

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 9936 OF 2016

Kiran Gorakh Kote and Others

..PETITIONERS

VERSUS

Sai Nagari Sahakari patpurvatha Sanstha
Maryadit, Shirdi and Others

..RESPONDENTS

....
Mr. P.B. Shirsath, Advocate for petitioners.

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**CORAM : T.V. NALAWADE, J.
DATED : 28th SEPTEMBER, 2016**

ORDER :

1. The petition is filed to challenge the judgment and award of the Co-operative Court, Shrirampur given in Dispute No. 215 of 2009 which was filed under Section 91 of the Maharashtra Co-operative Societies Act, 1960 by present petitioner. Heard learned Counsel for petitioner.

2. The said proceeding was filed for declaration and injunction. The declaration was claimed that predecessor in the title of the plaintiff was no more surety as no new document was executed after his death. The submissions made show that in past the issue of jurisdiction of Co-operative Court was decided against the petitioners as they were not the members of the co-operative society. This decision was challenged before the co-

operative appellate tribunal and the appellate tribunal had allowed the appeal and the matter was remanded back. The appellate tribunal had held that co-operative Court had the jurisdiction. The said decision of the appellate tribunal was challenged by filing Writ Petition No. 2286 of 2012 by the society but the said petition was dismissed. The order made by this Court is as under:-

“After arguing the matter for quite some time, the parties reconcile to the situation and additionally request that if the parties want to file further pleadings they may have liberty for the same. It would be open for the parties to do the same by filing appropriate applications, to be decided in accordance with law.

2. As such, no interference is called for in the impugned order and the writ petition stands disposed of.

3. Record and proceedings be sent to Co-operative Court, Shrirampur immediately.

4. The Dispute be tried and disposed of as early as possible preferably within a period of six months from the date of receipt of writ of this order.”

3. It appears that the co-operative Court has decided the matter by the decision dated 16th August, 2016 and again finding is given that co-operative Court has no jurisdiction. Under the co-operative societies act there is provision of appeal against the said decision of the Court as it treated as decree and appeal lies to co-operative appellate tribunal. Instead of filing

the appeal, the plaintiffs have come to this Court in writ petition. Learned Counsel for petitioner submitted that all the issues which were framed ought to have been decided by the co-operative Court and as there are not decided, the matter can be entertained. This submission is not at all acceptable. This kind of contention can also be made before the appellate tribunal. The learned Counsel for petitioner submitted that when in the past the point of jurisdiction was decided by the Appellate Court and this Court had refused to interfere in the decision of the appellate Court, the co-operative Court could not have decide the issue again and so there is no necessity to go to the co-operative appellate tribunal andr the petitioner can directly come to this Court. This submission is also not at all acceptable. This point also needs to be decided by the appellate Court. Reliance was placed on two reported judgments as **2005(3) Mh.L.J. 567** reported in **Narendra Ishulal Rahangdale** and **2007(1) Bom.C.R. 577** reported in **Jagdish Hari Thatte and Others Vs. Municipal Corporation of Greater Bombay and Another.**

4. This Court holds that there is remedy like appeal available and the award given by the Co-operative Court is treated as decree and so petitioner first need to approach the appellate tribunal and this Court is not expected to entertain the writ petition. As such, petition stands dismissed.

(T.V. NALAWADE, J.)

SSD