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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 2684 OF 2017

Shri. Babasaheb Mahadev Patil

.....Petitioner

V/s.

Divisional Joint Registrar Co-Op.
Societies Kolhapur and others

.....Respondents

Mr. Anilkumar K. Patil for the Petitioner

Mr. S. H. Kankal AGP for the State

Mr. Umesh R. Mankapure for respondent nos. 2 & 3

CORAM : NITIN W. SAMBRE, J.

DATE : JULY 16, 2019.

P.C.

Heard.

2 Order of recovery passed under Section 88 of The Maharashtra Co-operative Societies Act, 1960 ('the Act' for short) is subject matter of challenge in the petition. The petitioner raised two fold submissions; (a) that the petitioner has no authority to participate in the decision making process of the respondent-society. According to him, if the provisions of Sub-Section 20 of Section 2 of the Act are

appreciated, the petitioner at no point of time is involved in the matter of directions in regard to the business of the society and that being so, provisions of Section 88 of the Act ought not to have been invoked against the petitioner; (b) the second limb of submission is, recovery in exercise of powers under Section 88 of the Act is based on an allegation of misappropriation. According to him, no finding of fact are recorded by the Enquiry Officer so also Appellate Authority on the said issue as to mode and manner in which the petitioner has misappropriated the amount of the bank. The learned counsel has relied upon the Judgment of Single Judge of this Court at Nagpur Bench in the matter of **Shriram Dhonduji Raut Vs. Bahu Uddesiya Sahakari Sanstha, Virsi & Ors [2003 (4) ALL MR 1121]** so as to claim that even if the petitioner was incharge of branch, he cannot be held to be an officer within the meaning of Sub-Section 20 of Section 2 of the Act.

3 The learned AGP and the learned counsel appearing for respondent-bank support the order.

4 Having appreciated the submissions made, what is required to be noted is, it is not in dispute that the petitioner was working as Branch Manager of the respondent-bank for a period from 1991-1992 and 1997-1998. During said period, an audit was conducted for a period from 01/04/1991 to 14/10/1997. In an audit report dated 05/03/1998, misappropriation in the branch of which petitioner was head, was detected, as a consequence of which, notice under Section 83 of the Act came to be issued. An enquiry came to be conducted vide order dated 26/08/2003 pursuant to provisions of Rule 72 and section 88 of the Act based on aforesaid audit report.

5 In the aforesaid background, if the contentions of the petitioner are appreciated, what is noticed is, petitioner, undisputedly at the relevant time was working as Branch Manager (Head) with the respondent-bank. Sub-Section 20 of Section 2 of the Act reads thus:

“Section 2 (20) "officer" means a person elected or appointed by a society to any office or such society according to its by-laws; and includes a chairman, vice-chairman, president, vice-president, managing director, manager, secretary,

treasurer, member of the committee, and any other person elected or appointed under this Act, the rules or the by-laws, to give directions in regard to the business of such society”.

If the aforesaid definition of the term 'Officer' is appreciated, the same covers in its compass a person appointed by the society in office of such society according to bylaws. The petitioner was appointed by the society in accordance with its bylaws to carry out day to day functioning of the branch as its head. The petitioner has every authority to issue directions to its sub-ordinates working under him in the matter of administration of the branch of the respondent-Co-operative Society in the matter of carrying out business of such society.

6 The fact remains that the transaction in the branch of which the petitioner was head, were carried out in the supervision and under the direction of the petitioner and that being so, he may be termed as Officer of the bank within the meaning of Sub-Section 20 of Section 2 of the act. In the aforesaid background, reliance placed by the learned counsel for the petitioner on the Judgment of this

Court in the matter of **Shriram Dhonduji Raut** [cited supra] will be of hardly any assistance. In the said Judgment, this Court has observed that employee/officer in the said petition was not authorised to give any direction in regard to the business of such society. However, in the case in hand, it can be noticed that the petitioner being employee appointed by the society was having every authority to issue direction to its sub-ordinate staff of the branch to carry out its functioning in accordance with bylaws of the society. That being so, the contention of the petitioner that provisions of Section 88 ought not to have been invoked against the petitioner are liable to be rejected.

7 So far as the second limb of submission of the learned counsel for the petitioner is concerned, the fact remains that the audit report pursuant to provisions of Section 83 of the Act is formed to be basis for ordering enquiry under Section 88 of the Act. Such audit in categorical terms pinpoints the involvement and the misappropriation of the amount in the branch of which the petitioner was head. As such, proceedings taken out against the

petitioner for alleged misappropriation as are noticed in the audit report are rightly formed to be basis.

8 Once the audit report and the notice was served on the petitioner *qua* provisions of Section 88 of the Act, the burden is on the petitioner to demonstrate that he cannot be held responsible for ordering recovery under Section 88 of the Act.

9 In the case in hand, Authorities below have already recorded concurrent findings of fact against the petitioner on the said issue. In that view of the matter, no case for interference is made out. Petition fails, dismissed.

[NITIN W. SAMBRE, J.]