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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 3150 OF 2014

Kisan Veer Satara
Co-operative Sugar Factory Ltd. & Anr. ... Petitioners
Vs.
M/s. Jalsinchan Suppliers & Anr. ... Respondents

Mr. Ajit Kenjale, for the Petitioners.
Mr. Sameer S. Kadam i/b Ravi Kadam, for Respondent No. 2.
Mr. V. B. Rajure, for Respondent No. 4.

CORAM : C. V. BHADANG, J.

RESERVE FOR JUDGMENT ON : JANUARY 9, 2020

JUDGMENT PRONOUNCED ON : JANUARY 15, 2020

JUDGMENT

1. Heard. Rule. Rule is made returnable forthwith. Learned Mr. Sameer S. Kadam waives notice for Respondent No. 2, and learned counsel Mr. V. B. Rajure waives notice for Respondent No. 4. By consent of parties, petition is taken up for final hearing.

2. The challenge in this petition is to the judgment and order dated 13th January 2014 passed by the Cooperative Appellate Court at Mumbai bench at Pune in Appeal No 39/2012. By the impugned judgment the appellate court has confirmed the order dated 28.8.2012 (Belaow Ex 18) passed by the Cooperative Court at Pune in Dispute No

460/1993. By the said order the cooperative court has held that the dispute filed by the petitioners is not maintainable under section 91 of the Maharashtra Cooperative Societies Act, 1960 (for short “Act”).

3. The facts necessary for the disposal of the petition may be stated thus

3.1 The first petitioner is a co-operative sugar factory while the second petitioner is a lift irrigation society formed to provide lift irrigation facility to its members. The second Petitioner is working within the jurisdiction of the first petitioner. The second Petitioner had decided to implement a irrigation scheme for its members for which the first Petitioner had provided financial and technical support. The said scheme was funded by National Bank for Agriculture and Rural Development (for short “NABARD”).

3.2 The first Respondent is an agent and supplier of irrigation equipment. The first Respondent is a nominal member of the first Petitioner. The implementation of the irrigation scheme was tendered and was entrusted to the first respondent. Accordingly an agreement was executed between the parties on 24th January 1991. As per the terms agreed, the work was to be completed by 17th October 1991. The first Respondent had furnished a bank guarantee of the second Respondent for

the said work. Incidentally, both the Petitioners and the second respondent are constituted and governed by the provisions of the said Act.

3.3 As per the terms and conditions, the first Petitioner had paid an advance of Rs. 2,55,027/- to the first Respondent. However the first Respondent failed to execute the work. The first Petitioner therefore wrote to the second Respondent invoking the bank guarantee. The second Respondent also failed to honour the guarantee and to deposit the amount. This led the Petitioners to file the aforesaid dispute against the Respondents before the cooperative court under section 91 of the said Act for recovery of Rs 6,76,947/- alongwith interest. It comprises of the recovery of the advance along with penalty etc. It was contended that the first Respondent is a nominal member of the first Petitioner and the second Respondent is a bank governed by the said Act. It was further contended that the dispute is touching the business and management of the Petitioners and as such is maintainable under section 91 of the said Act.

3.4 The Respondents resisted the claim *inter alia* on the ground that the first Respondent was not a member of the first Petitioner. It was contended that the agreement was executed in the capacity as a contractor and not a member. It was contended that the tenders were invited for the

said work from the public at large and it was not restricted to members of the first Petitioner alone. Therefore, the dispute is not maintainable under Section 91 of the said Act, as essentially the petitioners were seeking specific performance of the agreement entrusting the execution of the scheme to the first Respondent.

3.5 The cooperative Court framed issues including Issue No 2 as to whether the court has jurisdiction to try and decide the dispute under Section 91 of the said Act. The said issue was taken up as a preliminary issue. The Co-operative Court by an order dated 28th August, 2012 while upholding the objection has held that the court had no jurisdiction to try the said dispute which order is confirmed by the Co-operative Appellate Court by the impugned judgment.

4. I have heard the learned counsel for the parties. Perused record.

5. It is submitted by the learned counsel for the Petitioners that the courts below failed to see that the first Respondent had become a member of the first Petitioner on 31st March 1992 and thus, on the date of filing of the dispute i.e. on 11th October 1993, the first respondent was very much a member of the first Petitioner. It is submitted that the relevant date is the date of filing of the dispute and not the date on which

the contract is entered into as has been held by the courts below. Reliance in this regard is placed on the decision of this court in the case of (i) ***Ramgauri Keshvlal Virani Vs. Walkeshwar Triveni Co-operative Housing Society Ltd. And Ors.***¹ (ii) ***S. B. Traders and Ors. Vs. Sant Eknath Sahakari Sakhar Karkhana Ltd. & Ors.***² and (iii) ***Chairman /Secretary, Shri Shrinath Panipuravatha Sahakari Sanstha Vs. Nitin Agro Engineers & Anr.***³ It is submitted that the reliance placed by the cooperative court on section 45 of the Act is also misplaced.

6. The learned counsel for the Respondents have supported the impugned judgment. It is submitted that, admittedly, the tender was open to general public and was not restricted to the members or employees of the first Petitioner. It is submitted that the offer of the first Respondent was accepted and an agreement was executed by the first Respondent in his capacity as a contractor and not as a member of the first Petitioner. It is submitted that the courts below have rightly come to the conclusion that in the absence of any evidence that as on the date of execution of the agreement / contract, the first Respondent was member of the first Petitioner, the dispute was not maintainable under Section 91 of the said Act. On behalf of the Respondents reliance is placed on the decision of the supreme court in the case of ***Marine Times Publications***

1 1999(3) Mh.L.J. 145

2 2017 (4) Bom. C.R. 453

3 2004 (5) Bom. C. R. 728

Pvt Ltd. Vs. Shriram Transport and Finance Co. Ltd. & Anr.⁴ It is submitted that courts below have also noticed that no permission was sought or produced to enter into a contract with a non member, as required by Section 45 of the said Act.

7. I have considered the circumstances and the submissions made. The Co-operative Court has held that it has no jurisdiction to entertain the dispute under S. 91 of the Act, basically for two reasons. Firstly, that as on the date of the agreement i.e. 17th January, 1991, the first Respondent was not a member of the first Petitioner/ Thus, in the opinion of the Co-operative Court, the relevant date for ascertaining whether the person against whom the dispute filed is a member or not is on the date of the agreement. Secondly, the Co-operative Court has found that no permission has been produced for entering into a contract with a non-member, as required by S. 45 of the said Act.

8. Insofar as first ground is concerned, it may not detain me long, as it is covered by the decisions of this Court. It has been consistently held that the relevant date is when the dispute is filed, and not the date of the agreement. In case of ***Ramgauri*** (*supra*), the flat was purchased in the year 1996 and the purchaser became member of the Co-operative Society in the year 1968 and continued to be so in the year

1973 when the dispute came to be filed in respect of terrace of the building in which the flat was situated. This Court held that the dispute was maintainable. In the case of ***Chairman/Secretary, Shri Shrinath Panipurvatha Sahakari Sanstha*** (*supra*) also the agreement was initially entered between the Co-operative Society and the contractor, which was followed by a tripartite agreement between the bank, the Society and the contractor, wherein it was agreed that all payments made by the bank to the contractor, shall be deemed to be payments to the Co-operative Society which the Society was liable to repay together with interest. The dispute was filed by the contractor against the Society and the bank. This Court held that the dispute was maintainable. Even in that case, the specific defence was that the dispute was not maintainable, as the disputant / contractor, was not a member of the society, at the time of the alleged agreement, which was negated on facts.

9. The reliance placed on the decision of the Supreme Court in the case of ***Marine Times Publications Pvt. Ltd.*** (*supra*) is misplaced. In that case, a company incorporated under the Indian Companies Act was a member of the Co-operative Society and had its office in a building owned by the said Co-operative Society. An agreement to sell was entered into by the said company with a non-member, subject to approval of the Co-operative Society concerned. The company which was a

member of the Society, later informed the non-member, that the Society had declined permission for transfer unless the premises were first offered to the existing members of the Society by way of first preference. The non-member thereafter filed a dispute before the Co-operative Court against the company / member as also the society *inter alia* seeking direction to the Society alongwith the member concerned to specifically perform the agreement. It was in these circumstances, held that the agreement having been entered into with a non-member, the dispute was not maintainable.

10. Coming to the present case, according to the Petitioners, the first Respondent became a member on 31st March, 1992 and thus, was indeed a member of the first Petitioner on the date on which the dispute was filed i.e. 5th May, 1993. I would hasten to add that even assuming that there is some dispute as to whether the first Respondent became member of the first Petitioner on 31st March, 1992 it will have to be decided during the course of the trial of the dispute and not as a preliminary issue.

11. The decision in case of ***Chairman/Secretary, Shri Shrinath Panipurvatha Sahakari Sanstha*** (*supra*) was cited before the Co-operative appellate court. The Co-operative Court in para 12 of the impugned judgment, has observed that “even though the parties to the

dispute are covered in view of judgment of this Court in case of *Srinath*, the agreement itself is not qua membership right of the first Respondent”. The reasoning in my considered view cannot be accepted. This is because there are only two requirements to be satisfied before a dispute can be held to be maintainable under Section 91 of the said Act. First is that the parties should fall in one or the other categories, as mentioned in S. 91(1) (a) to (e) ; and secondly, that the dispute is touching the business and management of the Society. As held by this Court in the case of ***Ramgauri (supra)***, relevant date for reckoning as to whether the person against whom the dispute is filed is a member or not, is the date of filing of the dispute. It can also be seen that the dispute in the present case is touching the business of the Petitioner’s Society. In that view of the matter, the impugned judgment and order, accordingly, cannot be sustained. The writ petition is allowed. The impugned judgment and order is hereby set aside accordingly. The Dispute Application No. 460 of 1993 is hereby restored to the file of the Co-operative Court at Satara for disposal according to law. Rule is made absolute in the aforesaid terms with no order as to costs.

Sd/-
C. V. BHADANG, J.

Vinayak Halemath