

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 3689 OF 2021

Prajwal s/o Kantilal Mithawala
Age : 58 yrs., Occ :- Business
R/o. Plot No. M-17, Sahyadri Hill,
Shivaji Nagar Road, Garkheda, Aurangabad ...Petitioner

Versus

1. Buldana Urban Co-operative Credit
Society Limited. Buldana Multistate
Reg. No. 267, Branch : Aurangabad
Through It's Authorised officer
Prashant Suresh Kulkarni
2. Shri S.S.Bhutada
appointed as Sole Arbitrator
for Buldhana Urban Co-operative
Credit Society Ltd.
Branch at Aurangabad
Having it's office address at
Beside Head office of Buldana Urban
Co-operative Credit Society Ltd.
Buldana Hutatma Gore Road, Buldana.
3. Milind Yashwantrao Paranjape
Age : Major, Occ : Business
R/o. R.H.No. 45 Sahyadri Hill,
Bagdiya Nagar, Garkheda, Aurangabad.
4. Sau. Jui Milind Paranjape
Age : Major, Occ : Business,
R/o Same as above 1. ...Respondents

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Mr. S.G.Dodya, Advocate for Petitioner
Mrs. Minakshi L. Sangit, Advocate for Respondent No. 1

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CORAM : MANGESH S. PATIL, J.

DATE : 24-09-2021.

ORAL JUDGMENT :

01. Heard learned Advocate for the petitioner and respondent No. 1.

02. Rule. Rule is made returnable forthwith. With the consent of the parties matter is heard finally at the stage of admission.

03. Petitioner is the guarantor in a dispute raised by the respondent No. 1 under Section 84 of the Multi-State Co-operative Societies Act, 2004 against the borrowers and the petitioner. Pursuant to the clause in the agreement, the parties are before the Arbitrator, respondent No. 2. By submitting application Exh. 42, the petitioner raised an issue of he being not a member of the respondent No. 1 and the learned Arbitrator has no jurisdiction. He requested to frame a preliminary issue as to if he was a member or otherwise of the Society and by the impugned order the Arbitrator has rejected the application holding that there is no provision in the Arbitration and Conciliation Act for framing preliminary issue and its decision and observed that it can be decided only after going into the merits.

04. Learned Advocate for the petitioner by referring to the decision in the case of **Kvaerner Cementation India V/s Bajranglal Agarwal, 2001 DGLS(SC) 476**, submits that the Arbitration Tribunal has jurisdiction to rule on its own jurisdiction. When by virtue of the provisions of the Multi-State Co-operative Societies Act it is a precondition that the petitioner should be a member without which the arbitration proceeding itself would be without jurisdiction, Arbitrator ought to have decided the issue as a preliminary issue as it goes to the root jurisdiction.

05. Learned Advocate for the respondent No. 1 submits that in the dispute itself it has been specifically averred in para No. 3 that the petitioner is a member of the disputed society. In view of such specific stand of the respondent No. 1, the matter needs to be allowed to be proceeded with and the issue being raised can finally be decided with the main proceeding before the Arbitrator.

06. I have carefully considered the rival submissions and perused the decision in the case of **Kvaerner Cementation India (Supra)**. There cannot be a

dispute about the fact that whether petitioner is a member of the disputed society or not is an issue which would go to the root of the jurisdiction of the Arbitrator.

07. As laid down by the Supreme Court in the case of **Kvaerner Cementation India** (Supra) the Arbitration Tribunal has the jurisdiction to rule on its own jurisdiction by virtue of the provisions of Section 16. If that be so, one cannot comprehend as to whether the learned Arbitration Tribunal could have refused to decide and rule on the issue being raised by the petitioner. Merely because the respondent society in its dispute has averred that the petitioner is its member that would not suffice. It is indeed an issue which goes to the root of the jurisdiction and calls for a decision as a preliminary issue. The Tribunal seems to have got swayed by the fact that there is no specific provision to enable him to adopt such procedure.

08. In any case, the issue being raised by the petitioner in his application Exh. 42 being an issue which goes to the root of the jurisdiction, it would be appropriate for the Arbitration Tribunal to go into it and decide it as a preliminary issue.

09. Apart from the pleadings the respondent ought to have produced some material to atleast draw some prima facie inference of the petitioner being its member. In the absence of such material it would be an exercise in futility if the entire Arbitration is allowed to be proceeded with.

10. The impugned order passed on the application (Exh. 42) is quashed and set aside. The Tribunal may now frame the issue and decided it as a preliminary one.

11. Simultaneously, the petitioner is also impugning the order as the application (Exh. 39) filed by someone else that is respondent No. 3 borrower. Obviously, since the application (Exh. 39) was not moved by the petitioner, he has no *locus* to challenge the order. The Writ Petition is partly allowed. The impugned order as the application (Exh. 42) is quashed and set aside.

12. The writ petition to the extent of challenge to the order passed on the application (Exh. 39) is dismissed.

13. Rule is made absolute in above terms.

[MANGESH S. PATIL]

JUDGE

Dahibhate/-