial Judge answered preliminary issues in
favour of the respondent, hereinafter be referred to as the plaintiff. The
learned trial Judge held that the plaintiff is not a workman / employee
and that Civil Court has jurisdiction to entertain and try the Suit.

4. In support of this Petition, Mr. Gangal submitted that plaintiff was
dismissed from the services of defendant No.1 by order dated

02.03.2012. He instituted Regular Civil Suit No.30 of 2013 in the Court of Civil Judge, Junior Division, Jawhar praying inter alia for declaration that the order of dismissal dated 02.03.2012 issued by the defendants is illegal, malafide and bad in law as also for setting aside the order of dismissal. He submitted that defendants filed written statement on or about 22.07.2013 inter alia contending the plaintiff has approached the wrong forum. Plaintiff is 'employee' as per the provisions of the Industrial Disputes Act, 1947 and Bombay Industrial Relations Act, 1946 (for short 'Act'). The Civil Court, therefore, has no jurisdiction to entertain and try the Suit. The Labour Court alone has jurisdiction to adjudicate the dispute and grant relief of reinstatement. He further submitted that the Government has issued Notification as regards applicability of the Act to the banking industry. In view of Section 3(13) of the Act, plaintiff was an employee. He further submitted that in any case defendant No.1 is a Co-operative Bank governed by the provisions of the Maharashtra Co-operative Societies Act, 1960 (for short 'M.C.S. Act'). In view of the decision of this Court in the case of *Pralhad Vithalrao Pawar Vs. Managing Director and another*, **1999 (1) Bom.C.R. 840**, plaintiff has to approach Co-operative Court in view of Section 91(1)(a) of the M.C.S. Act. Mr. Amberkar has filed purshis dated 06.07.2015 signed by respondent. The same is taken on record and marked 'X' for identification.

5. In view of the Purshis, Mr. Amberkar seeks permission to withdraw Regular Civil Suit No.30 of 2013 with liberty to institute appropriate proceedings before the appropriate forum.

6. On the motion made by Mr. Amberkar, Regular Civil Suit No.30 of 2013 is permitted to be withdrawn with liberty as prayed for. It is made clear that I have not examined the merits of the case. All the

contentions of the parties in that regard are expressly kept open. In view of the withdrawal of the Suit by plaintiff, the impugned order stands dissolved. Rule is made absolute with no order as to costs. Order accordingly.

(R. G. KETKAR, J.)

Minal Parab