

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

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**WRIT PETITION NO. 5243 OF 1995**

Ashok Sahakari Sakhar Karkhana  
Ltd., Ashoknagar, Tq. Shrirampur,  
Dist Ahmednagar. ...Petitioners...  
(orig disputant)

VERSUS

NAMDEO DHONDIBA JAGTAP.  
Age major, Occ. Contractor,  
R/o Kanhegaon, Tq. Kopargaon,  
Dist. Ahmednagar. ...Respondent..  
(orig. opponent.)

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Advocate for Petitioner : Shri V.S. Bedre.  
Advocate for Respondents : Mr P.B.Shirsath

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**CORAM : V.K. JADHAV, J.**

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Reserved on : January 12, 2018.  
Pronounced on January 25, 2018.

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**JUDGMENT :-**

1. Being aggrieved by the judgment and order passed by the In-charge President, Maharashtra State Cooperative Appellate Court, Bombay, Bench at Aurangabad in appeal No.93/1990, the original disputant has preferred this writ petition.

2. Brief facts, giving rise to the present writ petition are as follows :-

a] The petitioner had filed a dispute against the respondent herein before the Cooperative Court at Shrirampur bearing No.216/1982 for recovery of the suit amount. It has been contended by the petitioner that respondent had entered into an agreement for the transportation of the sugar bags in the go-down and from go-down to the railway station and also to make the delivery from the other vehicle for the year 1975-1976. Accordingly, work was allotted to respondent on 19.3.1975 and agreement to that effect was executed on 16.4.1975. It has been further contended in the said dispute that respondent was given advances from time to time and said amount has been shown in his account. After deducting the amount of the work done by respondent as on 30.6.1980, an amount of Rs.9189.66 ps was due and outstanding against the respondent. Thus, for the recovery of the said amount alongwith interest @ 18% p.a from 1.7.1980 till filing of the dispute, the dispute has been raised before the Cooperative Court. It has also been contended in the dispute that, the respondent was a 'C' class Member of the petitioner Karkhana.

b] Respondent herein has strongly resisted the said dispute by filing the reply. It has been contended in the reply that account extract of the disputant account was not legal and proper. Respondent has denied the account extract so also the amount deposited in his name. It has also been contended that, there was an agreement between the disputant and the opponent for transportation of the sugar bags from the sugar house so also to make measurement of the sugar bags. However, disputant has not given the account of that amount and false amount has been shown in the name of the opponent and so also the disputant has not paid the amount payable to the labourers and porters. It has been also contended that, opponent is not a member and as such dispute is not maintainable in the cooperative court. The disputant has filed false dispute only to harass the opponent.

c] On the basis of the pleadings of the parties, the learned Judge of the co-operative Court has framed as many as five issues and the parties lead their oral and documentary evidence in support of their respective

contentions.

3. The learned judge of the cooperative Court by judgment and order dated 23.4.1990 allowed the dispute and accordingly directed that the petitioner/original disputant can recover the amount of Rs.9189.66 with interest @ Rs.12% p.a. w.e.f. 1.1.1983 on the principal amount of Rs.9189.66 till the realization from the opponent alongwith costs which is determined at Rs.630/-. Being aggrieved by the same, the respondent herein has preferred appeal no.93/1990 before the Maharashtra State Cooperative Appellate Court, Bombay, Bench at Aurangabad and by impugned judgment and order dated 29.7.1995 learned in charge President of the Maharashtra State Cooperative Appellate Court Bombay, Bench at Aurangabad, has allowed the appeal and quashed and set aside the judgment and order dated 23.4.1990 passed by the learned Judge, Cooperative Court, Shrirampur. Hence, this writ petition.

4. The learned counsel for the petitioner submits

that, the allotment work of the transportation of the sugar bags and agreement executed pursuant thereto are the admitted facts. It is also not disputed that the respondent herein has empowered his father vide exh.6 to do the work of the transportation and to receive advance payment and also to make payment to the labourers. The learned counsel submits that, there are two important documents exh.6 and exh.51. As per exh.6, the respondent has empowered his father Shri Dhondiram Kashinath to receive the payment of the bills. Said authorization exh.6 has been executed on 17.4.1975 on the stamp paper of Rs.6 and the same has not been specifically denied by the respondent. Father of the respondent namely Shri Dhondiram has made an application exh.51 that amount Rs.18,200/- as on 15.4.1975 shown in his name be diverted and shown in the account of his son (respondent herein). Learned counsel submits that, accordingly vouchers were prepared and this amount of Rs.18,200/- was shown in the account of respondent under Exh.72 on 20.5.1975. This amount is mainly under dispute between the parties. The learned counsel submits that, the appellate

court has given importance to the office remarks on the rear side of exh.51 which indicates that before diverting and showing it into account of the respondent, the consent of the respondent is required. However, the appellate court has ignored the main document exh.6 which clearly speaks about the authorization by the respondent to his father to do all transactions of monetary business on behalf of the respondent.

5. The learned counsel for respondent submits that, the respondent Namdeo has deposed before the Cooperative Court that said disputed amount Rs.18,200/- debited in his account on 20.5.1975 was without his consent and even his father also did not inform him about debiting the said amount in his account. He did not give said authority to his father to debit said amount in his account. Learned counsel submits that, the appellate court has rightly given weightage to the remark of the Managing Director on the rear side of exh.51 that while transferring the amount of Rs.18,200/- in the name of respondent, his consent is necessary, since no consent of the respondent was

obtained for such a transfer of the amount in the account, the petitioner herein had no right to raise any dispute about the same.

6. On careful perusal of the judgment and order passed by both the courts below and record and proceeding, it appears that, the appellate court has not given weightage to the letter exh.6. Though, the appellate Court has observed that on the basis of the authorization, sugar factory justified in paying the amount to the father of the present respondent, however, accepted the contention raised by the respondent about disputed amount of Rs.18,200/- which is debited in his account. As per exh.6, the respondent has empowered his father Shri Dhondiram Kashiram to receive the payment of the bills of the work and advance payment and that respondent herein had no objection that the amount of the work if paid to his father. Bills and vouchers are placed on record, they are marked at exh. 7 to 20, exh.23 to 37, exh.45 to 66, 49 to 50, and exh.53 to exh.61, exh.62 to 65 and 66 to 70. All these are the receipts of the damarages and vouchers.

The petitioner has duly proved the said bills and vouchers. As per exh.6, if the respondent herein had empowered his father to do all the transactions of the monetary business on behalf of the respondent, the specific consent of the respondent about the disputant amount of Rs.18,200/- was not required. However, the appellate court has not considered the same. The learned judge of the cooperative court has discussed the evidence at length and rightly allowed the dispute. Even, respondent Namdeo has also admitted in his cross examination that subsequent to the execution of the agreement exh.5, transaction were dealt with by his father. Appellate Court without there being any pleadings has observed that amount of Rs.18,200/- which is debited in the account of the respondent is obtained by his father in his personal capacity and not on behalf of the respondent Namdev. The respondent has not specifically denied the document exh.6 and even then the appellate court has considered his oral evidence to the effect that he never authorized his father to obtain disputed amount of Rs.18,200/-. Even though, bills and vouchers are produced on record, the

appellate court has observed that no voucher of Rs.18,200/- are produced on record. In fact, there cannot be any voucher of Rs.18,200/- and the same is the total amount of various transactions/work. The appellate Court without any evidence observed that the petitioner/sugar factory has failed to prove the claim of Rs.18,200/- and respondent Namdeo would not be liable to pay any amount. Further by ignoring the letter exh.6 the appellate court has observed that, it was necessary on the part of the petitioner sugar factory to implead the father of the respondent as a party to the dispute and should have claimed the amount jointly from the respondent and his father.

7. In view of the above, I find that the learned In-charge President of the Maharashtra State Cooperative Appellate Court has recorded the perverse finding against the admitted facts and evidence lead by the parties. Thus, the impugned judgment and order passed by the Maharashtra State Cooperative Appellate Court, Bombay Bench at Aurangabad is liable to be quashed and set aside by confirming the judgment and

order passed by the Cooperative Court, Shrirampur. However, this writ petition is pending since 1995. In view of the same, the respondent is liable to pay the interest on the principle amount as directed by the Cooperative Court, Shrirampur w.e.f. from 1.1.1983 till the disposal of the appeal by the lower appellate Court and thereafter from the date of this order till realization of the entire amount as per the rate of interest i.e. 12% p.a. as directed by the Cooperative Court, Shrirampur. Hence, following order is passed.

### **O R D E R**

1. Writ Petition is hereby partly allowed with costs.
2. The impugned judgment and order passed by the in-charge President, Maharashtra State Cooperative Appellate Court, Bombay, Bench at Aurangabad in appeal no.93 of 1990 is hereby quashed and set aside.
3. Judgment and order passed by the Cooperative Court, Shrirampur dated 23.4.1990 in Case No.SR/ABN/216/82 stands confirmed with the following modifications :-

a] The respondent is liable to pay the interest @ 12% p.a. on the principal amount of Rs.9189.66 as directed by the Cooperative Court w.e.f. 1.1.1983 till the disposal of the appeal by the Maharashtra State Cooperative Appellate Court, Bombay Bench at Aurangabad and thereafter from the date of this order till the realization of the entire amount.

4. Rule is made absolute in above terms.

5. Writ Petition accordingly disposed of.

sd/-

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

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AAA/-