

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

WRIT PETITION NO. 12155 OF 2019

The Nashik Merchant Cooperative
Bank Limited

.... Petitioner

Versus

The State of Maharashtra & Another

.... Respondents

.....

Ms. Kalyani Talankar a/w Mr. Adesh Agarkar and Mr. Rahul Jotala i/b Mr. Ashish Agarkar for petitioner.
N.C. Walimbe, AGP for Respondent No.1.

CORAM : UJJAL BHUYAN, J.

DATE : 10th DECEMBER, 2019

P.C.

Heard Ms. Kalyani Talankar, learned counsel for the petitioner and Mr. Walimbe, learned AGP for respondent No.1.

2. By filing this petition under article 227 of the Constitution of India, petitioner has assailed the legality and correctness of the order dated 30.06.2017 passed by the Commissioner for Cooperation & Registrar, Cooperative Societies, Maharashtra State, Pune as well as order dated 14.09.2019 passed by the learned Arbitrator below Exh.4 and 8 in Arbitration Proceeding No.01/2019.

3. By the first order dated 30.06.2017, the Commissioner and Registrar appointed Mr. Rajendra Brijmohan Agrawal, retired

District Judge as Arbitrator to adjudicate the counter-claim of the applicant i.e. respondent No.2 against the petitioner as per Section 84(4) of the Multi State Cooperative Societies Act, 2002. The order clarified that learned Arbitrator would settle the dispute as per the provisions of the Arbitration and Conciliation Act, 1996 read with Section 84(4) of the aforesaid Act.

4. As per the second order dated 14.09.2019, the learned Arbitrator has rejected the application filed by the petitioner challenging his jurisdiction. Relevant portion of the order dated 14.09.2019 is extracted herein -

“5) I have given my conscious thoughts to all the submissions, Commissioner’s Order is respect of deciding the counter claim. As the Claimant used the word in the application for appointment of arbitrator for counter claim, the Commissioner had passed the Order of appointment for deciding the counter claim. The nomenclature to any dispute is not important. It is a matter of record that in earlier award there were no counter claim. It is also settled position of law as per Code of Civil Procedure as well as Section 23(2A) of Arbitration and Reconciliation Act that Counter Claim must be filed in a claim at the time of appearance by the party in the Claim Petition. However, as the earlier claim was decided and there is no Counter claim, it cannot be said that due to using of word Counter claim, the present proceeding is not maintainable before Arbitrator. There is no dispute about the legal propositions in respect of counter claim as held in AIR 2003 Supreme Court 2508

Kashi Biswanath Deb Vs Paramananda Routrai and AIR 1985 Orissa 260 Ramesh Chand Ardawatiya Vs. Anil Panjawani. As I am of the view that nomenclature to dispute is not material, therefore these citations are well as provisions of section 23(2A) are not applicable to the present proceeding.

6) Now as regards to passing of Order by the Hon'ble NCLT is concerned, no doubt there is appointment of interim resolution professional (IRP). However, the said Order was passed by the NCLT on 1st May 2019. However, the Petitioner had given application for appointment of Arbitrator in respect of the present dispute on 26.04.2019 means prior to five days of passing NCLT Order. So this ground of the Respondent did not hold water. Delay in passing the Order by the Commissioner for appointment of Arbitrator is not a fault of Petitioner. So appointment of IRP on 1.5.2019 will not give rise for termination of present proceeding.

7) In view of the above facts, counter claim word is not important and appointment of IRP is after application given by the Petitioner and therefore I hold that the Arbitrator has authority and power to adjudicate dispute between these parties and I hold that I have jurisdiction to entertain it.

Accordingly I pass the following order :

ORDER

Applications Exh.4 and 8 are rejected.

Respondent shall pay cost of Rs.5000/- to the Petitioner."

5. On thorough consideration of the matter, Court is not inclined to entertain the Writ Petition for more than one reason.

(i) Firstly, when the petitioner had approached this Court earlier in Writ Petition No.7672/2019, this Court was clearly not inclined to entertain the challenge made by the petitioner. However, it was observed that the challenge to jurisdiction could be taken up as a preliminary objection on the next date of hearing by the learned Arbitrator. Consequently, the said objection was heard and accordingly decided.

(ii) Secondly, the order passed by the learned Arbitrator is reasoned one and does not suffer any infirmity to warrant interference at this interlocutory stage.

(iv) Lastly and most importantly, in view of the statutory remedies available to the petitioner under the Arbitration and Conciliation Act, 1996, no interference in the Arbitration Proceeding No.01/2019 under Article 227 of the Constitution of India is warranted.

6. Accordingly, interference sought for is declined. The Writ Petition is dismissed.

(UJJAL BHUYAN, J.)