

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

**WRIT PETITION NO. 9912 OF 2017
WITH
WRIT PETITION NO. 9935 OF 2017**

M/S AMBARWADIKAR INDUSTRIES PVT LTD
THROUGH IT'S CHAIRMAN AND MANAGING DIRECTOR
VITTHALRAO RANGNATH AMBARWADIKAR
VERSUS
THE NASHIK MERCHANT CO OPERATIVE BANK LTD
THROUGH IT'S CHIEF EXECUTIVE OFFICER AND
ANOTHER.

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Advocate for Petitioner: Mr Thombre S.S.
Advocate for Respondents: N B Kambale a/w S V Adwant

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CORAM : V.K. JADHAV, J.

Dated: March 27, 2018

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PER COURT :-

1. Learned counsel for the petitioner in both the Writ Petitions has raised a common question that, though in terms of the provisions of Section 84 of the Multi-State Co-operative Societies Act, 2002 (hereinafter referred to as 'the act of 2002' for short) any dispute as explained in clause nos. a to d of Subsection (1) of Section 84 shall be referred to the Arbitration, in terms of the provisions of Section 7 and 8 of the Arbitration and Conciliation Act, 1996, the matter can be referred for arbitration only

when the arbitration agreement as contemplated under section 7 of the Arbitration and Conciliation Act, 1996 exists and the reference in the contract to a document containing an arbitration clause constitutes an arbitration agreement and if the contract is in writing and reference is such as to make that arbitration clause part of the contract. Learned counsel for the petitioner restrict his challenge only to the extent of above submissions.

2. Learned counsel for the respondents submits that, in case of a statutory arbitration whether the parties have independently entered into an arbitration agreement or not is not relevant. In view of section 84 of the act of 2002, once the parties to a dispute would fall under the category provided under section 84 (1) (a) and (b) and if the dispute relates to the category of disputes prescribed therein, parties have no option but to refer their dispute to arbitration of the arbitrator to be appointed by the Central Registrar or other person under the provisions of the said Act.

3. Learned counsel in order to substantiate her contentions placed her reliance on a judgment in case of **Saba Chemicals Vs. Siddhartha Bhattacharya** reported in **(2015) 4 Bom CR 682**.

4. Section 84 of the Act of 2002 which is relevant for the present discussion reads as under :-

Section 84 in The Multi-State Co-operative Societies Act, 2002 :-

84. Reference of disputes.—

- (1) Notwithstanding anything contained in any other law for the time being in force, if any dispute [other than a dispute regarding disciplinary action taken by a multi-State co-operative society against its paid employee or an industrial dispute as defined in clause (k) of section 2 of the Industrial Disputes Act, 1947 (14 of 1947)] touching the constitution, management or business of a multi-State co-operative society arises—
- (a) among members, past members and persons claiming through members, past members and deceased members, or
 - (b) between a member, past member and persons claiming through a member, past member or deceased member and the multi-State co-operative society, its board or any officer, agent or employee of the multi-State co-operative society or liquidator, past or present, or
 - (c) between the multi-State co-operative society or its board and any past board, any officer, agent or employee, or any past officer, past agent or past employee, heirs or legal representatives of any deceased officer, deceased agent or deceased employee of the multi-State co-operative society, or
 - (d) between the multi-State co-operative society and any other multi-State co-operative society, between a multi-State co-

operative society and liquidator of another multi-State co-operative society or between the liquidator of one multi-State co-operative society and the liquidator of another multi-State co-operative society, such dispute shall be referred to arbitration.

- (2) For the purposes of sub-section (1), the following shall be deemed to be disputes touching the constitution, management or business of a multi-State co-operative society, namely:—

 - (a) a claim by the multi-State co-operative society for any debt or demand due to it from a member or the nominee, heirs or legal representatives of a deceased member, whether such debt or demand be admitted or not;
 - (b) a claim by a surety against the principal debtor where the multi-State co-operative society has recovered from the surety any amount in respect of any debt or demand due to it from the principal debtor as a result of the default of the principal debtor, whether such debt or demand is admitted or not;
 - (c) any dispute arising in connection with the election of any officer of a multi-State co-operative society.
- (3) If any question arises whether a dispute referred to arbitration under this section is or is not a dispute touching the constitution, management or business of a multi-State co-operative society, the decision thereon of the arbitrator shall be final and shall not be called in question in any court.
- (4) Where a dispute has been referred to arbitration under sub-section (1), the same shall be settled or decided by the arbitrator to be appointed by the Central Registrar.
- (5) Save as otherwise provided under this Act, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to all arbitration under this Act as if the proceedings for arbitration were referred for settlement or decision under the provisions of the Arbitration and Conciliation Act, 1996.

5. It is not disputed by the petitioner herein that the

dispute squarely falls in clause No.(1) (a) to (1) (d) of Section 84 of the Act of 2002. In terms of the provisions of Section 84 of the Act of 2002, when the statutory arbitration is provided, the question whether the parties have independently entered into an arbitration agreement or not as contemplated under section 7 of the Arbitration and Conciliation Act, 1996 is not relevant. It further appears that even the parties do not have any option to choose or nominate any particular arbitrator under the provisions of section 84 of the Act of 2002.

6. This Court in identical set of facts, in the case of **Saba Chemicals Vs. Siddhartha Bhattacharya** reported in **(2015) 4 Bom CR 682** (supra) relied upon by the learned counsel for respondent, in paragraph no.56 has made following observations :-

“56. In my view, in case of statutory arbitration, whether parties have independently entered into any arbitration agreement or not is not relevant. In view of [section 84](#) of the said Act of 2002, once the parties to a dispute would fall under the category provided under [section 84\(1\)](#) (a) and (b) and if the dispute relates to the category of disputes prescribed therein, parties have no option but to refer their

dispute to arbitration of the arbitrator to be appointed by the Central Registrar or other person under the provisions of the said Act. The parties even do not have any option to choose or nominate a particular arbitrator under the provisions of the said Act. In my view the reliefs sought by the Multi-state Co-operative Bank for enforcement of the securities for the purpose of recovering the debts would exclusively fall within the jurisdiction of the learned arbitrator under [section 84](#) and thus expressly or impliedly barred from the purview of the jurisdiction of the civil court.”

7. Thus, considering the facts of the present case and in view of the observations made by this Court in the aforesaid case, I do not think that, any other view is possible. There is no substance in these two writ petitions. Both the writ petitions are hereby dismissed. No costs.

(V.K. JADHAV, J.)

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