

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 12351 OF 2015

Mr. Shirish Dalichand Oswal .. Petitioner
Vs.
Rupee Co-operative Bank Ltd. and ors. .. Respondents

Mr. Vaibhav A. Sugdare, for the Petitioner.
Mr. Pratap Patil, for Respondent No.1.

CORAM : M.S.KARNIK, J.

10th APRIL, 2017

P.C. :

. The petitioner by this Petition is challenging firstly the order dated 18/10/2014 passed in Revision Application No. 47 of 2014 by the Maharashtra State Co-operative Appellate Court Mumbai thereby dismissing the Revision Application filed against the order passed below Exhibit - 117 by the Co-operative Court, Pune on 21/05/2014. The respondent No.1 filed a dispute before the Co-operative Court for recovery and the petitioner being a surety is the opponent No. 5 in the dispute. The petitioner filed application below Exhibit 117 for framing

the issue of jurisdiction as a preliminary issue. It is the contention of the petitioner that he is not a member of the Society and therefore, the dispute against him is not maintainable. The Co-operative Court was pleased to reject the application on the ground that the issue as to whether the petitioner is a member or not is not purely a legal issue but it is a mixed question of law and fact which is required to be determined only by recording evidence and therefore cannot be tried as a preliminary issue. The Revisional Court confirmed the order passed by the Co-operative Court which order is impugned in this Petition. I do not see any reason to interfere with the concurrent finding recorded by the Courts below that the issue whether the petitioner is a member or not is a mixed question of law and fact and therefore, cannot be tried as a preliminary issue.

2. The petitioner also filed an application below Exhibit 134 for dismissal of the dispute on the ground that the dispute is filed against non member and on some other grounds.

According to the petitioner, the Co-operative Court by order passed below Exhibit 130 directed the disputant to produce certain documents on record. However, disputant failed to produce those documents on record. The Co-operative Court was of the opinion that if at all the disputant has not produced the documents or failed to produce the document then appropriate inference can be drawn at the appropriate stage. In so far as permission to file criminal complaint is concerned, it held that the Co-operative Court cannot grant or refuse permission to file criminal complaint for the acts which are alleged to be committed outside the Court. The application Exhibit 134 therefore was rejected by the Co-operative Court. Revision Application No. 42 of 2015 which was filed before the Revisional Court against the order dated 08/06/2015 passed below Exhibit 134 was also rejected.

3. In this view of the matter, I am not inclined to interfere with the order passed by the Courts below concurrently holding that the objection of the petitioner can be decided at the

appropriate stage. The contention raised by the petitioner as regards Sections 44 & 45 of the Maharashtra Co-operative Societies Act, 1960 can always be dealt with by the Co-operative Court at the appropriate stage.

4. With the above observations, Writ Petition stands rejected.

(M.S.KARNIK, J.)