

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

SECOND APPEAL NO.1 OF 2015

Chairman Bharat Andarsul Vividh
Karyakari Seva Shakari Society
Andarsul & Ors.

..Appellants/Org. Plaintiffs

Vs.

Chairman-Nashik Zilla Madyavarti
Sahakari Bank Ltd. & Ors.

..Respondents/Org. Defts.

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Mr. P. N. Joshi a/w Mr. N. M. Pujari for the appellants.
None for the respondents.

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**CORAM : N.M. JAMDAR, J.
DATED : 17 MARCH 2016**

P.C.:

. This appeal challenges the judgment and decree dated 11 March 2014 passed by the learned District Judge-I in Regular Civil Appeal No.39/2012, whereby the learned District Judge has confirmed the judgment and decree passed by the learned Civil Judge, Junior Division, Yeola dated 20 March 2012 in Civil Suit No.195/2011.

2. The appellants filed Civil Suit No.195/2011 with a prayer that respondent No.4 should not close down the branch which was the subject matter of the suit and should not shift the branch

elsewhere. Learned Civil Judge after hearing both the sides framed the preliminary issue as regards jurisdiction of the Civil Court and answered the same in the negative. Appeal filed by the appellants in the District Court was also dismissed confirming the finding that the Civil Court will have no jurisdiction to entertain the suit in view of section 91 of the Maharashtra Co-operative Societies Act.

3. Mr.Joshi, the learned counsel for the appellants submitted that relation between the appellant and the respondent is not only of member and co-operative Society but also of landlord and tenant and therefore the suit was maintainable. However, if the pleadings in the plaint and the prayers sought for are considered, they are based not on relationship of landlord and tenant but as a member of the Society. The learned counsel for the appellant then submitted that the conclusion of both the Courts below that the reliefs sought for will affect the business of the society, is not correct as the injunction is only regarding not to close down the branch and transfer the same. However, the basic premise for seeking such an injunction is convenience of the members and also that shifting the branch elsewhere would disturb the functioning of the branch. Thus the relief is sought based on the premise that the business conducted at this branch will be affected if it is shifted elsewhere. Therefore the conclusion reached by both the courts that dispute sought to be raised by the appellants falls within the ambit of section 91 of the Maharashtra Co-operative Societies Act, cannot be faulted. The second appeal cannot be

entertained. The appellants will have other remedies in the Competent Court of law as both the Court have not gone into merits of the rival contentions.

4. The Second Appeal is disposed of.

(N.M. JAMDAR, J.)