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IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 1565 OF 2019**

Dilip Pandurang Thopate

.....Petitioner

V/s.

Ashokrao V. Thopate and others

.....Respondents

Mr. A. Y. Sakhare Senior Advocate i/b Mr. Shriniwas Patwardhan
a/w Bhooshan R. Mandlik for the petitioner

Mr. Y. S. Jahagirdar, Senior Advocate i/b Shailendra Kantekar for
respondent no. 1

Mr. Shekhar Jagtap a/w Mr. Saurabh Chhabaria a/w Sairuchita
Chaudhary i/b J. Shekhar & Co. for respondent no. 2

CORAM : NITIN W. SAMBRE, J.**DATE : JUNE 7 2019.****P.C.**

The petitioner is a Member of Jananidevi Sahakari Doodh Utpadak Sanstha Maryadit, Karandi, Taluka Bhore, Dist: Pune which is a member of the Pune Zilla Sahakari Doodh Sangh Maryadit, Katraj, has preferred this petition questioning the Judgment delivered by Co-operative Appellate Court in Appeal No. 22 of 2018

whereby the election of the petitioner to the board of director came to be set aside with direction that the respondent be declared as elected.

2 The fact remains that the dispute preferred by respondent before the Co-operative Court, being Dispute No. 59 of 2015 came to be rejected vide Judgment dated 01/02/2018.

3 During the pendency of the dispute before the Co-operative Court, the respondent has produced documents alongwith list which is marked as Exhibit 117 on 25/01/2018. On the aforesaid date, it is not in dispute that the dispute in question was already closed for judgment. As such, Co-operative Court dismissed the disputes rightly without considering these documents.

4 Same documents came to be produced by present respondent before Co-operative Appellate Court during hearing of the appeal and the learned Appellate Court has allowed the dispute thereby setting aside the election of the petitioner based on reasons which are borne

out of these documents.

5 This Court has heard respective counsel at length on the issue as to whether in absence of oral evidence, whether the Appellate Court was right in considering the documents, which have been received in evidence by the Appellate Court.

6 In response to the Court's query, the learned senior counsel Mr. Jahagirdar on instructions has agreed to appear before the Co-operative Court which has dismissed the dispute so as to lead evidence in support of the said document i.e. which are produced at Exhibit 117 by setting aside both judgments i.e. one passed by the Co-operative Court and reversed by the Appellate Court. In the aforesaid background, petition is partly allowed. Both Judgments viz. Judgment delivered in Dispute No. 59 of 2015 by the Co-operative Court, Pune on 01/02/2018 and Judgment dated 10/01/2019 delivered by Co-operative Appellate Court in Appeal No. 22 of 2018 are hereby set aside.

7 The parties agreed that they shall appear before the Co-operative Court in the aforesaid Dispute on 24/06/2019. The Co-operative Court is directed to resume the proceedings in the Dispute from the stage of recording of oral evidence and shall permit the parties to lead oral evidence in the matter of the documents which are produced vide list of documents Exhibit 117 and such other evidence as is permissible in law.

8 This Court expects the Co-operative Court to decide the Dispute expeditiously and in any case by 30/09/2019. Needless to clarify that this Court has not examined the merits.

[NITIN W. SAMBRE, J.]