

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO. 13828 OF 2017

SHANAKR SHRIDHAR RAUT  
VERSUS  
SHRI SWAMI SAMARTH NAGARI SAHAKARI PAT SANSTHA  
MARYADIT THROUGH ITS MANAGER AND AANOTHER

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Advocate for Petitioner : Mr. K.J. Suryawanshi  
Adv. for Respondent No.1 : Shri V.D. Hon, senior counsel i/b Mr. A.V. Hon  
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**CORAM : V. K. JADHAV, J.**  
**DATED : 28<sup>th</sup> NOVEMBER, 2017**

**PER COURT:-**

1. Being aggrieved by the judgment and order dated 14.11.2017, passed by the Member, Maharashtra State Co-operative Appellate Court, Bench at Aurangabad in revision No. 50 of 2017, the original opponent No.1 approached this court by filing present writ petition.
2. Brief facts giving rise to the present writ petition are as follows:-
  - a) The respondent No.1 society has filed a Dispute No. 124 of 2010 in the Co-operative court, Ahmednagar against present petitioner and respondent No. 2 and one Maharudra Kulkarni, for recovery of loan amount due and outstanding. The petitioner had filed an application Exh.42 before the trial court for direction to respondent No.1 society to produce the documents, as detailed in

the said application. The said application came to be rejected by the trial court and therefore, the petitioner had filed revision No. 4 of 2014 before the Co-operative appellate court. The Co-operative appellate court by judgment and order dated 25.11.2014 has dismissed the revision with observations that the petitioner can apply for certified copies of the documents in terms of Section 32 of the Maharashtra Co-operative Societies Act 1960 (for short "the Societies Act"). Though the petitioner has approached respondent No.1 society and requested to supply the copies of documents, the same were not supplied to the petitioner.

b) The petitioner therefore, constrained to file application Exh.102, for supply of documents, as detailed in the said application Exh.102. By order dated 8.8.2017 the trial court has partly allowed the said application and directed respondent No.1 society to produce on record the documents at Exh. 2 to 4 and rejected the said application to the extent of production of document at Sr. Nos. 1 and 5.

c) Being aggrieved by rejection of application to the extent of document at Exh. 1 and 5, the present petitioner has preferred revision No. 50 of 2017. In the said revision, respondent No.1 society has also raised cross objection against the order passed by

the trial court directing respondent No.1 society to produce documents at Sr. Nos. 2 to 4 as detailed in application Exh.102. The learned Member of the appellate court by impugned the order, dismissed the revision and further quashed and set aside the order passed by the trial court below Exh.102. Hence, this writ petition.

3. Learned counsel for the petitioner submits that the petitioner has approached the appellate court to the extent of rejection of his application Exh.102 for production of documents at Sr. Nos. 1 and 5. Respondent No.1 society has approached the appellate court and filed cross objection. It appears from the record that the appellate court has treated the said cross objection as objection under Order 41 Rule 22 of C.P.C. and entertained the same. The provisions of Order 41 Rule 22 speaks about cross objection to be preferred in the pending appeal filed against the judgment and decree passed by the Court and the said provision cannot be made applicable to the orders passed in the like nature wherein the production of documents has been directed to the other side. Learned counsel submits that on earlier occasion though the petitioner had filed revision against the order passed by the trial court, issuing direction to respondent No.1 society for production of documents and though the appellate court has dismissed the said revision with observations that the petitioner may file an application for certified copy in terms of provisions of

Section 32 of the Societies Act, even though respondent No.1 society has not supplied the certified copy of those documents, as sought by the petitioner. Learned counsel for the petitioner therefore, constrained to file application Exh.102 before the trial court seeking directions to respondent No.1 society to produce the documents, as detailed in application Exh.102. Learned counsel submits that those documents are essential for just disposal of the case, however, for no reason, respondent No.1 society has withheld those documents.

4. Learned senior counsel for respondent No.1 society submits that in terms of provisions of Section 149 of Societies Act, more particularly sub section (9) thereof, the Co-operative appellate court is empowered to call for and examine the record of any proceedings in which an appeal lies to it, for the purpose of satisfying itself as to the legality or propriety of any decision or order passed. If, in any case, it appears to the Co-operative appellate court that any such decision or order should be modified, annulled or reversed the Co-operative Court may pass such order thereon as it may deem just. Learned senior counsel submits that the Co-operative appellate court has thus rightly exercised the powers vested under sub section (9) of Section 149 of the Societies Act and passed appropriate order. Learned senior counsel submits that twice the petitioner has filed similar applications for production of documents. Even the petitioner

has not given any explanation in his application Exh.102 as to how the documents sought to be produced are relevant to consider the controversy involved in the matter. Learned senior counsel submits that the dispute is of the year 2010 and the huge amount is outstanding and due against the petitioner. The dispute is filed by respondent No.1 society for recovery of huge amount and the burden is on respondent No.1 society to substantiate its case before the Co-operative Court. In para 12 of the impugned judgment and order, the Co-operative appellate court has dealt with the documents serial number wise, as sought to be produced in the application Exh.102. Learned senior counsel submits that there is no reason to interfere in the impugned order. The petitioner without any cause is protracting the trial of recovery proceedings and he may be saddled with costs.

5. I do not find any substance in the submissions made on behalf of the petitioner that the Co-operative appellate court could not have entertained the cross objection and rejected application Exh.102 in its entirety. In terms of provisions of sub-section (9) of Section 149 of Societies Act, the Co-operative appellate court can interfere in the order passed by the trial court and in an appropriate case may modify or reverse the order passed by the trial court.

6. It also appears from the record that the petitioner, on earlier

occasion, preferred similar application and the trial court has rejected the same. Being aggrieved by the same, the petitioner has approached the Co-operative appellate court, however, his revision also came to be dismissed with observations that the petitioner, being a member, may apply for certified copies of documents in terms of Section 32 of the Societies Act. It is the case of the petitioner that he has thereafter submitted an application to respondent No.1 society for obtaining certified copies of documents, however, the same were not supplied to him. The petitioner has not produced copies of said application in order to substantiate his contentions.

7. Even on careful perusal of contents of application Exh.102, it appears that the petitioner has nowhere explained as to how the documents sought to be produced are relevant to consider the controversy. In addition to that, in para 12 of impugned judgment and order, the appellate court has dealt with each and every documents sought to be produced by the petitioner by directing the other side. It further appears from the observations made by the appellate court in para 12 of the judgment that so far as the documents at Sr. No. 4 is concerned, that is already provided to the petitioner and other documents are not relevant for deciding the controversy. I agree with the submissions made by learned senior

counsel that it is for respondent No.1 society to substantiate its case before the trial court and burden is on respondent No.1 society to substantiate its case. Entire exercise undertaken by the petitioner herein is unwarranted and uncalled for. It is also necessary to mention here that all required documents are produced alongwith the dispute filed under Section 97 of the Societies Act raised by respondent No.1 society and even the petitioner has carried out the inspection of those documents. It prima appears that the petitioner is interested in protracting the recovery proceeding initiated by respondent No.1 society for recovery of amount. The petitioner is therefore, required to be saddled with costs. Hence, I proceed to pass the following order:-

#### O R D E R

- I. Writ petition is hereby dismissed with costs of Rs.500/- (Rupees Five hundred only) to be paid by the petitioner to respondent No.1 society.
- II. Writ petition is accordingly disposed of.

**( V. K. JADHAV, J.)**