IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Writ Petition No. 5358 of 2016
(The Amravati District Central Co-operative Bank Ltd., Amravati Vs. Amravati Zilla Patbandhare Karmachari Sahakari Pat Sanstha Ltd.)
WITH
Writ Petition No. 5464 of 2016
(Amravati Zilla Patbandhare Karmachari Sahakari Pat Sanstha Ltd. Vs. The Amravati District Central Co-operative Bank Ltd., Amravati)

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

WP No.5358/2016
Mr. J.B. Kasat, Advocate for the petitioner
Mr. A.D. Babrekar, Advocate for the respondent
WP No.5464/2016
Mr. A.D. Babrekar, Advocate for the petitioner
Mr. J. B. Kasat, Advocate for the respondent

CORAM : MANISH PITALE, J.

DATED : FEBRUARY 18, 2020

The rival parties in these writ petitions have raised challenge to judgment and order dated 08/03/2016, passed by the Maharashtra State Co-operative Appellate Court. The Amravati District Central Co-operative Bank Ltd. (hereinafter referred to as the Bank) has challenged the said impugned order as the appeal filed by it against judgment and order dated 01/12/2015, passed by the Co-operative Court, Amravati, was only partly allowed, whereby direction of the Co-operative Court to the said bank to pay amount of Rs.10,00,900/- to the Amravati Zilla Patbandhare Karmachai Sahakari Pat Sanstha (hereinafter referred to as Pat Sanstha) was upheld, but, the interest was reduced from 12% to 6%, till realization of the entire amount. The said Pat Sanstha has also challenged the said impugned order to the extent that it has reduced the rate of interest from 12% to 6%.

2. The aforesaid Bank and the Pat Sanstha are both registered Co-operative Societies under the provisions of the Maharashtra Co-operative Societies Act, 1960. The Pat Sanstha is a member of the said Bank, having share in the capital of the Bank. The said Pat Sanstha is in the business of advancing loan to its members and for that purpose it used to take loans from the aforesaid Bank.

3. It was the case of the Pat Sanstha that since it had repaid the entire outstanding loan of the Bank in the year 2000 and no dues certificate dated 14/12/2000, was also issued to the Pat Sanstha, a resolution dated 27/12/2000, was passed by the Pat Sanstha to request the Bank for cessation of its membership and refund of its share capital. A letter dated 02/01/2001, was sent by the Pat Sanstha to the Bank regarding the same. But, no further action was taken by the Bank in that regard.

4. Thereafter, the Pat Sanstha once again passed a resolution on 14/06/2007, and a letter was issued to the Bank in that regard. On 30/07/2007, the

Bank sent a reply stating that since it had suffered losses, it was unable to refund the share amount of the Pat Sanstha. Thereafter, the Pat Sanstha issued a legal notice on 26/06/2008, to the Bank and eventually, the Pat Sanstha was constrained to file a Dispute before the Co-operative Court under Section 91 of the aforesaid Act, praying for refund of the share amount of Rs.10,00,900/- along with interest @18% per annum from 02/01/2001.

5. The Bank denied the claim of the Pat Sanstha and the Pat Sanstha led evidence by examining one witness, while the Bank did not examine any witness. On 01/12/2015, the Co-operative Court partly allowed the Dispute in favour of the Pat Sanstha, directing the Bank to refund the aforesaid amount with interest at the rate of 12% per annum from 01/01/2002. The Co-operative Court held that when the Pat Sanstha had communicated its request for cessation of membership to the Bank, in the absence of express acceptance of the same, with passage of time, it was deemed to have been accepted, thereby justifying the direction of refund of amount with interest @12% per annum.

6. Aggrieved by the said judgment and order of the Co-operative Court, the Bank filed an appeal before the Co-operative Appellate Court. By judgment and order dated 08/03/2016, the Co-operative

Appellate Court only partly allowed the appeal. While upholding direction of refund of amount to the Pat Sanstha, the Co-operative Appellate Court reduced the rate of interest from 12% to 6% per annum. As noted above, both the rival parties have filed writ petitions in this Court, challenging the said judgment and order passed by the Co-operative Appellate Court.

7. Mr. J.B. Kasat, learned counsel appearing for the Bank submitted that cessation of membership of the Pat Sanstha could take place as per the procedure prescribed in Section 25 of the said Act and the same ought to be read with Rule 23 of the Maharashtra Co-operative Societies Rules, 1961. It was submitted that when the intention of the Pat Sanstha regarding cessation of membership and the letters sent by it to the Bank were never accepted, there was no question of refund of share amount, which could be calculated in terms of Rule 23 of the aforesaid Rules, pertaining to valuation of shares. It was further submitted that even in the Dispute filed before the Co-operative Court under Section 91 of the said Act by the Pat Sanstha, there was no specific prayer made with regard to cessation of membership. It was further submitted that the witness on behalf of the Pat Sanstha had conceded in evidence that the Pat Sanstha continued to be member of the Bank and that, therefore, there was no question of refund of share amount. On this basis, it was submitted that the impugned judgments and

orders passed by the Co-operative Court and Co-operative Appellate Court deserved to be set aside.

8. On the other hand, Mr. A.D. Babrekar, learned Advocate appearing for the Pat Sanstha submitted that the specific prayer made in the Dispute before the Co-operative Court regarding refund of share amount with interest, implicitly sought cessation of membership. It was submitted that the interpretation regarding resignation of membership or letter for cessation of membership as canvassed on behalf of the Bank would lead to arbitrary power in the hands of the bank to deny cessation of membership, even though clear intention of a member like the Pat Sanstha herein was evident from the material on record. It was further submitted that in this backdrop, no specific declaration was necessary regarding cessation of membership of the Pat Sanstha under Section 25 of the aforesaid Act. On the question of interest, it was submitted that the Co-operative Appellate Court committed an error in reducing the interest from 12% to 6% per annum. Attention of this Court was invited to Section 34 of the Code of Civil Procedure, in order to claim that the order of the Co-operative Court pertaining to grant of interest @12% per annum was required to be restored.

9. Heard learned counsel for rival parties and perused material on record. Section 25 of the aforesaid

Act reads as follows :

> "**25. Cessation of membership.**
>
> A person shall cease to be a member of a society on his resignation from the membership thereof being accepted, or on the transfer of the whole of his share or interest in the society to another member, or on his death, or removal or expulsion [from the society, or where a firm, company, any other corporate body, society or trust is a member, on its dissolution or ceasing to exist]."

10. A perusal of the above provision would show that the member of a Society shall cease to be a member upon resignation from membership and the same being accepted, among other contingencies. In the present case, it is undisputed that the Pat Sanstha had resolved in the years 2001 and 2007, regarding cessation of membership of the Bank and in pursuance thereof specific communications were addressed to the Bank. In the year 2007, the Bank had shown its inability to refund share amount as it was facing losses asking for consequent refund of share amount with interest. In the year 2008, the Pat Sanstha was constrained to send legal notice and ultimately, it had instituted a Dispute in December 2010, against the Bank. A perusal of the Dispute instituted by the Pat Sanstha before the Co-operative Court shows that a prayer was made for refund of the share amount along with interest @18% per annum. There was no specific prayer for declaration that the Pat Sanstha had ceased to be a member of the Bank and there was no direction

sought against the Bank or acceptance of communication sent on behalf of the Pat Sanstha showing its intention of cessation of membership.

11. A perusal of the judgment and order of the Co-operative Court shows that the said Court proceeded on the basis that it had to be deemed that the Bank had accepted the communications sent on behalf of the Pat Sanstha and on that basis it was held that cessation of membership had taken place under Section 25 of the said Act, leading to consequent direction of refund of the share amount with interest @12% per annum. As noted above, the Co-operative Appellate Court did not interfere with the findings of the Co-operative Court, but, it reduced the rate of interest from 18% per annum to 6% per annum.

12. The introduction of the concept of the deemed acceptance under the provisions of the aforesaid Act, particularly Section 25 thereof by the Co-operative Court does not appear to be sustainable. But, at the same time, there is substance in the contention raised on behalf of the Pat Sanstha that if the arguments raised on behalf of the Bank were to be accepted, it would lead to unbridled discretion in the hands of the Bank to accept or not to accept resignation / communications showing intention of cessation of membership by a member of a Bank, like the Pat Sanstha in the present case. If the arguments

of the Bank were to be accepted the member of the Society would be at the mercy of the Society for the cessation of membership, which cannot be accepted.

13. At the same time, it is also a fact that the Pat Sanstha proceeded in accordance with law to raise a Dispute regarding approach of the Bank, only in December 2010, by filing Dispute under Section 91 of the said Act before the Co-operative Court. This would show that the approach of the Bank was called into question for the first time in December 2010 and if the contention of the Pat Sanstha were to be accepted, the relief sought regarding refund of share amount along with interest had to be calculated from December 2010. It is in such a Dispute filed under Section 91 of the said Act that the Pat Sanstha could raise questions regarding unreasonable attitude of the Bank under Section 25 of the aforesaid Act. Therefore, it becomes obvious that although the theory of deemed acceptance cannot be sustained, the approach of the Bank in the present case under Section 25 of the aforesaid Act could be examined from the date when the Dispute was filed by the Pat Sanstha under Section 91 of the said Act before the Co-operative Court.

14. As regards failure of the Pat Sanstha in making a specific prayer for declaration of cessation of membership or failing to seek a direction to the Bank to accept the communications pertaining to cessation

of membership, suffice it to say that the pleadings before the Co-operative Court read with the prayer for refund of share amount with interest was sufficient to show that the Pat Sanstha was insisting that its membership had ceased upon sending of such communications to the Bank or at least from the date of filing of the Dispute before the Co-operative Court in December 2010. The Bank has not been able to demonstrate on merits as to why it was not liable to refund the share amount and why it could not be said that membership of the Pat Sanstha had ceased on the basis of material on record, at least from the point in time when the aforesaid Dispute was filed by the Pat Sanstha under Section 91 of the said Act before the Co-operative Court. Hence, the contentions raised on behalf of the Bank cannot be accepted and it is held that the concurrent direction given by the Courts below for refund of amount of Rs.10,00,900/- to the Pat Sanstha, is sustainable.

15. That brings this Court to the question of rate of interest raised by the Pat Sanstha while challenging the impugned judgment and order passed by the Co-operative Court. A perusal of the Dispute filed on behalf of the Pat Sanstha shows that it had demanded interest @18% per annum. The Courts below have concurrently granted interest from 01/01/2002, on the basis that the Pat Sanstha had issued letter for the first time on 02/01/2001 to the bank for refund of share

amount and cessation of membership and further that the Bank ought to have refunded the share amount within reasonable time i.e. till the end of year 2001. On this basis, interest was granted from 01/01/2002. The learned counsel appearing for the Pat Sanstha referred to Section 34 of the Code of Civil Procedure while seeking interference with the orders of the Co-operative Appellate Court in so far as grant of rate of interest is concerned. Section 34 of the Code of Civil Procedure provides for the manner in which rate of interest is to be applied when a decree for payment of money is passed by the Court. Applying the said provision, the Co-operative Appellate Court has come to an abrupt conclusion that according to it, grant of interest @6% per annum was reasonable and that, therefore, grant of interest @12% per annum by the Co-operative Court could not be sustained. But, in the facts and circumstances of the present case and applying Section 34 of the Code of Civil Procedure, this Court finds that interest on the refund of share amount could have been granted by the Courts below from the date when the Dispute was filed by the Pat Sanstha before the Co-operative Court. Till this time, the Pat Sanstha had not taken any action in pursuance of its first resolution in the year 2001 and subsequent resolution in the year 2007 and consequent communications sent to the Bank for cessation of membership and refund of share amount. In the facts and circumstances of the present case, the Pat Sanstha is entitled for grant of interest from the date of filing of Dispute before the Co-operative Court and not for the period before that.

16. The grant of interest @12% per annum by the Co-operative Court appears to be reasonable, considering the fact that the Bank failed to even respond to repeated requests made by the Pat Sanstha, which ultimately forced the Pat Sanstha to approach the Co-operative Court by filing the Dispute under Section 91 of the said Act. The Co-operative Appellate Court committed an error in interfering with the same and reducing the rate of interest to 6% per annum. But, the Courts below could not have granted interest on refund of share amount from 01/01/2002 and it could have been granted only from the date when the Dispute was filed by the Pat Sanstha before the Co-operative Court. To that extent the orders passed by the Courts below deserves to be interfered with.

17. Proviso to Section 34 of the Code of Civil Procedure also shows that in so far as further interest from the date of the decree to the date of payment is concerned, pertaining to commercial transactions the rate of interest can exceed 6% and in the absence of contractual rate of interest, the rate could be bank rate in relation to commercial transactions. This aspect was also not appreciated by the Courts below while deciding upon the component of rate of interest

payable for refund of share amount. Therefore, this Court is of the opinion that the Pat Sanstha was entitled to interest @12% per annum from 21/12/2010, i.e. the date on which Dispute under Section 91 of the said Act was filed, till judgment and order dated 01/12/2015, passed by the Co-operative Court. Thereafter, the Pat Sanstha was entitled to interest @9% per annum on the said amount. This Court is not going into the dispute as regards prevailing bank rate and it is found in the interest of justice that the rate of interest of 9% per annum from the date of judgment and order of the Co-operative Court, till actual payment is reasonable.

18. In view of above, the writ petitions are disposed of in the following manner.

A) The concurrent orders passed by the Co-operative Court and the Co-operative Appellate Court, directing refund of share amount of Rs.10,00,900/- to the Pat Sanstha are confirmed.

B) The Pat Sanstha is also entitled to interest on the said amount @12% per annum from 21/12/2010, till 01/12/2015 and thereafter from 02/12/2015, till 08/03/2018 @9% per annum. This is because undisputedly the Bank deposited amount of Rs.19,71,307/- in this Court on 08/03/2018.

C) The learned Registrar (Judicial) shall calculate the amount payable to the Pat Sanstha in terms of the directions given above, within a period of five weeks from today.

D) The rival parties will be at liberty to present their respective calculations before the learned Registrar (Judicial), within a period of three weeks from today.

E) If it is found that the Bank is liable to pay further amount to the Pat Sanstha, over and above amount already deposited in this Court, such payment shall be made by the Bank within three weeks of final calculation communicated by the learned Registrar (Judicial).

F) If it is found that the final amount payable to the Pat Sanstha in terms of the directions in the present order is less than the amount already deposited by the Bank in this Court, the additional amount shall be refunded to the Bank with accrued interest and similarly, the amount found payable to the Pat Sanstha shall be paid to it along with accrued interest.

19. The writ petitions are disposed of in above terms.

JUDGE

MP Deshpande