

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

WRIT PETITION NO.2498 OF 2006

Parashuram Maruti Khankar	..Petitioner
V/s.	
Ahmednagar Sahakari Bank & Ors.	..Respondents

.....

Mr. P. M. Khankar, Petitioner in person.
Mr. A. P. Vanarse, AGP for the Respondent No.17/State.

**CORAM : C.V. BHADANG, J.
DATE : 02nd JANUARY 2020**

ORAL JUDGMENT:

1. The challenge in this petition is to the judgment and order dated 18/2/2006 passed by the Co-Operative Appellate Court, Mumbai in RA No.75/2004 by which the Co-Operative Appellate Court has confirmed the order dated 4/11/2004 passed by the Co-Operative Court, Mumbai in Case No.CC/III/1303/1992, refusing to uphold the preliminary objection of the petitioner to the maintainability of the dispute filed by the first respondent Ahmednagar Sahakari Bank Ltd.

2. The brief facts are that the first respondent is a Co-Operative Bank while the second respondent is a Society registered under the Maharashtra Co-Operative Societies Act ('Act' for short). Incidentally, the first respondent is also governed by the said Act. The petitioner claims to be the Director of the second respondent society.

3. It appears that the second respondent had obtained a loan of Rs.2 Lakhs from the first respondent Bank for 'bill discounting facility'. The loan was disbursed on 29/11/1983. As the repayment of the loan was not made as per the schedule, the first respondent filed a dispute under Section 91 of the Act against the second respondent and its Directors for recovery of amount of Rs.2,76,244.75. It appears that the petitioner raised a preliminary objection to the maintainability of the dispute on two grounds. First is that the dispute as framed and filed under Section 91 of the Act, was not maintainable in as much as the second respondent society was not a member of the first respondent. Secondly, it was contended that the loan having been disbursed on 29/11/1983 the dispute filed on 15/12/1992 was barred by limitation.

4. The Co-Operative Court by an order dated 4/11/2004 refused to uphold the preliminary objection, holding that the Co-Operative Court has jurisdiction and the dispute was filed within time.

5. Feeling aggrieved, the petitioner challenged the same before the Co-Operative Appellate Court in RA No.75/2004 which was dismissed on 6/10/2005 upholding the finding that the Co-Operative Court has jurisdiction. It however appears that the Co-Operative Appellate Court did not advert to the issue of limitation. Be that as it may, the petitioner feeling aggrieved, approached this Court in Writ Petition No.8080/2005. This Court disposed of the said petition on 30/11/2005 directing the Co-Operative Appellate Court to determine the issue of limitation considering the provisions of Section 91 and 92 of the Act and all other relevant provisions, as may be permissible in law. It is necessary to note that while

remanding the matter on the point of limitation, this Court clarified that the impugned order in so far as the jurisdictional aspect is concerned is upheld. In other words, the finding recorded by the Co-Operative Court and the Co-Operative Appellate Court on the point of jurisdiction has been upheld and has attained finality. After the order of remand the Co-Operative Appellate Court by a judgment and order dated 18/2/2006, has held that the dispute was filed within limitation. Feeling aggrieved, the present petition is filed.

6. I have heard Mr. Khankar, the petitioner in person and learned Assistant Government Pleader for respondent No.17 / State. None appears for the second respondent. By an order dated 11/9/2009 the petition has been dismissed as against respondent Nos.3 to 16.

7. Mr. Khankar, the petitioner in person, has submitted that the matter has to limitation would be governed by Section 92(2) of the Act and not Section 92(1)(b) of the Act as has been held by the Co-Operative Appellate Court. It is submitted that the second respondent society is not a member of the first respondent Bank. It is submitted that in such circumstances, the period of limitation would be governed by sub-Section (2) of Section 92 which provides that the ordinary period of limitation before the Civil Court which is three years would apply. He therefore submits that the dispute having been filed on 15/12/1992, when the loan was disbursed on 29/11/1983 is clearly barred by limitation.

8. The learned AGP supports the impugned order.

9. I have considered the circumstances and the submissions made. The Co-Operative Appellate Court has found that the first respondent had resolved on 23/11/1983 that the society should enroll itself as a nominal member for obtaining bill discounting facility. In the opinion of the Co-Operative Court this shows that the members of the second respondent society had applied to the first respondent, for becoming nominal member, for obtaining loan for bill discounting facility. The Co-Operative Appellate Court has found that the second respondent thus having obtained the loan of Rs.2 Lakhs, cannot now turned around and say that the society is not a member. It further appears that the Co-Operative Appellate Court has placed reliance on the proviso to sub-Section 2 of Section 44 which says that with the special sanction of the Registrar, a society may make loans to another society. It has been found that the loan was sanctioned to the second respondent as per the sanction obtained from the Registrar and thus the matter would be governed by Section 44 of the Act.

10. As noticed above, the question of jurisdiction has attained finality. The only question is whether the dispute was filed within the period of limitation. The Co-Operative Appellate Court has found that the limitation would be six years while according to the petitioner the matter would be governed by section 92(2).

11. In order to appreciate the contentions, it is necessary to reproduce section 92 as under.

Section 92 – Limitation

(1) Notwithstanding anything in (the Limitation Act, 1963), but subject to the specific provisions made

in this Act, the period of limitation in the case of a dispute referred to (the Co-Operative Court) under the last preceding section shall -

(a) when the dispute relates to the recovery of any sum, including interest thereon, due to a society by a member thereof be computed from the date on which such member dies or ceases to be a member of the society ;

(b) when the dispute is between a society or its committee, and any past committee, any past or present officer, or past or present agent, or past or present servant or the nominee, heir or legal representative of a deceased officer, deceased agent or deceased servant of the society, or a member, or past member, or the nominee, heir or legal representative of a deceased member and when the dispute relates to any act or omission on the part of either party to the dispute, be six years from the date on which the act or omission with reference to which the dispute arose, took place ;

(c) when the dispute is in respect of any matter touching the constitution, management or business of a society which has been ordered to be wound up under Section 102, or in respect of which a nominated committee (or an administrator) or committee or authorised person has been appointed under sections 77A, 78 or 78A, be six years from the

date of the order issued under section 77A, 78 or 78A or, under section 102, as the case may be;

(d) when the dispute is in respect of an election of (a committee or officers) of the society, be (two months) from the date of the declaration of the result of the election.

(2) The period of limitation in the case of any other dispute except those mentioned in the forgoing sub-section which are required to be referred to (the Co-operative Court) under the last preceding section shall be regulated by the provisions of (the Limitation Act, 1963), as if the dispute were a suit and (the Co-operative Court) a Civil Court.

(3) Notwithstanding anything contained in sub sections (1) and (2), (the Co-operative Court) may admit a dispute after the expiry of the limitation period if the Applicant satisfied (the Co-operative Court) that he had sufficient cause for not referring the dispute within such period and the dispute so admitted shall be a dispute which shall not be barred on the ground that the period of limitation had expired.

12. According to the petitioner, the period of limitation in the case of any other dispute except those mentioned in sub-section 1, are required to be referred to the Co-Operative Court and should be

regulated by the provisions of the Limitation Act, as if the dispute was a suit and the Co-operative Court, a Civil Court. On behalf of the petitioner, reliance is placed on the decision of this Court in the case of **Malegaon Taluka Big Bagayatdar Co-Operative Credit Association Vs. Bharat Co-Operative Joint Farming Society Limited, 1993(3) Mh.L.J. 525** in which dispute was raised by society against another society for recovery of amount of Rs.50,000/- and odd. In that case admittedly, the society against which the dispute was raised was not a member of the society raising the dispute. Although it was contended by the petitioner that in the present case also it is admitted that the second respondent was not a member of the first respondent, a perusal of the para 7 of the impugned order which records the contention on behalf of the first respondent, it is clear that it was specifically denied that the second respondent was not a member of the first respondent. In my considered view, the decision in the case of **Malegaon Taluka Big Bagayatdar Co-Operative Credit Association** (supra) would be distinguishable on the ground that there it was an admitted position that the society against whom dispute was filed, was not a member of the disputant society.

13. Even assuming that the matter is governed by sub section (2) of section 92 and the ordinary law of limitation is applicable, it is now well settled that the issue of limitation is always a mixed question of law and fact and normally cannot be decided by way of a preliminary objection. It is significant to note that the dispute is filed in the year 1992, is still pending on a preliminary objection. Prima facie, it appears that a Co-Operative Appellate Court has found that there was a specific resolution of the first respondent

dated 23/11/1983 that the second respondent shall enroll itself as a nominal member for obtaining bill discounting facility.

14. The question whether the second respondent has in fact enroll itself as a member of the first respondent is a question of fact. Furthermore, even assuming that the ordinary law of limitation would apply. The question whether the dispute is filed within limitation would depend upon several factors such as acknowledgment in writing if any and/or repayment which are all question of facts which can be gone into while deciding the dispute in question. Subject to this, no case for interference is made out. The petition is accordingly dismissed with no order as to costs.

C.V. BHADANG, J.