

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.11057 OF 2015

01 Vishwasrao s/o Narayanrao Mahale,
age: 56 years, Occ: Agriculturist,
R/o Bolki, Tq. Kopargaon,
District Ahmednagar.

02 Dattatraya s/o Genuji Kolhe,
age: major, Occ: Agriculturist,
R/o Yesgaon, Tq. Kopargaon,
District Ahmednagar.

03 Ramkrushna s/o Banduji Kokate,
age: major, Occ: Agriculturist,
R/o Karwadi, Tq. Kopargaon,
District Ahmednagar.

04 Nivrutti s/o Changdeo Kolpe,
age: major, Occ: Agri,
R/o Kolpewadi, Tq. Kopargaon,
District Ahmednagar.

Petitioners

Versus

01 Ahmednagar District Central
Co-op. Bank Limited,
through : its Managing Director,
Station Road, Ahmednagar.

02 Sanjivn Agro Producers Co-op.
Marketing Society Limited,
Shingnapur, Tq. Kopargaon,
District Ahmednagar,
through its Liquidator -
Shri S.V.Patil, age: 56 years,
Occ: service, R/o Shingnapur,
Tq.Kopargaon,
District Ahmednagar.

03 Arvindrao s/o Baurao Pandhare,
age: major, Occ: Agriculturist,
R/o Deccan Gymkhana,

At & Post Pune, District Pune.

04 Daulatrao s/o Punjaji Hon,
age: major, Occ: Agriculturist,
R/o Kopargaon, Tq. Kopargaon,
District Ahmednagar.

05 Bhagwantrao s/o Vyankatesh
Kulkarni, age: major,
Occ: Agriculturist, R/o Dahegoan
Bolki, Tq. Kopargaon,
District Ahmednagar.

06 Punjaji s/o Yeshwantrao Chine,
age: major, Occ: Agriculturist and
Advocate, R/o Pathare, Tq. Sinnar,
District Nasik.

Respondents

Mr.S.D.Kulkarni, advocate for the petitioners
Mr.N.V.Gaware, advocate for Respondent No.1.
Respondent No.2 served.

CORAM : S.B.SHUKRE, J.

DATE : 02nd February, 2017

ORAL JUDGMENT :

1 Heard learned Counsel for petitioners and learned Counsel for Respondent No.1 – the main contesting party. Nobody appears for Respondent No.2. Learned Counsel for petitioners seeks leave to delete respondents no.3 to 6 and they are permitted to be deleted at the risk of petitioners.

2 Respondent No.2 is the Society, which has gone into liquidation and the liquidator of the society has not challenged the impugned order to the extent of award of interest @ 18% p.a. However, the order has been challenged by the petitioners, who are

erstwhile Managing Directors of the Society. Thus, the contest is only between petitioners and Respondent No.1.

3 Rule. Rule made returnable forthwith and heard finally by consent of learned Counsel for contesting parties.

4 Petitioners are aggrieved by award of interest @ 18% p.a. on the amount of Rs.1,02,53,551.69 payable by Respondent No.2-Society to Respondent No.1-Bank.

5 Learned Counsel for petitioners submits that, during pendency of the Dispute filed under Section 91 of the Maharashtra Co-operative Societies Act, 1961, being Dispute No.75/1999, Respondent No.2-Society was ordered to be wound up and liquidator was also appointed and once liquidator is appointed, the Co-operative Court cannot proceed with the dispute. He submits that even then, the Co-operative Court proceeded with the dispute and decided it by its order dated 12.07.2010, wherein, on the amount held to be payable by Respondent No.2, interest @ 18% p.a. has been awarded and this has been done, according to learned Counsel for petitioners, in violation of Rule 91 of the Maharashtra Co-operative Societies Rules, 1961. He submits that even this aspect of the matter has not been considered properly by the Maharashtra State Co-operative Appellate Court when it dismissed the Cross Appeal, being Cross Appeal No.48/2015, filed by petitioners.

6 Learned Counsel for petitioners further submits that whenever there is apparent conflict between the substantive

provision of law and rule based upon substantive provision of law, as far as possible, the Court is required to construe these provisions by resorting to rule of harmonious interpretation and the rule and the section shall be construed as supplement for each other and not supplanting each other. He further submits that as per Rule 91, of the Maharashtra Co-operative Societies Rules, 1961, the Co-operative Court could not have awarded huge interest and the matter should have been left to be decided by the Registrar. He places reliance on the judgment of Division Bench of this Court in the case of **Madhuri Prabhakar Patole Vs. Aruna Satishchandra Gaikwad**, reported in 2008 (3) Mh.L.J. 447; and in the case of **Mr.Sadashiv K. Sutar Vs. Kolhapur Zilla Janata Sahakari Bank Ltd. & another**, reported in 2004 (2) ALL MR 115.

7 Learned Counsel for Respondent No.1 submits that the liquidator was appointed during pendency of the dispute as required by Section 103 of the Maharashtra Co-operative Societies Act. Respondent No.1 obtained leave of the Registrar to prosecute the suit and, therefore, power of the Co-operative Court to decide the dispute, in accordance with law, as per Section 96 of the Maharashtra Co-operative Societies Act, remained unaffected. He further submits that Rule 91 operates in entirely different field and power of the Co-operative Court to decide the dispute under Section 96 of the Maharashtra Co-operative Societies Act works in another area. He submits that the Co-operative Court, under Section 96, has power to award interest on money claims adjudicated upon, at the rate, which is consistent with the contractual rate of interest and this is what the Co-operative Court has done in the instant case. He submits that in the instant case,

there is no question of any conflict between Rule 91 and Section 96, for the simple reason that the dispute was prosecuted after obtaining leave of the Registrar, as per Section 107 of the Maharashtra Co-operative Societies Act.

8 In the case of **Mr.Sadashiv K. Sutar** (*supra*), the learned Single Judge of this Court has held that no proceedings filed under Section 91 can be continued without prior leave of the Registrar of the Co-operative Societies when the Society is under liquidation. In the instant case, such leave has been obtained by Respondent No.1 and in view of that, Respondent No.1 was allowed to continue those proceedings. This fact has not been disputed by Respondent No.2-Society and even by the petitioners. Therefore, what becomes clear is that the Co-operative Court decided the dispute by resorting to the power under Section 96 of the Maharashtra Co-operative Societies Act and, therefore, the question of Rule 91, serving as a *non obstante* clause for the Co-operative Court to award interest, does not arise. In any case, even Rule 91 lays down that the maximum interest, that could be awarded, is one which is equivalent to the contractual rate of interest. The Co-operative Court has exactly done this and I find that no illegality has been done by the Co-operative Court as well as by the Co-operative Appellate Court. As I find that there is no conflict between Section 96 of the Maharashtra Co-operative Societies Act and Rule 91 of the Maharashtra Co-operative Societies Rules, as submitted by learned Counsel for Respondent No.1, the question of harmonious interpretation, as laid down by the Division Bench of this Court in the case of **Madhuri Prabhakar Patole** (*supra*), would not arise. As regards the case of

Ghanshyamdas Madanlal Chaudhary & another Vs. Chikhali Urban Coop. Bank Ltd. & others, reported in 2007(3) Bom.C.R. 170, I must say, this case also lays down that mandate of Section 96 to award interest, at the rate not lesser than contractual rate of interest, cannot be overlooked. There is, thus, no merit in this petition.

9 Writ Petition stands dismissed with costs. Rule discharged.

S.B.SHUKRE
JUDGE

adb/wp1105715