

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

ARBITRATION PETITION NO.1219 OF 2013

Kiran D. Parmar ... Petitioner
Versus
The Punjab & Maharashtra Co-op.
Bank Ltd. ... Respondent

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Mr. Vishal Kanade a/w Ms. Achala Hatode i/b S.K. Jain & Associates for the
Petitioner.

Mr. Chirag Mody a/w Mr. Kuber Wagle i/b M/s Purnanand & Co. for the
Respondent.

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CORAM : S.C.GUPTE, J.

DATE : 20 DECEMBER 2018

P. C. :

. Heard learned Counsel for the parties.

2 This arbitration petition challenges an award passed by a Sole Arbitrator under Section 84 of the Multi-State Co-operative Societies Act, 2002. The Petitioner herein is claimed to be a guarantor of a loan given by the Respondent, who is a Multi-State Co-operative Bank, to a principal debtor who was arraigned as opponent No.1 in the arbitration reference through his legal heirs. The arbitral tribunal, in the first instance, by its award dated 29 June 2013, accepted the defence of legal heirs of original opponent No.1 (principal debtor) that the latter had died without leaving any estate. The learned arbitrator held that the Respondent bank could not prove that any part of the property of the original principal debtor came into hands of his legal heirs. As far as the Petitioner herein is concerned

(who was Opponent No.2 in the arbitration reference), the learned arbitrator held that he was a member of the Respondent bank. The award was challenged by the Petitioner herein before this court under Section 34 of the Arbitration and Conciliation Act, 1996 ("Act"). At the hearing of that petition, this court, by its order dated 24 July 2014, referred the matter back to the learned arbitrator under Section 34(4) of the Act to consider the issue of his membership after giving the Petitioner an opportunity to produce evidence to the contrary. The learned arbitrator was directed to first consider documentary evidence and then decide whether any oral evidence was required and to what extent, and thereafter, if necessary, after permitting the parties to lead such oral evidence, pass an award. At the hearing of the arbitration reference on remand under Section 34 (4) of the Act, the learned arbitrator, after allowing documentary and oral evidence to be led before him, entered a categorical finding that the Respondent bank had failed to prove that the Petitioner herein was its member. Yet, the learned arbitrator went on to hold that the reference was maintainable before the arbitral forum purportedly on the ground that under Section 84(1)(a) of the Multi-State Co-operative Societies Act, 2002, a dispute between the Multi-State Co-operative Bank and a surety of its member was maintainable since such surety claimed through a member, past member or deceased member.

3 There is absolutely no basis in law for such a conclusion. The surety, by no stretch of imagination, can be said to be a person claiming through the principal debtor as against the creditor. The arbitrator's finding is wholly arbitrary and capricious. It has absolutely no support either in law or authority and cannot be sustained.

4 Learned Counsel for the Respondent submits that liability of a surety is co-existence with that of the principal debtor. That is quite so. But because it is so, the surety cannot be termed as a person claiming through the principal debtor. Learned Counsel alternatively relies on the judgment of this court in the case of **Shetkari Sahakari Sangh Ltd Vs. Shahuwadi Taluka Shetkari Sahakari Kharedi Vikri Sangh**¹ to support his case on maintainability of the reference. That case was under Section 91 of the Maharashtra Co-operative Societies Act, which provides for disputes referable to a Co-operative Court. Apart from the nature of the disputes, the section requires fulfillment of one or other of the capacities or categories mentioned under clauses (a) to (e) of sub-section (1) on the part of the parties. One of the categories (clause-(b)) is a surety of a member or a past member or a deceased member or of a person other than a member with whom the society has had any transaction in respect of which any restriction has been prescribed under section 45, whether or not such surety or person is a member of the society. In **Shetkari Sahakari Sangh Ltd's** case, the surety was arraigned as a surety of a member. The observations made in that judgment are to be read in that light. They have absolutely no application to the facts of our case. Our case is under the Multi-State Co-operative Societies Act, 2002 and Section 84 thereof does not refer to any such category. Learned Counsel relies on Section 84(b). This clause makes a deeming provision in respect of a claim by a surety against the principal debtor, where a Multi-State Co-operative Society recovers from the surety any amount of debt due from its principal debtor. This provision has no applicability to a claim by a Multi-State Co-operative Society against the surety.

1 1998(3) Mh.L.J. Pg.648

5 In the premises, the award cannot be sustained. The Arbitration Petition is, accordingly, allowed by setting aside the award. In the circumstances of the case, there is no order as to costs.

6 It is made clear that the impugned award is set aside on the ground of want of jurisdiction on the part of the arbitral tribunal. The other contentions of the Petitioner concerning his capacity as an alleged surety are not considered.

(S.C. GUPTE, J.)