IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2041 OF 2016

Anantrai Keshavlal Sheth (popularly known as Antubhai Sheth) partner of M/s Western Importers ..Petitioner
Vs.
The Institute of Chartered Accountants of India & Ors ..Respondents

Mr. A. K. Sheth the Petitioner in person
Mr. A. G. Damle Senior Advocate, a/w Mr. J. M. Joshi for the Respondent Nos.1 and 2
Mr. Rafiq Dada Senior Advocate, a/w Mr. F. B. Andhyarujina Senior Advocate, a/w Mr. M. F. Andhyarujina for the Respondent No.3

CORAM :R. M. SAVANT, &
SMT. SADHANA S JADHAV, JJ
DATE : 28th JUNE, 2017

P.C.

1 The Writ Jurisdiction of this Court under Article 226 of the Constitution of India is invoked against the order dated 10-2-2016 passed by the Disciplinary Committee holding the Respondent No.3 as not guilty of professional misconduct falling within the meaning of Clauses (5) and (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 as amended from time to time.

2 The Petitioner herein is the Complainant against the Respondent No.3 herein who was the partner of one M/s. Chokshi & Chokshi, a firm of Chartered Accountants. The said firm was appointed as the statutory auditors of one Parekh Market Co-operative Society Ltd. The Complainant i.e. the

Petitioner herein is a member of the said society. It seems that the Complainant had made a host of allegations against the Managing Committee of the Society in which were ingrained the allegations made against the Respondent No.3 impinging upon his conduct as the partner of the statutory auditors of the society. The allegations were crystalised by the Complainant in reply to the Managing Committee of the society in the following manner :

> “The M.C. had intentionally, willfully, maliciously, malafidely, illegally, unlawfully, highhandedly, dishonestly, in conspiracy in connivance and in coalition had entered into fraud / scam / scandal with “CKP”, “PND”, “PRAVIN”, “CHOKSHI” (Respondent) and others to dupe crores of rupees of the Society, dishonestly misappropriated the Society's funds did criminal breach of trust, in violation of Section 403, 405, 409 r/w 120(B) of Indian Penal Code, 1860 with Oblique motive, misstating, misguiding, suppressing the vital material facts of decisive importance from the memebrs of the Society to cheat them for persona financial benefits of all members of “M.C.”, “PRAVIN”, “CHOKSHI”, “CKP”, “PND”, against the interest of the innocent public (herein Members of the Society) took law in their own hands and thereby.”
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> “The MC in violation of the General Body Resolution empowering the “Complainant” got conspired, connived, entered into fraud / scandal / scam with “CKP”, “PND”, “PRAVIN”, “CHOKSHI” (Respondent) to settle legitimate dues towards “CKP” of more than Rs. 6 crores to only 55 lakhs for personal financial benefits of “M.S. “PRAVIN”, the Respondent and others.”

3 The Disciplinary Committee in the impugned order has reproduced the said allegations / grievances of the Complainant against the

Managing Committee in Paragraph 4 of its order. The principal grievance as can be seen from the complaint was in respect of the compromise that was entered into between the Society and M/s. C. K. Parekh (referred to as "CKP" in the complaint) in the arbitration proceedings which had taken place and in which a consent award came to be passed before a Learned Single Judge of this Court whereby the said Society had agreed and accepted the sum of Rs.43,00,000/- in full and final settlement against the said CKP. The grievance of the Complainant was that though the dues of the said CKP towards the Society in respect of the units which were in their occupation was in the sum of Rs.5,46,95,583/- (5.46 crores), the matter was settled for Rs.43,00,000/-. This according to the Petitioner has been done by the Managing Committee in connivance with the CKP for their financial benefit and thereby illegally, intentionally and malafidely duping the society of crores of rupees. The allegation against the Respondent No.3 was that in the said process he has failed and neglected to put his detailed reasoned notes of rectification of the figure from Rs.5.43 crores to Rs. 43,00,000/- illegally waiving more than 90% of the legitimate dues in the audit report for the year ending 31-3-2011. The other allegations in the complaint were revolving around the stand of the Managing Committee in respect of the resolution dated 8-2-1998 passed by the General Body Meeting of the society falsely stating that the resolution could not be cancelled with retrospective effect. The Managing Committee having failed to grant inspection of the Minute books of the society from 1-6-2009 till date. The Society violating the General Body Resolution appointing the Complainant (Petitioner) exclusively empowering him to handle to act and finalise all legal matters of the Society. The Managing Committee having not made any attempt to collect the legitimate dues of the Society of Rs.3,03,250/- being adhoc charges. To explain reasons as to why the Managing Committee has not taken proper proceedings for expulsion of CKP from membership of the Society when it was a win-win situation for the society. To explain as to why the Managing Committee has not given reply to about 80 letters of the Complainant i.e. the Petitioner herein.

4 The complaint received from the Petitioner was forwarded to the Respondent No.3 on 2-3-2012. In terms of the regulations which are applicable to the conduct of the proceedings before the Disciplinary Committee, the Respondent No.3 was required to file his Written Statement within the time stipulated in the said regulations. The Respondent No.3 vide his letter dated 7-3-2012 asked for extension of time to file his Written Statement. It seems that thereafter the Respondent No.3 fell ill and applied vide his letter dated 7-4-2012 for further time to file his Written Statement. The said application was accompanied with a Doctor's certificate. The Respondent No.2 i.e. the Disciplinary Committee by letter dated 20-4-2012 granted further time to the Respondent No.3 to file his Written Statement which was till 15-5-2012. The Respondent No.3 despatched his Written

Statement on 12-5-2012 to the Respondent No.2 which Written Statement, it seems reached the Respondent No.2 on 15-5-2012. The Petitioner herein filed his rejoinder to the said Written Statement. The Disciplinary Committee came to a conclusion that the Respondent No.3 was prima facie guilty of 4 charges out of the allegations levelled by the Petitioner. The said 4 charges would be referred to in the instant order a bit later. In view of the said prima facie finding of the Disciplinary Committee the Respondent No.3 filed his additional Written Statement on 15-4-2014 to which the Petitioner filed his rejoinder dated 4-6-2014. Thereafter the disciplinary proceedings were kept for hearing on 16-4-2014 which hearing was cancelled due to unavoidable circumstances. Thereafter hearing took place on 5-11-2014 when it was partly heard and adjourned. Thereafter on 30-3-2015, on which date the hearing was adjourned at the request of the Petitioner. Thereafter on 29-7-2015 the hearing was cancelled due to unavoidable circumstances. Thereafter on 21-9-2015 the hearing was adjourned at the request of the Petitioner on the ground that his Advocate had gone on pilgrimage to Haj. The next hearing was kept on 18-12-2015, however the Petitioner by his letter dated 9-12-2015 sought time on the ground that he requires inspection of documents. The Disciplinary Committee vide letter dated 16-12-2015 i.e. prior to the date when the hearing was fixed rejected the request of the Petitioner and directed the Petitioner to attend the hearing on 18-12-2015. On 18-12-2015 the disciplinary proceedings were taken up for final hearing. The Respondent No.3 examined himself on oath and the witnesses on behalf of the Respondent No.3 were examined by the Respondent No.2. The Disciplinary Committee by the impugned order dated 10-2-2016 as indicated above held the Respondent No.3 as not guilty of any of the charges.

5 Prior to arriving at the said conclusion, the Disciplinary Committee as can be seen from the impugned order has considered each of the charges of which the Disciplinary Committee had held the Respondent No.3 prima face guilty. The said charges are reproduced hereinunder for the sake of ready reference.

> "(i) The Respondent in their Auditor's Report for the year 31.03.2010 have stated that the legitimate dues of "Society" towards "CKP" was Rs.5,46,95,583/- (above Rs.5.46 crores). However, in connivance, in conspiracy, in coalition with "M.C.. "CKP", "PRAVIN", the Respondent has failed and neglected to put their details reasoned notes of rectification of figures from about Rs.5.46 crores to 0.43 lakhs illegally waiving more than 90% of legitimate dues in their audit Report for the year ended 31.03.2011 (as mentioned under para No.1.18 above and 7.4 of the prima facie opinion)
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> (ii) To explain as to why amount of Rs.3,47,950/- was not disbursed to Members which is with Society right from 1983 till date despite the auditors remark in almost all previous audited accounts to finlalize same, since the same belongs to members and not to Society as stated in para 2 of general remarks of Auditor's Report (as mentioned under para No.4 above and 7.5 of the prima facie opinion)
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> (iii) The Respondent and "M/s PRAVIN" both are in proper co-ordination with each other and

> are in connivance, in conspiracy, in coalition with "MC", "CKP", "PND", and thus have entered into fraud /scam / scandal with them and have failed and neglected to put detailed reasoned notes to misguide the General Body to enable the "M.C." could pass illegal unlawful resolutions, against the interest of Society for their personal financial benefits (as mentioned under paras No.1, 19 above and 7.11 of the prima facie opinion).
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> (iv) To explain as to why "M.C." have not submitted Audit Rectification report of the previous audit memos. Violating Acts, Rules, Bye-Laws and directions of C.A. in almost all Audit Reports since last 27 years as stated in para 4(d) of Auditor's Report.
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> To provide details and copy of the audit memo in draft M.C. Meeting as stated in para 14 of general remark of Auditor's Report.
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> To explain as to why "M.C." did not file audit rectification report in prescribed form "O" and also called upon to file the same immediately with a copy to "Complainant" as stated in para 15 of general remark of Auditor's Report (as mentioned under paras No.4 above and 7.12 of the prima facie opinion)."

6 The Disciplinary Committee as indicated above has considered each of the above charges of which the Disciplinary Committee had prima facie held the Respondent No.3 guilty. In so far as the first charge is concerned, the Disciplinary Committee noted from the Consent Award dated 22-6-2011 that there was a dispute between the Society and the CKP group and that this Court by order dated 5-10-1999 had referred the dispute to arbitration. The Disciplinary Committee observed that from the minutes of the Annual General Meeting held on 5-2-2011 it has been noted that the General Body Meeting authorised the Managing Committee to negotiate, finalize and settle all

pending matters with CKP keeping the society's best interest fully secured and safe and that the monetary consideration should not be less than Rs.43 lakhs.

In so far as the charge No.(ii) is concerned, the Disciplinary Committee noted that in respect of the confirmation of the balance, the Respondent No.3 had given in his report that the balance confirmation was not provided for verification. Since the balance confirmation was not available the Respondent No.3 pointed out the same in his audit report, as regards the question as to whether the Respondent No.3 was required to seek external confirmation from the members. The Disciplinary Committee accepted the case of the Respondent No.3 that as per the publication issued by the ICAI, it is apparent that the accounting standards formulated by the ICAI do no apply to a non profit organization. The Disciplinary Committee further observed that the Respondent No.3 referred to paragraph 8 of the Standard on Auditing whereby the Respondent No.3 was not required to call for external confirmation.

In so far as the charge No.(iii) is concerned, the Disciplinary Committee observed that Respondent No.3 had reported the fact that the list of depositors is not available every year and the same was not provided to him. The Disciplinary Committee further observed that the Respondent No.3 in the general remarks forming part of the Audit Report for the financial year 2009-2010 and 2010-2011 reported the same. The Disciplinary Committee observed that the Respondent No.3 had advised the Society to have the list from the CKP group being the original builders and have the confirmation. The Disciplinary Committee noted that the Respondent No.3 in his audit report had duly mentioned that the list of distributors was not available.

In so far as charge No.(iv) is concerned, the Disciplinary Committee observed that the Society was covered by the Maharashtra Co-operative Societies Act, 1960 which does not make it mandatory for it to appoint an internal auditor. The Disciplinary Committee observed that the Petitioner did not bring on record the copy of the internal audit report and hence it was not possible for the Committee to know about the observations made by the internal auditors in their report. The Disciplinary Committee further observed that the Respondent No.3 had provided the record that he had carried out checks with the information available and found no deficiency in the operation of the Society. The Disciplinary Committee further observed that the Respondent No.3 brought on record that it is his responsibility and that there was no contradictory statement in the audit memo and audit report.

7 As indicated above, the Disciplinary Committee after considering each of the charges in respect of which it has found the Respondent No.3 prima facie guilty and the explanation of the Respondent No.3 to the said charges, came to a conclusion that the Respondent No.3 is not guilty of any professional misconduct in terms of clauses (5) and (7) of the said Act.

8 It is the said order dated 30-3-2016 passed by the Disciplinary Committee which is taken exception to by way of the above Petition.

9 The Petitioner in person Mr. Sheth sought to question the impugned order dated 10-2-2016 on the ground that the Written Statement of the Respondent No.3 could not have been taken on record and considered. It was the case of the party in person that the documents preceding the filing of the Written Statement i.e. the application for extension of time to file the Written Statement and the letter dated 20-4-2012 granting extension of time to the Respondent No.3 to file the Written Statement are fabricated documents and therefore a fraud was practiced by the Respondent No.2 which has vitiated the proceedings. In view of the allegations that the documents were fabricated, this Court had directed the Respondent No.1 by order dated 5-6-2017 to give inspection to the Petitioner of the said original documents which preceded the filing of the Written Statement by the Respondent No.3. In terms of the said directions inspection was granted by the Respondent No.1 to the Petitioner herein. In fact by order dated 9-6-2017 this Court had directed that the Petitioner would be entitled to only the inspection of the documents which are mentioned in the order dated 5-6-2017. However during the course of the hearing of the above Petition, the Petitioner in person once again reiterated the submission that the said documents are forged and fabricated and that a fraud

is sought to be practiced on this Court. The Respondent No.1 after the inspection was granted to the Petitioner has filed an affidavit to which are annexed the documents of which inspection has been granted to the Petitioner. The said affidavit is dated 14-6-2017. Exhibit A to the said Affidavit is the extract of the register in which the entry as regards the receipt of the letter dated 7-4-2012 addressed by the Respondent No.3 to Shri. M. L. Gola, Assistant Secretary of the Disciplinary Committee is recorded on 9-4-2012 at Entry No.1. The copy of the said letter dated 7-4-2012 along with the medical certificate is annexed at Exhibit B. At Exhibit C is annexed the letter dated 20-4-2012 addressed by Mr. M. L. Gola, Assistant Secretary, Disciplinary Committee to the Respondent No.3. By the said letter as indicated above time to file the Written Statement was extended up to 15-5-2012. At Exhibit D is annexed the cover of the Speed Post and Courier Register of the Respondent No.1 for the period 17-10-2011 to 21-11-2012 alongwith the page of the issue register i.e. the letters which are to be sent by post in the caption of Speed Post. The said letter dated 20-4-2012 is addressed by the Assistant Secretary Mr. M. L. Gola to the Respondent No.3 is at Item No.13. The next document is a statement containing the list of the documents from the postal department indicating that the said documents have been sent by Speed Post. The letter addressed to the Respondent No.3 is at Item No.2 bearing No.719. At Exhibit F is the forwarding letter dated 12-5-2012 of the Respondent No.3 by which letter the Written Statement dated 12-5-2012 was forwarded to the

Respondent No.2. The said letter bears the endorsement from the office of the Disciplinary Committee as having been received on 15-5-2012. Hence the aforesaid documents can be said to belie the case of the Petitioner that the said documents are false and fabricated. As indicated above, apart from the documents of the Respondent Nos.1 and 2, there is also a document of the postal department as having received the letter dated 20-4-2012 addressed to the Respondent No.3 which as indicated above which bears No.719. Hence it is not possible for us to accept the case of the Petitioner that the documents are all got up documents to justify the Written Statement of the Respondent No.3 being taken on record.

10 In the said context, it is also required to be noted that the Petitioner had filed a rejoinder to the Written Statement filed by the Respondent No.3. It is after the filing of the Written Statement and the Rejoinder that the Disciplinary Committee had arrived at a prima facie conclusion and had found the Respondent No.3 prima facie guilty of the 4 charges which we have referred to in the earlier part of this order. The matter does not rest there. After the prima facie conclusion was drawn against him the Respondent No.3 in response thereto has filed a further Written Statement on 15-4-2014 to which also the Petitioner had filed a rejoinder on 4-6-2014. The Disciplinary Committee has also taken into consideration the aforesaid facts and has rejected the contention urged on behalf of the Petitioner that the

Written Statement of the Respondent No.3 could not have been taken on record. In our view, having regard to the documents which are placed on record on behalf of the Respondent No.1 as also having regard to the rejoinder filed by the Petitioner, the finding of the Disciplinary Committee, on the said aspect cannot be faulted with.

11 As indicated above, the Disciplinary Committee has gone thread bare into the 4 charges or grounds on which the Respondent No.3 was found prima facie guilty. The Disciplinary Committee has considered the explanation given by the Respondent No.3 along with the documents which are on record. The Disciplinary Committee has deemed it appropriate to accept the explanation given by the Respondent No.3 and has held the the Respondent No.3 as not guilty of any of the charges. The Disciplinary Committee can be said to have given the fullest opportunity to the Petitioner (Original Complainant).

12 In so far as the Writ Jurisdiction under Article 226 of the Constitution of India in the matter of orders passed in disciplinary proceedings are concerned, it is well settled that a Writ Court does not sit as a Court of Appeal so as to re-appreciate the evidence and arrive at a different conclusion than the one arrived by the Disciplinary Authority. In the instant case the findings of the Disciplinary Committee are well founded and the order

passed by the Disciplinary Committee is a well reasoned order. It appears that the Petitioner has a grievance as regards the functioning of the Managing Committee of the Society of which he is a Member as can be seen from the Complaint made by the Petitioner to the Respondent No.2. In so far as the said aspect is concerned the functioning of the Managing Committee is covered by the provisions of the Maharashtra Co-operative Societies Act. It is for the Petitioner to adopt such remedies under the said Act or take such recourse as he deems fit. In our view, the order passed by the Disciplinary Committee exonerating the Respondent No.3 does not merit any interference in our Writ Jurisdiction. The Writ Petition is accordingly dismissed.

[SMT SADHANA JADHAV, J] **[R.M.SAVANT, J]**