

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO. 1969 OF 1995

S.B. Traders, a registered
Partnership Firm having its
Office at "Bohara Niwas",
Khadkeshwar, Aurangabad.

Through its partners;

1. Jaikumar s/o Hukumchand Bohara,
Age : 46 years,
2. Shekharchand s/o Champalal Sethi,
Age : 47 years,
3. Hukumchand s/o Tarachand Bohara,
Age : 78 years,
4. Mrs. Pushpalata Subhashchandra Bohara,
Age : 45 years,
5. Sangita Vijaykumar Sethi,
Age : 26 years,
6. Sunanda Vilaschand Sethi,
Age : 28 years.
All residing at "Bohara Niwas"
Khadkeshwar, Aurangabad.

...PETITIONERS

VERSUS

1. Sant Eknath Sahakari Sakhar
Karkhana Ltd.,
Paithan, Dist. Aurangabad.
Register No. ACE-PRO/(A) 7(5),
Paithan,
Through its Chairman,

2. Member,
Maharashtra State Co-operative,
Appellate Court,
Bombay.
Bench at Aurangabad.
3. Judge,
Co-operative Court,
Aurangabad.

...RESPONDENTS

...

WITH

**WRIT PETITION NO. 1970 OF 1995
(WITH CIVIL APPLICATION NO. 2477 OF 1995)
IN
WRIT PETITION NO. 1970 OF 1995**

M/s Jai Travels,
Proprietor :- Shri Jaikumar s/o
Hukumchand Bohra, Age : 30 years,
Occupation : Business,
R/o. Bohra Niwas, Khadkeshwar,
Aurangabad.

...PETITIONER

VERSUS

1. Sant Eknath Sahakari Sakhar
Karkhana Ltd.,
Paithan, Dist. Aurangabad.
Register No. ACE-PRO/(A) 7(5),
Paithan,
Through its Chairman,
Shri Kalyanrao Pandharinathrao Patil.
2. Member,
Maharashtra State Co-operative,
Appellate Court,
Bombay.
Bench at Aurangabad.

3. Judge,
Co-operative Court,
Aurangabad.

...RESPONDENTS

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WITH
WRIT PETITION NO. 1971 OF 1995
(WITH CIVIL APPLICATION NO. 2476 OF 1995)
IN
WRIT PETITION NO. 1971 OF 1995

M/s. Deep Tyres,
Chandulala s/o Deepchand Kale,
Age : 51 years,
Occupation : Business,
R/o. Kopargaon, Dist. Ahmednagar.

...PETITIONER

VERSUS

1. Sant Eknath Sahakari Sakhar
Karkhana Ltd.,
Paithan, Dist. Aurangabad.
Register No. ACE-PRO/(A) 7(5),
Paithan,
Through its Chairman,
Shri Kalyanrao Pandharinathrao Patil.
2. Member,
Maharashtra State Co-operative,
Appellate Court,
Bombay.
Bench at Aurangabad.
3. Judge,
Co-operative Court,
Aurangabad.

...RESPONDENTS

...

WITH
WRIT PETITION NO. 1972 OF 1995
(WITH CIVIL APPLICATION NO. 2475 OF 1995)
IN
WRIT PETITION NO. 1972 OF 1995

M/s. Nitin Agencies,
Bohra Niwas, Khadkeshwar,
Aurangabad. thorough its
Partners.

1. Jaikumar Hukumchand Bora,
R/o. Aurangabad.
2. Subhashchandra Hukumchand Bora,
R/o. Aurangabad.
3. Vilas Champalal Sheti,
R/o. Aurangabad.

...PETITIONERS

VERSUS

1. Sant Eknath Sahakari Sakhar
Karkhana Ltd.,
Paithan, Dist. Aurangabad.
Register No. ACE-PRO/(A) 7(5),
Paithan,
Through its Chairman,
2. Member,
Maharashtra State Co-operative,
Appellate Court,
Bombay.
Bench at Aurangabad.
3. Judge,
Co-operative Court,
Aurangabad.

...RESPONDENTS

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Mr. P.F. Patni, Advocate for Petitioners.

Mr. D.R. Kale, Advocate for Respondent No.1.

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CORAM : S.S. SHINDE, J.

RESERVED ON : 9th May, 2017

PRONOUNCED ON : 11th May, 2017

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JUDGMENT :-

Heard the learned counsel appearing for the petitioners and the learned counsel appearing for respondent no.1.

2. At the outset, it is necessary to clarify that, in view of the settled position of law, the Member, Maharashtra State Co-operative Appellate Court Bombay, Bench at Aurangabad and the Judge, Co-operative Court at Aurangabad are not necessary parties.

3. The brief facts, as disclosed in the

Petitions, are as under :-

(A) Petitioner in respective Petitions is registered Partnership Firm/ Proprietary Firm running the business of supply of stores, consumables & spare parts etc. which are needed for various industries including Sugar Factories. Present Respondent No.1 is a Co-operative Sugar Factory (A Co-operative Society) named as "Sant Eknath Sahakari Sakhar Karkhana Ltd., Paithan, Dist. Aurangabad". The petitioners in respective petitions supplied different goods to the respondent no.1 -Karkhana, as per their written orders. The transactions as to supply of goods were continued and the respondent No.1 used to make lum-sum payment of part of the dues amount to the petitioners firms.

(B) As per the bills and the books

maintained by the petitioners in each of the Petitions, the dues against respondent no.1 is as under :-

- (a) As on 27.04.1987 : Rs. 3,53,859.75 paise in WP No.1969 of 1995.
- (b) As on 27.12.1988 : Rs. 35,000/- in WP No.1970 of 1995.
- (c) As on 27.12.1988 : Rs. 37,000/- in WP No.1971 of 1995 and
- (d) As on 27.12.1988 :Rs.4,79,328.24 paise in WP No. 1972 of 1995.

(C) The newly elected members and Managing Committee of respondent no.1 - Karkhana declined to pay dues of the Petitioners. Thereafter, the petitioners made repeated requests to pay the dues, but the respondent no.1 - Karkhana failed to make the payment of dues. Therefore, the petitioners issued notice through Advocate, but inspite

of receipt of notices, respondent no.1 did not reply the said notices or paid the dues.

(D) The petitioner in respective Petitions therefore, constrained to file the Dispute before the Co-operative Court at Aurangabad as follows :-

- (a) Dispute No. 34 of 1988 for recovery of amount of Rs.3,53,859.75 paise along with interest @ 18% p.a. (WP No.1969 of 1995).
- (b) Dispute No.35/1988 for recovery of amount of Rs. 35,000/- along with interest @ 18% (WP No.1970 of 1995).
- (c) Dispute No.33/1988 for recovery of amount of Rs.1,37,500/- (WP No.1971 of 1995) and
- (d) Dispute No.32/1988 for recovery of amount of Rs.4,79,328.40 paise (WP No. 1972 of 1995)

(E) Respondent No.1 failed to file its written statements opposing the claim of the petitioners in each Disputes.

(F) The Judge, Co-operative Court passed the Judgments and awards and allowed the disputes filed by the respective petitioners.

(G) Present Respondent No.1 was aggrieved by the Judgments and awards of Co-operative Court preferred the Appeals before the Maharashtra State Co-operative Appellate Court Mumbai bench at Aurangabad as follows :-

(a) Appeal No. 157 of 1991 (WP No.1969/1995).

(b) Appeal No. 167 of 1991 (WP No.1970/1995).

(c) Appeal No. 166 of 1991 (WP No.1971/1995)

(d) Appeal No.156 of 1991(WP No. 1972/1995)

(I) The Co-operative Appellate Court allowed all the abovereferred appeals and returned the disputes for presenting it before the proper Court. Hence these Writ Petitions.

4. Mr. P.F. Patni, learned counsel appearing for the petitioners submits that, the Member, Maharashtra State Co-operative Appellate Court Bombay, Bench at Aurangabad (for short "the Co-operative Appellate Court"), instead of deciding the appeals on merits as well as the jurisdiction of the Co-operative Court to adjudicate the disputes, decided the appeals only on the ground that, the Co-operative Court had no jurisdiction to decide the Disputes filed by the petitioners. It is submitted that, the petitioners deposited Rs.5/- to become the members of 'C' class. After they deposited the said amount in abidance with the terms

and conditions of purchase orders issued by respondent no.1. He submits that, in view of condition no.5 of the terms and conditions of the purchase orders, the petitioners were obliged to deposit Rs. 5/- towards nominal membership fees to become the nominal members. Once the said amount is deposited by the petitioners, it was for respondent no.1 to enroll the petitioners as 'C' class members. It is submitted that, on the date of filing the dispute, the petitioners were members of respondent no.1, and therefore, in view of the judgments of the Bombay High Court at Principal Seat, in the cases of **Ramagauri Keshavlal Virani V/s Walkeshwar Triveni Co-operative Housing Society Ltd., and others¹** and **Chairman/Secretary, Shri Shrinath Panipuravatha Sahakari Sanstha V/s Nitin Agro Engineers and another²**, the petitioners are the members of respondent

1 1999(3) Mh.L.J. 145

2 2004(3) Mh.L.J. 908

no.1 - karkhana. Even in the case of **Ramagauri Keshvlal Virani (supra)**, the High Court has taken a view that, the membership of the parties to the dispute has to be considered on the date of filing of dispute. It is submitted that, the Co-operative Appellate Court, instead of deciding the appeals on merits, proceeded to hold that, the petitioners/Firms were not admitted to memberships as on the date of transaction. The case of the disputants is based upon the payment of Rs.5/- as fees for becoming the nominal members. The original receipts dated 8th October, 1987 for payment of Rs.5/- are produced on record. It is submitted that, the Co-operative Appellate Court observed that, even assuming that, the disputants are admitted to memberships on the basis of payment of Rs.5/- as 'C' class members, the receipts are made on 8th October, 1987 as per receipt Nos.4356, 3455, 1358 and 5357, and

therefore, at the most, it can be said that, the disputants are admitted as nominal members on 8th October, 1987 or subsequent thereto. The transaction in question was in between the appellant i.e. respondent no.1 herein, and the respondents i.e. petitioners herein, were for a period of 1984 to 1987 1984 to 1986 and 1982 to 1987 and the last date of which is 29th January, 1987, 03.01.1986 and 04.01.1986, and therefore, the payment of amount of Rs.5 is paid subsequent to the period of transaction. Therefore, even assuming that, the disputants were admitted to memberships, it would be on or subsequent to 8th October, 1987, which is the date after the transaction in between the disputants and the opponent.

5. It is submitted that, it was the duty of the Co-operative Appellate Court to record the findings on all the issues arising

for consideration. It is submitted that, the Co-operative Appellate Court ought to have addressed himself, interpreting Section 91 of the M.C.S. Act, 1961, to the effect that if the Society wants to refer a dispute under Section 91 against a person, such person ought to be a member at least of 'C' class, however for a creditor of a Society, to refer a dispute, his being a member of 'C' class is wholly irrelevant. It is submitted that, Respondent No.1 has erroneously felt that, that the pleading as to the "Creditor" is not taken before Co-operative Court and is taken for the first time in the Co-operative Appellate Court. In fact petitioners having proved and argued that disputants are the creditor are already recorded by Co-operative Court, and the said observations contained in the Judgment of Co-operative Court are not called in question as not true and genuine. It is submitted that, the finding recorded by

Co-operative Court about the petitioners being 'C' class members and creditors is based on legal evidence, presumptions and inferences, and therefore, the Co-operative Appellate Court while exercising jurisdiction under Civil Procedure Code had no jurisdiction to set aside a finding of fact, which is illegal and perverse.

6. It is submitted that, the Co-operative Appellate Court ought to have been considered that in civil law, the Appellate Court can re-appreciate the evidence and record finding of fact, however, findings and orders cannot be set aside unless the Judgment under appeal could be termed as illegal, unconscionable, beyond jurisdiction or otherwise untenable. Only because Appellate Court can take another or different point of view than the Co-operative Court, is not by itself adequate for

Co-operative Appellate Court to exercise the appellate powers to reverse the order under appeal. It is submitted that, the Co-operative Appellate Court has failed to exercise the jurisdiction under section 91 of the Maharashtra Co-operative Societies Act, 1961 and hence the Court exercising powers and the jurisdiction has to see the 'equity' and balance of justice.

7. The learned counsel invites my attention to the findings recorded by the Co-operative Court and submits that, the Co-operative Court framed as many as four/five issues. The preliminary objection was raised by respondent no.1 i.e. appellant before the Appellate Court that, the disputant is not 'C' Class member of the opponent – Karkhana. While deciding the said issue the Co-operative Court has discussed in detail in the judgment that, the petitioners brought on record the document i.e. receipt of payment

of Rs.5/- deposited by the petitioners to become nominal members. The amount was deposited by the petitioners, they were not under obligation to do anything further to become the 'C' class members. On the contrary, it was for the opponent - Karkhana to enroll the petitioners as 'C' class members. He submits that, the petitioners filed application before the Co-operative Court to call the 'C' Class membership register and bye-laws of the opponent - Karkhanana and the opponent - Karkhana was directed to file say on the said application. The opponent - Karkhana inspite of receipt of the copy of the application did not file the documents. The disputants i.e. the petitioners also filed application at page 185 of the original record and requested to call certain documents from the opponent - karkhana to decide the issue nos. 1 and 2, the disputant prayed to call register of

supply of machineries maintained by the opponent – Karkhana, original ledger of opponent, cash book, register of 'C' class members and the voters list of the opponent – karkhana. The opponent neither filed any say nor produced documents as per the application. Therefore, the order was passed on Exhibit-10 directing the parties to lead evidence on all the issues. The matter was posted for final hearing on issue nos.1 and 2. The disputants filed receipt nos. 4356, 3455, 1358 and 5357 dated 8th October, 1987 issued by the opponent – karkhana by which the disputants paid Rs. 5/- towards admission fees of 'C' class membership. Therefore, it is submitted that, the Co-operative Court drive adverse inference against the opponent – karkhana that, the opponent – karkhana has not produced the record inspite of the applications of the disputants for production of the documents including the register of

`C' class membership. Therefore, the Co-operative Court has accepted the case of the disputants that, they have become `C' class members. It is submitted that, when such findings of fact was recorded by the Co-operative Court and even on other issues, the Co-operative Court held in favour of the petitioners and allowed the disputes, in that case, the Co-operative Appellate Court ought to have considered the appeals filed by the opponent - karkhana not on the point of jurisdiction but even other issues raised on merits. It is submitted that, the Co-operative Appellate Court proceeded to pass the orders on the ground that, the transaction in question are entered into by the disputants and the opponent - karkhana prior to the payment of amount of Rs.5/- on 8th October, 1987, and therefore, the transactions are not in the capacity as nominal members, and hence, the disputes

filed by the petitioners i.e. disputants will not be covered under Section 91 of the Maharashtra State Co-operative Societies Act, 1960. Therefore, the learned counsel further submits that, the Supreme Court in the case of **Deccan Merchants Co-operative Bank Ltd., V/s M/s Dalichand Jugraj Jain and others**³ has taken a view that, the word "business" in sub-sec. (1) of Sec.91 has been used in narrower sense and it means the actual trading or other similar business activity of the Society which the Society is authorised to enter into under the Act and the Rules and byelaws. Five kinds of disputes are mentioned in sub-section (1); first, disputes touching the constitution of a society; secondly disputes touching election of the office bearers of a society; thirdly, disputes touching the conduct of general meetings of a society; fourthly, disputes touching the

3 AIR 1969 SC 1320

management of a society; and fifthly, disputes touching the business of a society. It is clear that the word "business" in this context does not mean affairs of a society because election of office-bearers, conduct of general meetings and management of a society would be treated as affairs of a society. Relying upon the above observations of the Supreme Court, it is submitted that, so far the disputes raised by the petitioners would fall in the category first i.e. the disputes touching the constitution of a society and therefore, the disputes filed by the petitioners were maintainable before the Co-operative Court. He also placed reliance on the judgment of the Supreme Court in the case **Margret Almeida and others V/s Bombay Catholic Co-operative Housing Society Ltd., and others**⁴ and submits that, when section 91(1)(c) stipulates that persons other than

4 2012(5) Mh.L.J.4

the members of the society with whom the society has any transaction as one of the classes of persons who could be parties to a dispute amenable exclusively to the jurisdiction of the Co-operative Court, such a class is not an unqualified class. The said sub-section further qualifies the said class by expressly mentioning that the transactions of such persons with a society should be a transaction "in respect of which restrictions and Regulations have been made or prescribed under sections 43, 44, or 45 of the Act". Therefore, to understand the exact nature of the above mentioned class, an examination of the scheme of sections 43, 44 is necessary.

Therefore, the learned counsel appearing for the petitioners submits that, the Petitions may be allowed.

8. On the other hand, Mr. D.R. Kale, the learned counsel appearing for respondent no.1 submits that, merely because the petitioners deposited Rs.5/- in the month of October, 1987 and merely on depositing such amount, the memberships are not granted. Even for `C' class membership, there is procedure prescribed under the Maharashtra State Co-operative Societies Act, 1960 and the Rules and unless the membership is approved/accepted by the Board of Directors after adhering to the procedure under the aforesaid Act and Rules, the contention of the petitioners that, since the petitioners deposited Rs.5/- and on depositing such amount, they became nominal members is devoid of any merits. It is submitted that, the Co-operative Court did not take into consideration that, there is procedure to become `A', `B' or `C' class member. It is submitted that, even though the petitioners

deposited the amount on 8th October, 1987, the alleged transaction between the petitioners and the opponent – karkhana is prior to depositing the amount of Rs. 5/- by the petitioners, and therefore, the said alleged transaction between the petitioners and the opponent – Karkhana was even prior to deposit of Rs.5/- by the petitioners and in view of the said position, the petitioners' grievance raised in the disputes on merits about the alleged recovery of amount from the sugar factory could not have been entertained by the Co-operative Court. Therefore, the Appellate Co-operative Court, taking into consideration, all the aforesaid aspects reached to the conclusion that, in first place the petitioners have never become the members of the respondent – sugar factory and secondly, even if the date of deposit of Rs.5/- i.e. 8th October, 1987 is taken into consideration, in that case also the

petitioners were not members on the initial date of entering into alleged transaction with the opponent – karkhana, and therefore, the disputes filed by them should not have been entertained by the Co-operative Court, since the Co-operative Court had no jurisdiction to entertain such disputes keeping in view the provisions of Section 91 of the Maharashtra Co-operative Societies Act, 1960. The learned counsel invites my attention to the judgment of the Bombay High Court bench at Aurangabad in the case of **Belganda Sahakari Sakhar Karkhana Ltd., Bhoras, Dist. Jalgaon V/s Keshav Rajaram Patil⁵** and submits that, in respect of dispute between a society and its member regarding matter which does not arise out of the provisions of the Maharashtra Co-operative Societies Act, the Co-operative Court has no jurisdiction to entertain the

5 1994(2) Mh.L.J. 1756

same. He also invites my attention to the judgment of the Bombay High Court bench at Aurangabad in the case of **Mula Pravara Electric Co-operative Society Ltd., V/s Maharashtra State Electricity Distribution Company Ltd.,⁶** and submits that, dispute between the society and member may not always touch business of society due to nature of dispute or nature of transaction, and therefore, the Civil Court has jurisdiction to decide the dispute. It is submitted that, when the Co-operative Court had no jurisdiction to entertain the dispute in that case, it was not necessary for the Co-operative Appellate Court to render the findings on merits of the contentions raised by the disputants, and therefore, the Co-operative Appellate Court has rightly decided the appeals only on the basis of the preliminary issue that, the Co-operative

6 2016(3) Mh.L.J. 190

Court had no jurisdiction to entertain the disputes. Therefore, he submits that, the Petitions are devoid of any merits and the same may be dismissed.

9. I have given thoughtful consideration to the submissions of the learned counsel appearing for the petitioners and the learned counsel appearing for respondent no.1. With their able assistance, I have perused the pleadings in the Petitions, grounds taken therein, annexures thereto and the findings recorded by the Co-operative Court and also the Co-operative Appellate Court.

10. In my opinion, it is not necessary to address the contentions raised on merits and keeping in view the order passed by the Co-operative Court, I am confining the adjudication of these Writ Petitions in

respect of jurisdiction of the Co-operative Court to entertain the disputes, however keeping in view the findings recorded by the Co-operative Appellate Court.

11. The Co-operative Court has framed as many as four/five issues for its adjudication and determination. The issue no.1 reads thus :-

"Issue no.1. Does the disputant prove that the it is 'C' class member of the opponent – karkhana ?

In respect of the said issue, there is detailed discussion in the judgment of the Co-operative Court. The Co-operative Court has adverted to the contentions of the petitioners and also the respondent – karkhana. It is recorded by the Co-operative Court that, the opponent – karkhana filed

application at Exhibit 7 for deciding the issue regarding 'C' class membership of the disputant firms as a preliminary issue and also prayed to decide the issue no.2 regarding tenability of the disputes, as preliminary issue. The opponent - karkhana filed say to the aforesaid issue nos.1 and 2. The disputants i.e. petitioners herein filed application at page 179 to call the 'C' class membership register and bye-laws of the karkhana. The opponent - karkhana was directed by the Court to file say on the said application, however, the opponent karkhana neither filed reply nor placed on record the documents. Thereafter, the Co-operative Court passed the order on 30th June, 1990 to hear the parties on issue nos.1 and 2. The disputants filed another application at page 185 and requested to call certain documents from the opponent karkhana to decide the issue nos.1 and 2. The disputants prayed to

call register of supply of machineries maintained by the opponent - karkhana, original ledger of opponent, cash book, register of 'C' class members and the voters list of the opponent - karkhana. The opponent - karkhana neither filed any say nor produced documents as per the application. Therefore, the Co-operative Court passed the order on Exhibit-10 directing the parties to lead evidence on all the issues. However, on the insistence of opponent - karkhana, the arguments were again heard and parties were given opportunity to lead the evidence on all the issues including issue nos.1 and 2 as per the order dated 3rd April, 1991 and thereafter, the case was fixed for final hearing. The Co-operative Court has recorded that, the disputants filed Receipt Nos. 4356, 3455, 1358 and 5357 dated 8th October, 1987 issued by the opponent - karkhana. It is observed that, the said receipt is at page

189 and it shows that, the disputants have paid Rs.5/- towards admission fees ('C' class membership). It appears that, the disputants led evidence. He examined Shri J.H. Bohara, partner of his firm. His deposition is at Exhibit-12. In the deposition Shri J.H. Bohara, he stated on oath that, as per condition No.5 in the purchase order, the disputant was required to become nominal member of the opponent Karkhana. Therefore, the disputant paid Rs.5/- for becoming 'C' class member of the opponent Karkhana. He stated on oath that the disputant firm is 'C' class member of the opponent karkhana."

12. It appears that, the learned Advocate for the opponent – karkhana cross examined the said witness and suggested that, there is no resolution of Board of Directors admitting him 'C' class member. It appears that, even the witnesses were examined on

behalf of opponent karkhana. After appreciation of the evidence of both sides, the Co-operative Court reached to the conclusion that, the opponent – karkhana has not produced the record inspite of the applications of the disputants, and therefore, the case of the disputants that, they have become 'C' class members will have to be accepted. Therefore, the case of disputants that, they become 'C' class members deserves acceptance. It appears that, the adverse inference was drawn against the opponent – karkhana for not submitting the 'C' class membership register for perusal of the Court. In addition to aforementioned issue, the Co-operative Court also proceeded to decide the other three/four issues on merits including the issue of jurisdiction, whether the disputant proves their claims in the disputes and whether, the opponent karkhana is liable to pay interest @ 18% p.a.

on the said amounts. Therefore, the adjudication by the Co-operative Court was on all the issues framed by that Court.

13. Upon careful perusal of the findings recorded by the Maharashtra State Co-operative Appellate Court, it appears that, the Co-operative Appellate Court considered the preliminary issue raised by the appellant – karkhana confined to issue no.1 i.e. Does the disputant prove that it is 'C' class member of the opponent – karkhana ?, which was framed by the Co-operative Court. The Appellate Court, after adverting to the rival contentions observed that, even assuming that, the disputants are admitted to memberships, it will be required to be seen as to whether the firms were admitted to memberships as on the date of transaction. It is further observed that, the disputants deposited an amount of Rs.5/- and produced

the original receipts dated 8th October, 1987 for payment of Rs.5/-. It is further observed that, even if the cases of the disputants are accepted that, the disputants deposited Rs.5/- on 8th October, 1987 and to that effect the receipts are produced on record, the transaction in question in between the appellants and the respondent were for the period from 1984 to 1987, 1984 to 1986 and 1982 to 1987 and the last date of which is 29th January, 1987, 03.01.1986 and 04.01.1986, and therefore, the payment of amount of Rs.5/- is paid subsequent to the period of transaction. Therefore, even assuming that, the disputants were admitted to membership, it would be on or subsequent to 8th October, 1987, which is the date after the transaction in between the disputants and opponent. It further appears that, the Co-operative Appellate Court placed reliance in the case **Deccan Merchants Co-operative Bank (supra)**

and also other judgments and reached to the conclusion that, it is settled principle that, unless the transaction is effected by the person in his capacity as a member, the jurisdiction under Section 91 of the M.C.S. Act, 1960 is not attracted. If the transaction entered into before admitting the persons, it would the transaction with non-member and dispute filed by such person would not be covered under Section 91. It is further observed that, in the present case, admittedly, the transactions in question are entered into by the disputants prior of the payment of amount of Rs.5/- on 8th October, 1987, and therefore, the said transactions are not in a capacity as nominal members, and therefore, the dispute filed by the disputants would not be covered under Section 91 of the Maharashtra Co-operative Societies Act, 1960.

14. Upon careful perusal of the judgments of the Co-operative Appellate Court, except the aforementioned findings, there is no findings on other issues, which were considered by the Co-operative Court including on merits of the claims of the disputants. Ultimately, the Appellate Court held that, the disputes filed by the disputants stand dismissed for want of jurisdiction and the same was returned for presenting it in a proper Court.

15. If the findings of the Co-operative Appellate Court are considered in the light of the authoritative pronouncement of the Bombay High Court bench at Aurangabad in the case of **Chairman/Secretary, Shri Shrinath Panipuravatha Sahakari Sanstha (supra)**, it will have to be held that, the said findings are not in consonance with the ratio laid down in the aforementioned judgment. In para

7 of the said judgment, the Court has adverted to the arguments of the learned counsel appearing for the bank in the said case that, the dispute was not maintainable under Section 91 of the M.C.S. Act, 1960 and on the ground that, the contractor was not a member of the society at the time of alleged agreement dated 30th January, 1988 and 4th February, 1988 entered with the society. It appears that, there was tripartite agreement between the contractor, society and the bank. The High Court held that, there is no merit in the contentions raised by the bank, because the relevant date for consideration of maintainability of the dispute under Section 91 is not the date of agreement but the date on which the dispute is instituted before the Co-operative Court.

16. Coming to the facts of the present case, the petitioners i.e. disputants filed

the disputes before the Co-operative Court in the year 1988. As it has already come on record that, the petitioners i.e. disputants have deposited Rs.5/- on 8th October, 1987. The Co-operative Court has considered the case of the disputants and while answering the issue no.1 i.e. does the disputants prove that, it is 'C' class member of the opponent – karkhana ?, have recorded the finding that, the case of the disputants that, they have become 'C' class members will have to be accepted. The said finding recorded by the Co-operative Court is after appreciation of evidence brought on record by the disputants and also by the opponent – karkhana. As long as the said finding is intact and is not negated, it will have to be held that, on the date of filing disputes in the year 1988, the disputants became 'C' class members of the respondent – karkhana. The Co-operative Court has also pronounced the judgments on other

issues on merits of the claims of the disputants for an outstanding amount, as has been mentioned in the respective Disputes. In that view of the matter, in my opinion, the findings recorded by the Co-operative Appellate Court and the orders passed are not in consonance with the law laid down in the aforementioned two judgments of the High Court, in the cases of **Ramagauri Keshavlal Virani (supra)** and **Chairman/Secretary, Shri Shrinath Panipuravatha Sahakari Sanstha (supra)**.

17. Apart from discussion in foregoing paragraphs, in my considered opinion, the Co-operative Appellate Court ought to have decided the Appeals on merits addressing all the issues, which were framed, considered and decided by the Co-operative Court in disputes. In that view of the matter, the impugned judgment and order of the Co-

operative Appellate Court in respective proceedings filed by respondent no.1 herein, stand quashed and set aside. The respective Appeals are restored to its original file. The State Co-operative Appellate Court is directed to hear the parties on merits and decide the appeals on all the points including the jurisdiction and merits touching to all the issues, which are considered, answered and decided by the Co-operative Court, and render the final judgment, as expeditiously, as possible and in any case not later than one year from today. Accordingly Rule made absolute in the above terms. The Petitions stand disposed of accordingly. Pending civil applications stand disposed of accordingly. No orders as to costs.

18. However, it is clarified that, all the contentions raised on law as well as

facts, on all the points/issues, are left open to be agitated before the Co-operative Appellate Court.

(S.S. SHINDE, J.)

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