

IN THE HIGH COURT OF BOMBAY AT GOA**APPEAL FROM ORDER NO. 38 OF 2018**

1. Apolonario Gomes
Son of late Benedito Gomes,
aged 61 years, Indian National,
Occupation Retired,
Residing at H. No.148, Vorcotto,
Sanguem-Goa 403 704.
2. Shri Niranjana Naik,
Son of late Manohar Naik,
aged 52 years,
Indian National, Occupation Service,
House No.115, Ghotmarod Kakoda,
Curchorm, Goa 403 706.
3. Shri Damdoar Naik,
Son of late Sitaram Naik,
aged 42 years,
Indian National, Occupation Service,
Residing at H. No.727,
Near Shrikrishna Temple,
Mirabag, Sanvordem-Goa 403 706.
4. Shri Kamlakar Gaonkar Dessai,
Son of Shri Uttm Gaonkar Dessai,
Aged 54 years,
Indian National, Occupation Service,
Residing at Costi, Kalay,
Sanguem-Goa 403 704.
5. Shri Ramchandra S. Dessai,
Son of Netaji Dessai,
Aged 56 years,
Indian National, Occupation Service,,
Residing at H. No.607/15, Takri-Sheldem,
Quepem, Goa.

6. Shri Anand Kunde,
Son of Shri Pundalik, aged 62 years,
Indian National, Occupation Retired,
Residing at R-5, Sai Residency,
Nagzar-Curti, Ponda Goa 403 401.
7. Shri Vilas More,
Son of Baburao, aged 62 years,
Indian National, Occupation Retired,
Residing at Quarter C-5,
Govt. Primary Health Centre,
Balli Cuncolim 403703.
8. Shri Satish S. Shirodkar,
Son of Shrikant Shordkar,
Aged 51 years,
Indian National, Occupation Service,
Residing at Balli, Mat Cuncolim,
Goa 403 703.
9. Shri Harischandra Gaonkar,
Son of Anant Gaonkar, aged 59 years,
Indian National, Occupation Service,
Residing at H. No.649/1 Karai,
Shiroda-Ponda, Goa 403 103.
10. Smt. Asha Gaonkar,
Wife of Anant Sawant,
Aged 53 years, Occupation Service,
Indian National,
House No.191/A,
Mastimal, Canacona, Goa.
11. Smt. Prema R. Dessai,
Wife of late Raghoba Desai,
Aged 61 years,
Indian National, Occupation Retired,
Residing at Assolda,
Chandor-Goa

.... Appellants/Petitioners

V e r s u s

1. State of Goa,
Through its Chief Secretary,
Having his office at
Secretariat, Porvorim,
Goa.
2. Registrar of Co-operative Societies,
Office of the Registrar of Co-operative
Societies, "Sahakar Sankul",
Patto Plaza, Panaji, Goa.
3. Deputy Registrar of Co-operative Societies,
Office of the Registrar of Co-operative Societies,
"Sahakar Sankul",
Patto Plaza, Panaji, Goa.
4. Advocate Shri Arun Naik,
Major of age,
Nominee of the Registrar of the Co-operative Societies,
1st floor, "Misquita House", near
La Capital Hotel, Panaji-Goa, 403 001.
5. Shri Santosh Naik,
Senior Advocate, Major of Age,
Office of the Registrar of Co-operative Societies,
"Sahakar Sankul",
Patto Plaza, Panaji, Goa.
6. Mrs. Shilpa Vishal Naik alias
Vijayshree Vishal Naik, Major of Age,
Resident of House No.93/1, Bamangal,
Hodar, Curchorem, Goa.
7. Shri Vishal Naik,
Son of Vassudev Naik,
Aged 32 years, occupation business,
Residing at H. No.93/1, Bamangal,
Hodar, Curchorem, Goa.
8. Smt. Sushanti P. Naik,
Wife of Prakash Naik,

- Aged 50 years, Housewife,
Residing at H. No.32, Hodar,
Curchorem-Goa.
9. Smt. Vinda Naik,
Wife of Vasudev Naik,
Aged 51 years, Housewife,
Residing at H. No.739/1,
Mirabhag, Curchorem-Goa.
10. Shri Deepak Desai,
Son of Devappa Desai,
Aged 63 years, occupation retired,
Residing at H. No.28 A, Cotto,
Fatarpa, Qupem, Goa.
11. Shri Nilesh Raut Desai,
Son of Kashinath Raut Desai,
Aged 46 years, occupation service,
Residing at H. No.88,
Adamorod, Assolda,
Quepem-Goa.
12. Shri Ashok Sawant Desai,
Son of late Shantu Sawant Desai,
Aged 61 years, occupation Retired,
Residing at Ghotmorod, Cacora,
Curchorem-Goa.
13. Shri Uday Desai,
Son of Vithoba Desai,
Aged 59 years, occupation service,
Residing at Tanki Xeldem,
Quepem-Goa.
14. Thrift Co-operative Association Ltd.
A Co-operative Society registered
under No.RCS/Credit 13/Goa, through
its President Shri Deepak Kamulkar,
having its registered office at
'Vinayaki Building', 2nd floor,
Opp. Fire Station, Ponda, Goa.

15. Shri Datta Hari Bhat,
(Ex-President Thrift Co-op. Association)
Son of Hari Bhat,
Aged 56 years, occupation Ayurvedic
Medical Practitioner,
residing near Football Ground,
Mardol, Ponda-Goa.
 16. Shri Deepak Gaonkar,
Ex-Development Officer/Secretary,
Thrift Co-op. Association,
Major of age, occupation service,
Residing at Mahalaxmi Apts. Behind PHE Office,
Fatorda, Margao, Goa.
 17. Shri Salu N. Bhagat,
Son of N. Bhagat,
Aged 46 years, occupation service,
Residing at Tivrem, Orgao, Marcela-Goa.
 18. Shri Nagendra Kudchadkar,
Major of age,
Ex-Manager Goa State Co-operative Bank Ltd.
Curchorem Branch,
Presently working at Head Office-
The Goa State Co-operative Bank Ltd.,
'Sahakar Sankul', Patto Plaza,
Panaji-Goa.
 19. The Government Secondary and Higher Secondary
School Teachers Co-operative Credit Society Ltd.,
Quepem-Sanguem-Goa, Having its office at Bansai,
Curchorem-Goa, through its Secretary
having his Office at Bansai,
Curchorem-Goa.
- Respondents/
original Defendants.

Adv. Shashikant Narayan Joshi with Adv. Sameera S. Bhat for the Appellants.
Mr. Amir Jamdar, Addl. Government Advocate for Respondents no.1 to 3.
Adv. K. T. Sawant for Respondents no.12 and 13.
Adv. Prasanna Chawdikar for Respondents no.14 to 17.

CORAM: C. V. BHADANG, J.
DATE: 5th September, 2018.

Oral Order:

By this appeal, the appellants are challenging the order dated 14/2/2018 (below Exhibit 3) passed by the learned Principal District Judge, Panaji in Civil Suit No.17/2016. By the impugned order, the learned District Judge has dismissed the application (Exhibit 3), thus refusing to stay the recovery proceedings and the Misfeasance proceedings, under the Goa Co-operative Societies Act, 2001 (Act, for short) initiated against the petitioners and others.

2. The brief facts are that the appellants were the members of the Managing Committee of the respondent no.19 (The Government Secondary and High Secondary School Teachers Co-operative Credit Society Ltd.) for a certain period from 2009 to 2011. The respondent no.19 happens to be a member of respondent no.14 (Thrift Co-operative Association Ltd.) which is also a cooperative society registered under the provisions of the said Act. The respondent no.19 had obtained financial assistance from the respondent no.14.

3. It appears that the respondent no.14 had initiated a dispute against the respondent no.19 and the members of its managing committee purportedly under section 83 of the Act. The said dispute was filed on 9/1/2012 and is stated to be pending before the Registrar's Nominee. According to the respondent no.14 the opponents in the said dispute owed a sum of Rs.1,45,50,895/- as on 30/11/2011 to the defendants. The respondent no.14 had prayed for issuance of an award for recovery of the outstanding amount along with interest.

4. It appears that on 17/5/2013 the Registrar issued a notice to the appellants and others purportedly under section 82 of the Act seeking an explanation /clarification as to why an amount of Rs.50,13,761/- along with interest from 1.4.2009 (based on re-audit report for the year 2008-2009) should not be recovered from the appellants and others, by initiating proceedings under the aforesaid section. There is yet another notice dated 21/1/2013 which was issued in the Misfeasance proceedings under section 82 of the Act for the year 2008-2009. Subsequently on 28/11/2014 the Registrar has passed an order on the basis of the Misfeasance report holding that the society has allegedly suffered a loss of Rs.64,23,033/- as on 31/3/2010 owing to the alleged negligence in the performance of the duties and the responsibilities on the part of the managing committee members and

ex employees Smt. Silpa V. Naik during the period from 1.4.2009 to 31/3/2010. By the said order the Registrar has authorized the Dy. Registrar of Co operative Society, under section 82 of the Act and the rules framed thereunder to inquire into the findings of the audit on the working of the aforesaid society for the year 2009-2010 and to determine the amount payable by each of the members of the managing committee/office bearers and ex employee of the society. All these proceedings are pending before the competent authority i.e the Registrar or the Registrar's nominee and the evidence led by the respondent no.14 is stated to be over.

5. The appellants filed the aforesaid suit before the learned District Judge in March 2016 inter alia for directing the respondent no.14 for reconciliation and settlement of the accounts, with the appellants and the respondent no.19. There are several other reliefs sought, including a declaration that the dispute in Form "N" dated 9/1/2012 instituted by the respondent no.14 against respondent no.19 cannot be decided under section 83 r/w section 86 of the Act. The appellant also sought a relief for setting aside the order of reference dated 1/7/2014 by which the Registrar has made a reference to the Registrar's nominee under section 83 r/w section 86 of the Act and for a decree in favour of the appellants holding that the defendants no. 5 to 18 (except defendant no.14) are jointly and severally liable to pay to the

respondent no.19 a sum of Rs.1,36,32,370/- or any other amount that may be settled on reconciliation, along with interest. The appellants also sought a direction to the respondents no.14 and 19 to make available to the appellants all the records pertaining to the loan transactions and for stay of the recovery proceedings under section 82 as well as the Misfeasance proceedings under section 83 of the Act.

6. The appellants filed a separate application for stay of the recovery proceedings and Misfeasance proceedings seeking the following substantive reliefs:

- a. Issue appropriate directions to the defendant nos. 14 and 19 to make available to the plaintiffs all the records pertaining to the loan transactions between them as also the fraudulent and genuine transactions.
- b. Stay all further proceedings for Recovery in pursuance of Form "N" dated 9/1/2012 instituted by Thrift Co-op Association Ltd. As against the Teacher's Society.
- c. Stay further proceedings in Misfeasance Proceedings No.1-210-2012-TS-RCS-GSHSSTC and Misfeasance Proceedings No.1-222-2014/Ts-RCS-GSHSSTC pending before the Dy. Registrar of Co-operative Societies, Respondent no.3 till the hearing and disposal of the present suit.

7. The application came to be opposed on behalf of the contesting

respondents/defendants, inter alia on the ground that the civil court lacked jurisdiction to entertain the suit or to grant the relief as claimed. The learned District Judge by the impugned order dated 14/2/2018 has dismissed the said application, inter alia holding that the reliefs as sought are not competent to be granted by the civil court. Feeling aggrieved, the appellants are before this court.

8. I have heard Shri Joshi, the learned counsel for the appellants, Shri Jamdar, the learned Additional Government Advocate for Respondent no.1 to 3, Shri Sawant, the learned counsel for respondent no.12 and 13 and Shri Chawdikar, the learned counsel for respondent no.14 to 17. With the assistance of the learned counsel for the parties I have perused record.

9. It is submitted by Shri Joshi, the learned counsel for the appellants that the suit cannot be said to be not maintainable. It is submitted that the civil court is competent to grant the reliefs as sought. The learned counsel has taken me through the provisions of section 83 and section 86(3) of the Act and section 126 in order to demonstrate that the civil court would be competent to grant the reliefs. Secondly, it is submitted that on the basis of a complaint filed by the Registrar as far back as on 12/3/2013, the Police Inspector Curchorem Police Station carried out investigation and a charge

sheet is filed in the year 2015 before the learned Chief Judicial Magistrate at Quepem for the offence punishable under section 408, 468, 467, 471, 420 r./w section 120-B IPC against some of the defendants. It is submitted that on investigation the investigation officer had come to the conclusion that there is misappropriation of Rs.1,36,32,370/- which figure does not match with the alleged misappropriation/ misfeasance as indicated by the respondent no.14 in the dispute under section 83 of the Act or in the misfeasance proceedings under section 82 of the Act. Lastly it is submitted that the appellants had sought the copies of certain documents as set out in para 50 of the plaint, However, the appellants could not get the copies of the said documents, in as much as it was reported by the investigating officer, that the documents are sent for analysis to CFSL, Hyderabad and are yet to be received back. The learned counsel in this regard has placed reliance on a letter dated 19/4/2016 addressed by the P.I. Curchorem Police Station to the Chief Executive of the respondent no.14. He, therefore, submits that the learned District Judge ought to have directed furnishing of the documents and ought to have stayed the misfeasance/recovery proceedings.

10. On the contrary it is contended by the learned Additional Government Advocate as well as the learned counsel appearing for respondent no.12 and Respondent no.14 that the Civil Court lacked jurisdiction to entertain the suit

or to grant the reliefs as sought for. The learned counsel for the respondent no.14 pointed out that the appellants have conducted the cross examination of the sole witness examined by the respondent no.14 for a period of about one year. It is also submitted that the notarized copies of the documents have been supplied to the appellants.

11. Shri Joshi, the learned counsel for the appellants in rejoinder has disputed about the notarized copies of the documents being supplied. It is submitted that some of the documents pertain to respondent no.19 and could not have been in possession of the respondent no.14 and thus it cannot be accepted that the documents have been supplied.

12. I have carefully considered the circumstances and the submissions made and I do not find that any case for inference is made out. The first and the foremost question, is whether prima facie the civil court would be competent to entertain and grant the reliefs as sought for. It is only when the civil court would be competent to grant the relief that the merits of the claim can be prima facie examined at this stage. Sub section 4 of section 83 of the Act provides that save as otherwise provided under sub section 3 of section 86, no court shall have jurisdiction to entertain any suit or other proceedings in respect of any dispute referred to in sub section (1). It can thus be seen that

except a case falling under sub section 3 of section 86, the civil court would lack jurisdiction to entertain any suit, in respect of any dispute referred to under sub section 1 of section 83. Sub section 3 of section 86 which is relevant for the purpose reads thus:

Section 86 (3) Notwithstanding anything contained in section 83, the Registrar may, if he thinks fit, suspend proceedings in regard to any dispute, if the question at issue between a society and a claimant or between different claimants, is one involving complicated questions of law and fact, until the question has been tried by a regular suit instituted by one of the parties or by the society. If any such suit is not instituted within two months from the date of the Registrar's order suspending proceedings, the Registrar shall take action as is provided in sub section (1).

13. It can thus clearly be seen that it is only when the Registrar thinks it fit to suspend the proceedings, in regard to any dispute, where the question at issue between the society and the claimants or between the different claimants is one involving complicated questions of law and facts, that the civil suit would be maintainable . To put it otherwise, it is only when the registrar comes to the conclusion that it is necessary to suspend the proceedings as it involves complicated question of law and facts, that the suit would be maintainable. In the present case it is nobody's case that the Registrar has suspended the proceedings holding that there are complicated questions of law and fact involved in this case.

14. Section 126 of the Act provides for Bar of jurisdiction of Courts.

Under section 126 (1) (b) any dispute required to be referred to the Cooperative Society for decision, is outside the scope and jurisdiction of the civil court.

15. Coming to the case of the appellants about supply of copies of the documents as set out in para 50 of the plaint, the Civil Court would be competent to give such a direction, provided the civil court has jurisdiction to entertain the suit as filed and to grant the relief. Further more, there is a disputed question as to whether the notarized copies of the documents are supplied to the appellants or not. On one hand the learned counsel for the respondent no.14 submits that the copies have been furnished, the same is disputed by the learned counsel for the appellants. An attempt was made as to ascertain as to whether the documents have been received back from the CFSL, Hyderabad in as much as more than two years have elapsed after the letter dated 19/4/2016 was issued. Shri Joshi, the learned counsel for the appellants however, submitted that the documents are not yet received back. In any event, once it is prima facie found, that the civil court lacked jurisdiction to entertain and grant the relief as sought in the application, it is difficult to see as to how in an appeal challenging the order on the

application Exhibit 3 such reliefs can be granted.

16. It was submitted by Shri Joshi the learned counsel for the appellants that the Registrar could not have made over the reference to the Registrar's nominee without hearing the petitioners . Reliance in this regard is placed on the decision of the Supreme Court in the case of **Deccan Merchants Coop. Bank Ltd. Vs. Dalichand Jugraj Jain (1969) AIR SC 1320**. I am afraid the contention cannot be considered in this appeal particularly when the civil court would not be competent to examine or sit in appeal over the action of the Registrar of making over the reference to the Registrar's nominee by the letter dated 1/7/2014. Thus the merit of the said contention cannot be examined in an appeal arising out of the order passed by the civil court.

17. I have carefully gone through the impugned order passed by the learned District Judge and I do not find that any exception can be taken to the same.

18. The appeal is accordingly dismissed with no order as to costs. It would however be open for the appellants to apply before the Registrar/Registrar's nominee for obtaining the copies of the documents. If such an application is filed, the Registrar/Registrar's nominee decide the same in accordance with

law as expeditiously as possible.

C. V. BHADANG, J.

Ap/