

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

ARBITRATION PETITION NO.1061 OF 2012

1. Abid & Company Steels Private Limited)
A private limited company having its)
registered office at 184 Reti Bunder,)
Mazagaon, Lakari Bunder Road, Darukhana)
Mumbai 400 010)

2. Abbas Akberali Upletawala)
Residing at c/o.192, Neelambar,)
37 Peddar Road, Mumbai 400 026.)

3. Asma A. Upletawala)
Residing at c/o.192, Neelambar,)
37 Peddar Road, Mumbai 400 026.) .. Petitioners

Vs.

The Bombay Mercantile Co-operative)
Bank Ltd., having its registered office at)
78, Mohammedali Road, Mumbai- 400 003.) .. Respondent \

Mr.Chirag Balsara a/w Mr.Mohit Arora a/w Mr.Kaizar Merchant a/w
Mr.Mohit Punjabi i/by M/s.Apex Law Partners for the petitioners.
Mr.Rohan Cama a/w Ms.Sapna Rachure i/by M/s.T.N. Tripathi & Co.
for the respondent.

CORAM : R.D. DHANUKA, J.
RESERVED ON : 22nd April 2015
PRONOUNCED ON : 6th May 2015

JUDGMENT :-

. By these petitions filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short “the said Arbitration Act), the petitioners have impugned the arbitral award dated 21st April 2012 passed by the learned arbitrator allowing the claims made by the respondent and

declaring that the petitioners herein are jointly and severally liable to pay to the respondent an amount of Rs.9,88,55,938,80 as on 30th September 2006 with further interest @ 16% from 1st October 2006 till payment. The petitioners have also been directed to pay arbitration fees of Rs.30,800/- and administrative charges of Rs.12,500/-. Some of the relevant facts for the purpose of deciding these petitions are as under :

2. The respondent-bank is a Co-operative Society registered under Bombay Co-operative Societies Act, 1925 and also deemed to be registered under Multi State Co-operative Societies Act, 2002. It is the case of the respondent that the petitioners are its members and shareholders. The respondent had issued 519 shares in the name of the petitioner no.2 and 524 shares in the name of the petitioner no.3. The petitioner no.2 and the petitioner no.3 in their capacity as members and directors of the petitioner no.1 made an application to the respondent on 29th June 1989 and applied for Letter of Credit Packing Credit Loan limit of Rs.260 lacs and overdraft facility of Rs.42 lacs. It is the case of the respondent that the said application was sanctioned as per sanctioned letter dated 12th July 1989 for Letter of Credit and overdraft facility against Letter of Credit and collaterally secured by Equitable Mortgage of various properties. The petitioner no.2 and the petitioner no.3 stood as personal sureties.

3. Vide their letter dated 7th July 1989, the petitioner no.1 referred to their earlier letter dated 29th June 1989 by which the petitioner no.1 requested the respondent for establishment of Letter of Credit for Rs.260/- lacs in favour of Great Eastern Shipping Co. Ltd. on 120 days D.A. Basis. The petitioner no.1 informed that their tender for the

ship had been accepted by the company and the petitioner no.1 had to establish Letter of Credit latest by 7th July 1989 so that the ship might be delivered and berthed for breaking purposes at the time of highest tide which was scheduled on 17th July 1989. There was further discussion between the parties. In the said letter dated 7th July 1989, the petitioner no.1 referred to the said discussion and agreed to deposit various amounts in overdue account in the name of the petitioner no.1 at the time of opening of Letter of Credit. The petitioner no.1 also agreed to convey Registered English mortgage in respect of Malad as well as Lonavala properties.

4. In the said letter, the petitioner no.1 informed that the bank was aware of tight financial position of the petitioner no.1 otherwise the earlier account would not have gone sticky. The petitioner no.1 stated that the entire family had been banking with the respondent and the respondent had been earning substantial amount as revenue. The petitioner no.1 conveyed that keeping in view old credentials of the petitioner no.1, the petitioner no.1 had requested the bank to accept their Lonavala bungalow as the equitable mortgage and for the Malad property to accept the power of attorney for creation of mortgage/sales at the discretion of the bank. By the said letter, the petitioner no.1 requested the bank to sanction an Inland Letter of Credit for Rs.260/- lacs as well as overdraft facility of Rs.42/- lacs for payment of custom duty.

5. On 12th July 1989, the respondent addressed a letter to the petitioner no.1 informing that the petitioner no.1 had been sanctioned the facility of Inland Letter of Credit upto Rs.260/- lacs and overdraft

facility Rs.42/- lacs on various terms and conditions mentioned therein. One of the conditions mentioned in the letter was for submission of the guarantee by both the directors of the petitioner no.1 in their personal and individual capacity. The condition no.14 provided that the petitioner no.1 would possess requisite number of shares of the respondent-bank and to continue to hold them till the facilities were liquidated in full.

6. On 12th July 1989, the petitioner no.1-company passed a Resolution at board meeting and resolved that the petitioner no.1 had accepted the terms and conditions of the respondent as stated in the letter dated 12th July 1989 for sanction of two facilities and had further resolved that the necessary security documents as required by the bank be executed by Mr.Abbasbhai A. Upletawala and the common seal be affixed in his presence.

7. On 13th July 1989, the petitioners executed a Demand Promissory Note in favour of the respondent. On 13th July 1989, the petitioner no.2 and the petitioner no.3 executed a Deed of Guarantee in favour of the respondent. On 17th July 1989, the petitioner no.1 in the presence of the petitioner no.2 and the petitioner no.3 as directors of the petitioner no.1 executed Unattested Deed of Hypothecation in favour of the respondent. In the said Deed of Hypothecation, it was recited that the petitioner no.1 was a member of the respondent and having a Current Account with the Head Office of the respondent. In the said Deed of Hypothecation, the petitioners also recited about various facilities applied for by the petitioner no.1. The petitioner no.1 also referred to the board resolution passed by the petitioner no.1 in the board meeting held on 12th July 1989.

8. The respondent issued 166 shares in favour of the petitioner no.1. On 12th July 1989, the respondent-bank confirmed the membership of the petitioner no.1. In the meeting of Finance committee of the board of directors held on 13th September 1989, all the applications of various parties for enrollment as members of the respondent-bank during the period from 1st July 1989 to 31st August 1989 were presented for ratification. Application of the petitioner no.1, who was allotted 166 numbers of shares, was also ratified in the said meeting dated 13th September 1989. The name of all the three petitioners were also recorded in the Shares Register maintained by the respondent.

9. It is the case of the respondent that the petitioner, however, committed default in making the payment of the said amount and their account was being classified as NPA. According to the respondent, the petitioners were liable to pay a sum of Rs.1,83,76,126.80 towards balance of principal amount and Rs.8,04,79,812/- towards interest as on 30th September 2006. It is the case of the respondent that though by several letters/ notices, the respondent called upon the petitioners to pay overdue instalments, the petitioners did not pay various amount and committed default.

10. Some time in the year 1990, the respondent filed a dispute before the 1st Co-operative Court, Mumbai being case no.CC/1166/1990 against the petitioners under Section 91 of the Maharashtra Co-operative Societies Act, 1960. By an order dated 27th January 2003, the Co-operative Court returned the said plaint to be filed before the appropriate forum holding that it had no jurisdiction to entertain the

matter filed by the bank deemed to be registered under the Multi State Co-operative Societies Act, 2002. The respondent, thereafter, invoked the provisions of Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 thereby seeking to attach the property at Lonavala. By an order dated 7th June 2006, passed by the Debt Recovery Tribunal-II, Mumbai, the application filed by the petitioners came to be allowed and action initiated by the respondent under the provisions of the said Securitisation Act came to be set aside.

11. Some time in the year 2007, the respondent herein filed its statement of claim before the learned arbitrator appointed under Section 84 of the Multi State Co-operative Societies Act, 2002 against the petitioners herein, inter alia, praying for a sum of Rs.9,88,55,938,80 as on 30th September 2006 with further interest. In paragraph 2 of the said statement of claim, the respondent herein referred to the details of the membership and shareholdings of the petitioners with the respondent-bank. The said statement of claim was resisted by the petitioners by filing written statement.

12. In the written statement filed by the petitioner no.1, a reference was made to various documents furnished to the petitioner no.1 by the respondent including Membership Application Form, Minutes of meeting of the Finance Committee of the bank held on 13th September 1989 and Minutes of meeting of the Finance Committee of the bank held on 11th September 1974. The petitioner no.1 alleged that there were various discrepancies in the said documents and the same could not have been relied upon by the bank. It was alleged by the petitioner no.1 that

membership of the petitioner no.1 was not signed by its two members required to propose/recommend for grant of membership to the petitioner no.1 as per bye-laws of the bank. The petitioner no.1, however, did not dispute the signatures on the membership application form. The petitioner no.2 and the petitioner no.3 filed a separate written statement and raised identical issues which were raised by the petitioner no.1.

13. The learned arbitrator framed 8 points for determination. The respondent examined a witness who was cross-examined by the petitioners. The petitioners did not lead any oral evidence. On 21st April 2012, the learned arbitrator rendered an award directing the petitioners to pay various amounts to the respondents. The learned arbitrator rejected the contentions raised by the petitioners that they were not the members or shareholders of the respondent. The learned arbitrator also rejected the plea of limitation and jurisdiction raised by the petitioners. It is held by the learned arbitrator that the respondent-bank had proved loan amounts outstanding against the petitioners. It is held that the petitioners continued to be the members and shareholders of the respondent-bank. The said award is impugned in this petition under Section 34 of the Arbitration Act on various grounds.

14. Mr.Balsara, learned counsel for the petitioners invited my attention to various documents, pleadings and the bye-laws of the bank and also to various findings recorded by the learned arbitrator. He submits that the petitioner no.1 and the petitioner no.3 were not the members and shareholders of the respondent-bank. In support of this submission, the learned counsel invited my attention to the membership application form filed by the petitioner no.1 and petitioner no.3 and

would submit that in so far as the petitioner no.1 is concerned, no member of the respondent proposed and recommended the application of the petitioner no.1 to become member of the respondent in accordance with bye-law 10(2) of the bye-laws of the respondent-bank which is mandatory. He submits that according to the said bye-laws, application for membership has to be approved by the majority of the board of directors.

15. He invited my attention to the resolution dated 13th September 1989 passed by the Finance Committee of the board of directors of the respondent and submits that the application for membership, if any, has to be approved by the board of directors of the respondent and not by the Finance Committee of the board of directors. He submits that merely because some amounts were debited to the account of the petitioner no.1 by the bank that would not make the petitioner no.1 member unless the mandatory requirements under the bye-laws followed by the bank.

16. Bye-law 10(2) of the bye-laws of the respondent-bank is extracted as under :-

“10. No person shall be eligible to be a member of the Bank unless :

(2) Its written application in the form prescribed by the Bank signed by it and supported by two members who know the person applying had been made to the Bank and had been approved by the majority of the directors for the time being constituting the Board of Directors of the Bank.”

17. Learned counsel for the petitioner submits that since the membership application forms of the petitioner no.1 and the petitioner

no.3 were not in accordance with the said bye-law 10(2) of the bye-laws of the respondent and in any event, were not approved by the board of directors, the petitioner no.1 and the petitioner no.3 did not become members of the respondent. He submits that the entire proceedings in so far as the petitioner no.1 and the petitioner no.3 are concerned, were thus without jurisdiction under Section 84(b) of the Multi-State Co-operative Societies Act, 2002. He submits that larger period of limitation prescribed under Section 85(1)(a) of the Multi-State Co-operative Societies Act, 2002 would thus not apply to the petitioner no.1 and the petitioner no.3 but the provisions of Section 85(2) of the said Act would apply. He submits that the claims against the petitioner no.1 and the petitioner no.3 filed by the respondent were thus barred by law of limitation.

18. Learned counsel for the petitioners submits that though the bye-laws of the respondent-bank did not have any force of statute, the bye-laws in the nature of agreement between the parties were mandatory and thus binding on the bank and its members. He submits that under such bye-laws, since the membership application form had not been proposed by two members and not approved by the board of directors of the respondent, the same would not be binding on the petitioners. In support of this submission of the petitioners, learned counsel placed reliance on the judgment of the Supreme Court in the case of ***The Co-operative Central Bank Ltd. & Ors. Vs. The Additional Industrial Tribunal, Andhra Pradesh & Ors.***, reported in ***1969 (2) SCC 43*** and in particular paragraphs 7, 9 and 10 which read thus :-

“7. Applying these tests, we have no doubt at all that the dispute

covered by the first issue referred to the Industrial Tribunal in the present cases could not possibly be referred for decision to the Registrar under S. 61 of the Act. The dispute related to alteration of a number of conditions of service of the workmen which relief could only be granted by an Industrial Tribunal dealing with an industrial dispute. The Registrar, it is clear from the provisions of the Act, could not possibly have granted the reliefs claimed under this issue because of the limitations placed on his powers in the Act itself. It is true that S. 61 by itself does not contain any clear indication that the Registrar cannot entertain a dispute relating to alteration of conditions of service of the employees if a registered society; but the meaning given to the expression "touching the business of the society", in our opinion, makes it very doubtful whether a dispute in respect of alteration of conditions of service can be held to be covered by this expression. Since the word "business" is equated with the actual trading or commercial or other similar business activity of the society, and since it has been held that it would be difficult to subscribe to the proposition that whatever the society does or is necessarily required to do for the purpose of carrying out its objects, such as laying down the conditions of service of its employees, can be said to be a part of its business, it would appear that a dispute relating to conditions of Service of the workmen employed by the society cannot be held to be a dispute touching the business of the society. Further, the position is clarified by the provisions of sub-s. (4) of S. 62 of the Act which limit the power to be exercised by the Registrar, when dealing with a dispute referred to him under s. 61, by a mandate that he shall decide the dispute in accordance with the provisions of the Act and the Rules and bye-laws. On the face of it, the provisions of the Act, the rules and the bye-laws could not possibly permit the Registrar to change conditions of service of the workmen employed by the society. For the purpose of bringing facts to our notice in the present appeals, the Rules framed by the Andhra Pradesh Government under the Act, and the bye-laws of one of the appellant Banks have been placed on the Paper-books of the appeals before us. It appears from them that the conditions of service of the employees of the Bank have all been laid down by framing special bye-laws. Most of the conditions of service, which the workmen want to be altered to their benefit, have thus been laid down by the bye-laws, so that any alteration in those conditions, of service will necessarily require a change in the bye-laws. Such a change could not possibly be directed by the Registrar when, under S. 62(4) of the Act, he is specifically required to decide the dispute referred to him in accordance with the provisions of the bye-laws. It may also be noticed that a dispute referred to the Registrar under S. 61 of the Act can even be transferred for disposal to a person who may have been invested by the Government with powers in that behalf, or may be referred for disposal to an arbitrator by the Registrar. Such person or arbitrator, when deciding the dispute, will also be governed by the mandate in S. 62 (4) of the Act, so that he will also be bound to reject the claim of the workmen which is nothing else than a request for alteration of conditions of service contained in the bye-laws. It is thus clear that, in respect of the dispute relating to alteration of

various conditions of service, the Registrar or other person dealing with it under S. 62 of the Act is not competent to grant the relief claimed by the workmen at all. On the principle laid down by this Court in the case of the Deccan Merchants Cooperative Bank Ltd.(1), therefore, it must be held that this dispute is not a dispute covered by the provisions of S. 61 of the Act. Such a dispute is not contemplated to be dealt with under s. 62 of the Act and must, therefore, be held to be outside the scope of section 61.

9. *Learned counsel appearing on behalf of the appellant Banks, however, urged a new point to challenge the jurisdiction of 'the Industrial Tribunal to deal with the dispute relating to conditions of service to the effect that the conditions of service having been made the subject -matter of bye-laws, an Industrial Tribunal will not be competent to alter them, because even an Industrial Tribunal has no jurisdiction to make orders contrary to law. For this purpose, he referred us to a number of decisions of this Court in Dalmia Cement (Bharat), Ltd., New Delhi v. Their Workmen and Another(1); The Management of Marina Hotel v. The Workmen (2) ; Cinema Theatres v. Their Workmen(3); and The Hindustan Times Ltd., New Delhi v. Their Workmen & Vice Versa(4). In all these cases, it was held that an Industrial Tribunal acted illegally in prescribing leave in excess of the number of days laid down by the Delhi Shops and Establishments Act, 1954. In S. 22 of that Act there was a specific prohibition that leave for sickness or casual leave with full wages shall not exceed 12 days; and it was held that a direction made by the Tribunal granting to the workmen more than 12 days' sickness or casual leave was illegal. The principle of the decisions in those cases does not, however, appear to us to be applicable to the cases before us, because, in the present cases, there is no prohibition contained in the Act that the conditions of service prescribed are not to be altered. The argument on behalf of the Bank, however, was that the bye-laws, which contained the conditions of service, are themselves law, so that any direction made by an Industrial Tribunal altering a condition of service contained in a bye-law would be an order contrary to law and, hence, illegal.*

10. *We are unable to accept the submission that the bye-laws of a co-operative society framed in pursuance of the provisions of the Act can be held to be law or to have the force of law. It has no doubt been held that, if a statute gives power to a Government or other authority to make rules, the rules so framed have the force of statute and are to be deemed to be incorporated as a part of the statute. That principle, however, does not apply to bye-laws of the nature that a co-operative society is empowered by the Act to make. The bye-laws that are contemplated by the Act can be merely those which govern the internal management, business or administration of a society. They may be binding between the persons affected by them, but they do not have the force of a statute. In respect of bye-laws laying down conditions of service of the employees of a society, the bye-laws would be binding between the society and the employees just*

in, the same manner as conditions of service laid down by contract between the parties. In fact, after such bye-laws laying down the conditions of service are made and any person enters the employment of a society, those conditions of service will have to be treated as conditions accepted by the employee when entering the service and will thus bind him like conditions of service specifically forming part of the contract of service. The bye-laws that can be framed by a society under the Act are similar in nature to the Articles of Association of a Company incorporated under the Companies Act and such Articles of Association have never been held to have the force of law. In a number of cases, conditions of service for industries are laid down by Standing Orders certified under the Industrial Employment (Standing Orders) Act, 1946, and it has been held that, though such Standing Orders are binding between the employers and the employees of the industry governed by those Standing Orders, they do not have such force of law as to be binding on industrial Tribunals adjudicating an industrial dispute. The jurisdiction which is granted to Industrial Tribunals by the Industrial Disputes Act is not the jurisdiction of merely administering the existing laws and enforcing existing contracts. Industrial Tribunals have the right even to vary contracts of service between the employer and the employees which jurisdiction can never be exercised by a civil court or a Registrar acting under the Co-operative Societies Act, so that the circumstance that, in granting relief on issue No. 1, the Tribunal will have to vary the special bye-laws framed by the Cooperative Bank does not lead to the inference that the Tribunal would be incompetent to grant the reliefs sought in this reference. In fact, the reliefs could only be granted by the Industrial Tribunal and could not fall within the scope of the powers of the Registrar dealing with a dispute under s. 61 of the Act.”

19. Learned counsel for the petitioners also placed reliance on the judgment of this Court in the case of **Krishna Ganpatrao Kamdi & Ors. Vs. Liladhar s/o Laxman Pathode & Ors.**, reported in 2008 (6) **Mh.L.J. 391** and in particular paragraphs 10, 11, 13 and 14 thereof which read thus :-

“10. Jurisdiction vested in the Co-operative Court in substance; is very wide but has a limited application to the persons and affairs spelt out in the provision. For example, in the case of Chairman and Vice-Chairman of the Managing Committee of the specified society, the Co-operative Court will have no jurisdiction to entertain an election petition as it would squarely fall within the jurisdiction of the Commissioner under Section 144-T of the Act as held in the case of Zambar Raj aram Patil and Anr. v. State of Maharashtra and Ors. MANU/MH/0166/2000 : 2000(2)BomCR128 . Absence of express statutory provision in relation to election being

materially affected *per se* would not make application of the concept alien to Co-operative Court while determining the election dispute in exercise of its powers under Section 91 of the Act. This concept would have to be applied in its proper perspective and with due care. Uniform application de hors the nature of the violation alleged to have been committed can hardly be spelt out as a principle of law. In the case of *B.K. Garad v. Nasik Merchants Co-op. Bank Ltd.* [MANU/SC/0367/1984](#) : [1984]1SCR767, the Supreme Court took the view that rules have a status of subsidiary but bye-law of the Co-operative Society can at best have the status of Article of Association of the company governed by the Companies Act, 1956. They are not law and are incapable of being treated as such. However, society is bound by its bye-laws but in case of conflict, the provisions of the statute prevail. Section 73 of the Act makes it mandatory that Managing Committee of the Society has to be constituted not only in accordance with the Act and the Rules but also in accordance with the Bye-laws. Anything done or decision taken not in conformity with the bye-laws will clearly result in affecting the constitution of the Managing Committee and infraction or violation of the provisions of Section 73. Of course, these observations of the Division Bench of this Court in this case, *prima facie*, looked to be at variance of the judgment of the Supreme Court in the case of *Co-operative Central Bank Ltd. v. Addl. Industrial Tribunal, Andhra Pradesh, Hyderabad and Ors.* [MANU/SC/0611/1969](#) : (1969)1ILLJ698SC but in fact, when they are examined closely and harmoniously, there is no conflict between the two. The rules must get precedence over bye-laws and enforceability of bye-laws may not be equated to the statutory law but at the same time, they continued to bind the society and its members and they have no right to violate the same. Business of the society essentially, thus, may be carried out in consonance with the bye-laws. In the case of *Chapadgaon Vividh Karyakari Seva Sahakari Society Ltd. v. Collector* [MANU/MH/0440/1989](#) : 1989 Mh.L.J. 872, the Division Bench of this Court even took a view that wrong exclusion of a member of a society from participating in the election to committee has a right to maintain election petition despite the language of Rule 74 which provides challenge to election by a voter or a candidate before the Commissioner. In the case of *Banwari Dass v. Sumer Chand* [MANU/SC/0276/1974](#) : [1974]3SCR358, the Supreme Court clearly stated the law that an election contest is not an action at law or a suit in equity but a purely statutory proceeding unknown to common law and Court possesses no common law powers. Its procedure, powers and scope of remedy has to be controlled statutorily and in accordance with those provisions. In an election of the Managing Committee, preparation of electoral roll is intermediate stage and once the election process is set in motion, the general principle that under Article 226, the High Court would not interfere and leave the parties to follow the statutory provision of invoking the election process or election procedure as the case may be. - *Shri Sant Sadguru Janardhan Swami Sahakari Dugdha Utpadak Sanstha and Anr. v. State of Maharashtra* 2002(1) Mh.L.J. 659.

11. Admittedly, there is no provision in the Act *pari materia* to Section

100(1)(d) and the other provisions of Representation of Peoples Act, 1951 which require that the Co-operative Court should examine the concept of 'election being materially affected' by the irregularities, illegalities or other statutory violations. Absence of such provision in the present Act indicates the mind of the legislature not to subject all irregularities, illegalities or violation tactics to the concept of election being 'materially affected'. It is the settled canon of statutory interpretation that the principle of plain interpretation should be applied where the language of the provision is clear and rather unambiguous. It will be impermissible for the Court to provide any strait-jacket formula as panacea to the various situations that may arise in relation to any dispute of election to committee or notified society. The Court, at best, can only lay down certain general percepts which would help the co-operative Court and the High Court in dealing with the cases of the present kind or such other cases relating to matters of election. Section 91 of the Act provides for any dispute touching the election of the committee etc. and also between whom the dispute should be and what does the dispute includes. This Section either by specific expression or by necessary implication does not touch upon or prescribe any criteria/parameters which may be considered or adopted by the co-operative Court while dealing with the disputes relating to the election. This is the grey area left by the legislature and would require the lacunae to be supplied by judicial interpretation but while supplying such a lacunae, the Court has to ensure the legislative character, object and methodology contemplated under the statutory provision is not altered or violated by such process.

13. The laws relating to Municipalities, Gram Panchayats and even with regard to non-specified and non-notified societies do not contain provisions alike the Representation of Peoples Act. However, Rule 81 of the Maharashtra Specified Co-operative Societies Election to Committee Rules, 1971 (hereinafter referred to as "the Rules") is a provision *pari materia* to Section 100(1)(d) of the Representation of Peoples Act. The provisions of the Maharashtra Co-operative Societies Act, 1960, are primary provisions relating to process of election in exercise of powers conferred under Sections 144-F, 144-L and 144-X and their different Sub-sections read with Sub-section (1) of Section 165 of the Act, the State Government of Maharashtra in exercise of its power had framed the said Rules to regulate the process of election to the different societies. However, there are hardly any specific provisions which deal with process of election or ground on which an election can be set aside in the case of a non-specified or non-notified society. The general adjudicative powers are vested in the Tribunal in terms of Section 91 which is expected to adopt its own procedure. Thus, the provisions under other laws or even under these provisions cannot be applied to the non-specified or non-notified societies in strict sensu. The aggrieved person has to approach the Tribunal in accordance with the provisions of the Sections of the Act itself. In the present case, we are concerned with the non-specified or non-notified society. Elections to the Managing Committee were declared on 14th February, 2004 and 17

Managing Committee members were to be elected, 11 under the general category and remaining under different reserved categories. The votes were counted on 15th October, 2004 and results were declared. 18 disputants had challenged the elections of the elected members on various grounds including the irregularities in election process as well as actual holding of election. It was also the ground taken that votes were not counted and even result of the election was changed. Thus, according to them, elections suffered from irregularities as well as illegalities. Viewing it from a larger perspective, there could be two classes of cases in election petition; (i) where there is clear violation of provisions of the Act, the Rules and the Bye-laws having a mandatory character. Such class of cases may even include unfair practices like corrupt practices etc. and (ii) where irregularities or improper practices are committed and they are not in conformity with the rules or bye-laws having non-mandatory character and are directory in nature. This classification would have to be determined by the Co-operative Court depending on the facts and circumstances of the case and in accordance with law. In the prior class of cases, it may not be absolutely necessary for the Court to apply the principle of election being materially affected while in the later class of cases, the application of such principle may be essential. In either of these class of cases, the purpose is that election should be 'pure and fair'. Fairness is relatable to procedure while pureness is to be tested in every facet of election process. This is the true doctrine applicable to any democratic process of election. Whatever be the status of the bye-laws, their sanctity cannot be entirely wiped out for lack of their statutory character. The object of the Act, Rules and the Bye-laws, cumulatively read, is to ensure proper and fair election and not to permit this to subserve illegalities or irregularities. Mainly such questions need to be determined by the Co-operative Court in exercise of its vast jurisdiction. It being a Court of specific jurisdiction, is expected to deal with the factual matrix and legal disputes raised in an election petition and in consonance with the settled principles of law. In the present case, the disputant had raised various objections and alleged that there is violation of rules and bye-laws.

14. *Various grounds of challenge taken by the petitioner (disputant) have already been stated by us above. As per the findings of the Co-operative Court, majority of the grounds taken were correct and they had materially affected the result of the election. Once such a finding is found to be in consonance with the settled principles of law, hardly anything remains to be discussed. Statements of object and reasons of an Act are not of great help in interpreting clear and unambiguous words or language of the provision. However, they are relevant considerations wherever there is lacunae in statutory provisions. The object of the said Act was to pay attention to the growing role of co-operative movement. The growing diversification of activities through the co-operative movement, thus, had caused certain attendant problems in respect of the conduct of the business activities and democratic set up in a co-operative society. With an intent to streamline the working of co-operative societies and to provide appropriate*

and fair election process, the said Act was enacted and subsequently, amended .Despite language of Section 91 even a general concept that election process has to be pure and fair and election disputes need to be adjudicated upon expeditiously can hardly be disputed. The concept of pure and fair election will take into its ambit the principle of election being materially affected, of course, depending upon the facts and circumstances of a given case. Wherever there is violation of a substantive and/or mandatory provision which affects the very root of the election process, it cannot be said that in such circumstances, it would be obligatory for the disputant or petitioner to prove that election was materially affected. For example, where a member whose nomination has been accepted was disqualified from membership prior to filing of nomination, such a member had contested the election and succeeded. A person may file his nomination to contest the election as an associate member and whose name does not stand in the share certificate (Bye-law 18) or had earned disqualification in terms of Rule 19(2) or the relevant bye-laws. In other words, violation of such statutory provisions, rules and bye-laws which in their contention are mandatory and which go to the very root of the election process, it would not be necessary, in our opinion, that the candidate should prove that in addition to such violation, the election result was also materially affected. Under the scheme of the said Act, it is not within the powers of anybody to condone non-compliance of such mandatory provisions. Thus, these are not the cases where a discretion is vested with any forum to permit alteration of a status or a situation to entry period. While in other cases where there are irregularities or practices adopted which do not violate mandatory provisions and are directory and procedural in nature it only amounts to irregularities, in those cases, it will be appropriate for the candidate to show to the satisfaction of the co-operative Court that even election result was materially affected by such irregularities. For example, as alleged by the disputant, there was improper voting at one of the booths and, thus, the validity of the entire election process was questioned. In that event, the possibility of the fact that even if all votes expected to be polled in that booth are taken against the succeeded candidate, still it may not affect the result of the election.”

20. Learned counsel for the petitioners placed reliance on the cross-examination of the witness examined by the respondent and would submit that since the resolution by the Finance Committee was passed on 13th September 1989 by which the alleged membership of the petitioner no.1 was approved, the question of issue of any shares to the petitioner no.1 in July 1989 did not arise. He submits that the register of the members and the details of the shares mentioned in so far as the

petitioner no.1 is concerned, was thus false and misleading. He submits that in any event, the said resolution passed on 13th September 1989 was not passed by the board of directors of the respondent-bank but was passed by the board of directors of the Finance Committee of the respondent and was thus not in accordance with bye-law 10(2) of the bye-laws of the respondent.

21. Learned counsel for the petitioners submits that since Form 'K' which was one of the mandatory requirement under the bye-laws the bank was admittedly not filled in and submitted by the petitioner no.1 and the petitioner no.3, the petitioner no.1 and the petitioner no.3 could not have become members of the respondent. In support of this submission, the learned counsel placed reliance on the judgment of this Court in the case of **Prakash Vrundavan Thakkar Vs. Nagpur Nagrik Shakari Bank Ltd.**, reported in **2014 (3) Mh.L.J. 349** and in particular paragraphs 5 and 11 thereof. He submits that since the respondent has failed to show that the petitioner no.1 and the petitioner no.3 were the members of the respondent-bank at the time of referring the dispute under Section 85(1) (b) of the said Act, the entire arbitral proceedings is without jurisdiction. Paragraphs 5 and 11 of the said judgment in the case of *Prakash Vrundavan Thakkar (supra)* read thus :-

“5. In the judgment and order impugned in this appeal, the learned Principal District Judge has relied upon Form "k" signed by the petitioner and tendered to the respondent no. 1 Society. The learned Principal District Judge has also relied upon the deed of guarantee signed by the petitioner and it has been held that it is established that the appellant was the member of the respondent no. 1 society.

11. In the absence of there being any evidence on record to show that the petitioner was a member of respondent no. 1 society at the time of referring the dispute under Section 84(1)(b) of the Multi-State Cooperative

Societies Act, the learned Principal District Judge has committed an error of law in holding that the arbitral tribunal had jurisdiction to entertain, try and decide the dispute between the petitioner and the respondent no. 1 society.”

22. It is submitted by the learned counsel for the petitioners that even if the petitioners had borrowed any loan from the respondent in view of the petitioner no.1 and the petitioner no.3 not being the members of the respondent, the respondent could not have invoked the mechanism of arbitration under Section 84 of the Multi State Co-operative Societies Act, 2002 but ought to have filed the other proceedings permissible in law.

23. Learned counsel for the petitioners submits that initially the respondent had filed a dispute in the Co-operative Court. On 27th January 2003, the Co-operative Court had passed the order to the effect that the said Court had not jurisdiction to entertain the said dispute filed by the respondent in view of the respondent being a Society deemed to have been covered under the provisions of the Multi State Co-operative Societies Act, 2002. He submits that the respondent, however, invoked the arbitration agreement only in the month of August 2007 which was thus beyond the period of limitation. Learned counsel for the petitioners submits that the finding of the learned arbitrator that the petitioner no. 1 and the petitioner no.3 were the members is based only on the basis the application forms signed by the petitioner no.1 and the petitioner no.3 who were admittedly incomplete. He submits that the said finding is thus contrary to bye-law 10 (2) of the bank.

24. Mr. Cama, learned counsel for the respondent, on the other hand, submits that the petitioner nos.2 and 3 were admittedly the

members of the respondent since long. In support of this submission, the learned counsel invited my attention to various documents. He submits that Form 'K' has to be filled only by the borrowers who were the members of more than one credit societies. It was not the case of the petitioners that the petitioners were the members of more than one credit societies. He submits that in any event, it is by way of declaration and was not applicable to the petitioners and was thus kept blank. In support of this submission, learned counsel invited my attention to Form 'K' which was annexed to the application for membership and was kept blank.

25. Mr.Cama submits that in so far as the requirement of the recommendation by two members of the respondent-bank on the application for membership is concerned, the same is not a pre-condition or mandatory to make the applicant a member of the respondent and can be waived. He submits that in any event, the said procedure is for the benefit of the respondent-bank and not for the benefit of the persons applying for membership. He invited my attention to the membership application form submitted by the petitioners and would submit that each of the petitioners had signed on the said application forms and had declared that they had already read the bye-laws of the respondent.

26. Learned counsel submits that the petitioner no.1 had addressed a letter to the bank on 7th July 1989 requesting for sanction of the loan immediately in view of the financial position of the petitioner no.1 having become sticky. It was also represented by the petitioner no.1 that their family was banking with the respondent for about 35 years. Learned counsel also invited my attention to the sanctioned letter issued

by the respondent in favour of the petitioner no.1 dated 12th July 1989. He submits that the said application of the petitioner no.1 was sanctioned on 12th July 1989 and loan was released immediately. The petitioner no.1 was also issued 166 shares on payment of the share money which was admittedly debited to the account of the petitioner no.1. The petitioners never disputed such amount having been debited to the account of the petitioner no.1.

27. Learned counsel also invited my attention to the copy of the resolution dated 12th July 1989 passed by the petitioner no.1 resolving to comply with all the terms and conditions of the sanctioned letter issued by the respondent in respect of two facilities availed of by the petitioner no.1. Learned counsel invited my attention to the Deed of Hypothecation dated 17th July 1989 admittedly signed by the petitioner no.1 and its directors in which the petitioners had confirmed that the petitioner no.1 was a member of the respondent-bank. My attention is also invited to the membership shares register to indicate that the petitioner no.2 had become member on 7th December 1960. The respondent also placed reliance on Minutes of meeting of the respondent dated 11th September 1974 to show that the petitioner nos.2 and 3 had been transferred various shares of the respondent long back. Learned counsel also placed reliance on the share allotment register to show that the petitioner no.1 had become member on 12th July 1989.

28. In so far as the submission of the learned counsel for the petitioners that the resolution was not passed by the board of directors of the respondent but was passed only by the Finance committee of the board of directors of the respondent and thus was not valid is concerned,

the learned counsel for the respondent invited my attention to the said resolution and would submit that the membership application form of the petitioner no.1 was already approved as far back as on 12th July 1989 as would be apparent from the application form itself. All such applications which were received by the respondent and were approved during the period between 1st July 1989 to 31st August 1989 were placed before the board of directors of the Finance Committee for ratification.

29. Mr.Cama submits that the petitioners have not disputed that based on such membership and shareholdings, the petitioner no.1 had received the said two facilities from the respondent immediately on approving the petitioner no.1 as member i.e. on 12th July 1989 itself. Learned counsel for the respondent placed reliance on the judgment of the Supreme Court in the case of **General Manager, Sri Siddeshwara Co-operative Bank Limited & Anr. Vs. Ikbali & Ors.**, reported in **(2013) 10 SCC 83** and in particular paragraph 19 and it is submitted that even if the provision is mandatory, it can always be waived by a party or parties for whose benefit such provision has been made. Paragraph 19 of the said judgment in the case of *General Manager, Sri Siddeshwara Co-operative Bank Limited & Anr. (supra)* reads thus:-

“19. There is no doubt that Rule 9(1) is mandatory but this provision is definitely for the benefit of the borrower. Similarly, Rule 9(3) and Rule 9(4) are for the benefit of the secured creditor (or in any case for the benefit of the borrower). It is settled position in law that even if a provision is mandatory, it can always be waived by a party (or parties) for whose benefit such provision has been made. The provision in Rule 9(1) being for the benefit of the borrower and the provisions contained in Rule 9(3) and Rule 9(4) being for the benefit of the secured creditor (or for that matter for the benefit of the borrower), the secured creditor and the borrower can lawfully waive their right. These provisions neither expressly nor contextually indicate otherwise. Obviously, the question

whether there is waiver or not depends on facts of each case and no hard and fast rule can be laid down in this regard.”

30. Learned counsel for the respondent distinguished the judgment of the Supreme Court and this Court relied upon by the learned counsel for the petitioners and would submit that the said judgment would not assist the case of the petitioner but would assist the case of the respondent.

31. In his alternative submission, learned counsel for the respondent submits that even if the petitioner no.1 was not a member on 12th July 1989, on the date of dispute, the petitioner no.1 was already a member on the date of filing dispute by the respondent and thus the claims filed by the respondent in the arbitral proceedings filed under Section 84 was maintainable. He submits that in any event, under bye-law 10(2) of the respondent, there was no bar against the respondent-bank for ratification of the resolution passed by the respondent to make the borrower a member post facto by ratification. Learned counsel for the respondent invited my attention to the cross-examination of the petitioner no.2 who admitted that he had been dealing with the respondent-bank since last 35 years. The petitioner no.2 and his wife only were the directors of the petitioner no.1. The petitioner no.2 had been dealing with the respondent in the name of the petitioner no.1-Abid & Company Steels Private Limited. The said witness admitted that he was the member of the respondent-bank since 1960.

32. In so far as the issue of limitation raised by the petitioners is concerned, the learned counsel for the respondent submits that since each of the petitioners were members of the respondent and did not

cease to be members when the arbitral proceedings were filed by the respondent against the petitioners under Section 84 of the said Act, the proceedings were not only maintainable against each of the petitioners but also were within the limitation under Section 85 (1) of the Multi State Co-operative Societies Act, 2002. Learned counsel for the respondent submits that the learned arbitrator has rendered findings of facts after considering the pleadings and evidence and such findings are not perverse and thus this Court cannot interfere with such findings of facts and cannot re-appreciate the evidence considered by the learned arbitrator. In support of this submission, the learned counsel placed reliance on the judgment of the Supreme Court in the case of Ravindra Kumar Gupta and Company Vs. Union of India, reported in (2010) 1 SCC 409 and in particular paragraphs 9 to 12 thereof.

33. Learned counsel for the petitioners in rejoinder submits that Deed of Hypothecation relied upon by the respondent which was submitted by the petitioner no.1 was in the standard form and thus merely because it was mentioned therein that the signatory to the said Deed of Hypothecation was a member, it would not be conclusive. He submits that under bye-law 10(2) of the bye-laws of the respondent, approval of the membership has to be granted by majority of the directors. The respondent had not led any evidence as to how many directors of the respondent had attended the said meeting. He submits that bye-law 10(2) of the bye-laws of the respondent is not meant for benefit of any party but is mandatory.

REASONS AND CONCLUSIONS:-

34. It is not disputed by the petitioners that the petitioner no.2 was a member and shareholder of the respondent. It was the only case of

the petitioner no.1 and the petitioner no.3 that they were not the members and the shareholders of the respondent. This contention was raised by the petitioners on the ground that though the petitioner no.1 and the petitioner no.3 had signed the membership application form, the same was not proposed in the manner prescribed under bye-law 10(2) of the bye-laws of the respondent and in any event had not been approved by the majority of the board of directors of the respondent. It was the case of the petitioners that in so far as the membership application form of the petitioner no.1 was concerned, the same was not proposed by any member whereas the membership application form of the petitioner no.3 was proposed only by one member and not by two members.

35. A perusal of the membership application form forming part of the record clearly indicates that none of the petitioners had disputed their signatures. The petitioners had declared in the said application form itself that the petitioners had read the bye-laws of the respondent. The said form also indicates that certain amounts had been paid by the petitioners for becoming members of the respondent and towards the shares allotted. Even in the Deed of Hypothecation signed by the petitioner no.1 through its directors, it was confirmed by the petitioners that the petitioner no.1 was a member of the respondent-bank.

36. A perusal of the correspondence exchanged between the petitioner no.1 and the respondent-bank prior to the date of sanction of the loan clearly indicates that the petitioner no.1 had applied for various facilities urgently in view of the financial condition of the petitioner no.1 having become sticky. The petitioner no.1 also made a

representation that their family was dealing with the respondent for last 35 years. The petitioners had demanded the sanction and disbursement of the loan very urgently. The witness examined by the petitioners i.e. the petitioner no.2 had admitted in his cross-examination that he had been dealing with the bank for more than 35 years and was a member of the respondent-bank since 1960. It is not disputed by the petitioners that the petitioners had not borrowed any amount from the respondent or had not submitted any such membership application forms.

37. A perusal of the order passed by the Co-operative Court which held that the said Court did not have jurisdiction in view of the Respondent being covered by the provisions of the Multi-State Co-operative Societies Act, 2002 also indicates that the Co-operative Court had passed that order only on the premise that the petitioners herein who were the Respondents to the said proceedings were the members of the Respondent Bank.

38. Bye-law 10(2) of the Bye-laws provides that the written application in the form prescribed by the Bank signed by it and supported by two members who knew the person applying had been made to the Bank and had been approved by the majority of the directors for the time being constituting the Board of Directors of the Bank. It was the case of the Petitioners themselves that the family of the Directors of the Petitioner No.1 was already dealing with the Respondent Bank for more than 35 years and because of such close relations, the Petitioner No.1 had applied for sanction of the loan urgently. Since the Respondent Bank already knew the Petitioners' background and the Petitioner Nos.2 and 3 already being members of the Respondent Bank, the membership

application form of the Petitioner No.1 was immediately sanctioned on various conditions. The sanctioned letter issued by the Bank also clearly indicates that the the Petitioners will have to be the shareholders of the Respondent Bank. It is not disputed by the Petitioner No.1 that the specific amount was debited to the Account of the Petitioner No.1 by the Bank towards membership and for issuance of shares. The Petitioners never challenged the said entry in the bank accounts by the petitioner no.1.

39. A perusal of the record indicates that the loan was immediately sanctioned in favour of the Petitioner No.1 based on such membership and issuance of shares in view of the request made by the Petitioner No.1 for immediate sanction and disbursement of the loan. The membership application form of the Petitioner No.1 along with several other application forms were specifically placed before the Board of Directors of the Finance Committee of the Respondent Bank for ratification along with the details of the membership and shares held by each of the members and admittedly, the said Resolution was subsequently passed by the Board of Directors of the Finance Committee. The register of the membership and also the other documents produced by the Respondent before the learned arbitrator clearly indicates that the Petitioner No.1 became member of the Respondent and was issued 166 shares. It is not the case of the Petitioners that though the Petitioners demanded issuance of those 166 shares which shares were alleged to have been issued to the Petitioner no.1 as per the said sanctioned letter, the Petitioner no.1 demanded but was not issued with any such shares. In my view, the defence raised by the Petitioner No.1 about the membership and the shares was ex facie false and frivolous.

40. The Supreme Court in the case of General Manager, Sri Siddheshwara Co-operative Bank Ltd. & Anr.(supra) has held that even if a provision is mandatory, it can always be waived by a party (or parties) for whose benefit such provision has been made. It is held that the secured creditors and the borrowers can lawfully waive their right. In this case, in my view, the said Bye-law 10(2) of the respondent-bank was for the benefit of the Respondent Bank with a view to see that if an outsider for membership, his name should be recommended by two existing members. In this case, the Petitioner Nos.2 and 3 who were the Directors of the Petitioner No.1 Company were already members of the Respondent Bank and were dealing with the Respondent for more than 35 years.

41. In my view, even if there was any relaxation granted by the Respondent Bank by not insisting for the proposal by the two existing members in view of such admitted facts is concerned, it would not indicate that the Petitioner No.1 was not a member of the respondent Bank. The Petitioner No.1 also issued a share certificate by the respondent Bank. The decision of the Bank accepting the membership application form of the Petitioner No.1 was subsequently ratified by the Board of Directors in the Finance Committee meeting of the Respondent. The Petitioners had accepted and confirmed the membership of the Petitioner No.1 in Deed of Hypothecation. In my view, since the said Bye-law 10(2) was for the benefit of the Respondent, even if the same was waived, the Petitioners could not have taken undue advantage of alleged non-compliance of bye law 10(2) which was for the benefit and protection of the bank. I am respectfully bound by the judgment of the Supreme Court in the case of *General Manager, Sri Siddheshwara Co-operative Bank Ltd. & Anr.(supra)* which squarely applies to the facts of this case.

42. The Supreme Court as well as this Court in the case of *The Co-operative Central Bank Ltd. & Ors.* and in case of *Krishna Ganpatrao Kamdi & Ors.(supra)* respectively relied upon by the Petitioners also held that such bye-laws would be in the nature of agreement and would not have force of law. In so far as the judgment of this Court in the case of *Prakash Vrundavan Thakkar (supra)* relied upon by the Petitioners is concerned, since none of the Petitioners were the members of more than two credit societies, the said Form 'K' prescribed under Rule 44(1) of the Maharashtra Co-operative Societies Act, 1960 required to be submitted. The said form was accordingly kept blank and was not filled in by the Petitioners. Since the Petitioners were the members of the Respondent Bank, the said judgment of this Court in the case of *Prakash Vrundavan Thakkar (supra)* does not apply to the facts of this case and would not assist the Petitioners.

43. In so far as the issue of jurisdiction raised by the Petitioners is concerned, since each of the Petitioners were the members of the Respondent Bank and continued to be the members on the date of filing of the dispute by the Respondent in the Co-operative Court and thereafter, on the date of filing of the arbitral proceedings against the Petitioners before the learned arbitrator, the provisions of Multi State Co-operative Societies Act, 2002 and more particularly Sections 84 and 85 were applicable to the Parties. The Respondents had thus rightly invoked Section 84 and had filed arbitration claims against the Petitioners who are the members. In my view, there is thus no merit in the submission of the learned counsel for the Petitioners that the proceedings were without jurisdiction.

44. In so far as the issue of limitation raised by the Petitioners is concerned, since the Petitioners were members of the Respondent Bank and did not cease to be the members on the date of filing of the arbitration claim by the Respondent, the Petitioners were governed by Section 85(1) (a) of the said Act and not under Section 85(5) of the said Act. The limitation thus for filing of the arbitration claims did not commence in view of the Petitioners continued to be the members on the date of filing of the arbitration claims. The claims thus made by the Respondent Bank were within time. The learned arbitrator has rightly rejected the plea of jurisdiction as well as the plea of limitation raised by the Petitioners as having found no merits.

45. In so far as the submission of the learned counsel for the Respondent in rejoinder that the Respondent did not lead any evidence to prove as to how many Directors out of the entire Board of Directors were present in the meeting held on 13th September 1989 is concerned, in my view, there is no merit in this submission of the learned counsel for the Petitioners. No such plea was raised by the Petitioners at any stage before the learned arbitrator. No such plea can be allowed to be raised for the first time at this stage.

46. In my view, the learned arbitrator has rendered findings of fact based on the pleadings and the evidence led by the parties and such findings of fact are not perverse and thus cannot be interfered with under Section 34 of the Arbitration Act. The interpretation of the learned arbitrator of the Bye-law 10(2) of the Bye-laws of the Respondent Bank is a possible interpretation and thus cannot be substituted by another interpretation by this Court.

47. In my view, the Petition is totally devoid of merits. I, therefore, pass the following order :-

- a) The Arbitration Petition No.1061 of 2012 is dismissed.
- b) There shall be no order as to costs.

R.D. DHANUKA, J.