

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

921 WRIT PETITION NO.4657 OF 2020

MAHENDRA KANHIYALAL JAIN

VERSUS

**THE MAHAVIR URBAN CO OOPERATIVE CREDIT SOCITY LTD NVIPETH
JAGAON THROUGH ITS ADMINISTRATOR AND ORS**

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Advocate for Petitioner : Mr. Brahme Shailesh P.

CORAM : MANGESH S. PATIL, J.

DATE : 12.10.2021.

PER COURT :

Heard learned advocate Mr. Brahme for the petitioner.

2. The petitioner is the original respondent in a dispute before the Co-Operative Court, who is aggrieved and dissatisfied by the judgment and order passed in a Revision under Section 149(9) of the Maharashtra Co-Operative Societies Act preferred by the disputant-respondent-Society, thereby allowing its application (Exh. 42) for leading secondary evidence and in the process quashing and setting aside the order of the Co-Operative Court rejecting that application.

3. The learned advocate Mr. Brahme for the petitioner would submit that there are no sufficient and cogent reasons as are required by Section 63 and 65 of the Evidence Act so as to grant permission to lead secondary evidence. He would further submit that though the respondent-Society is now asserting that the original documents have been lost and is coming out with an explanation that those have been lost while the parties are engaged in several disputes before different courts and fora, none of these original documents were required to be produced in any of those proceedings. He

would submit that the Revisional Court has indulged in supplanting the grounds which were not available before the Co-Operative Court. Some inferences have been drawn based on conjectures and surmises observing that the Society is now being administrated by Board of Administrators and the office is managed by Clerical staff and that is why there could be a possibility of mismanagement resulting in loss of the original documents. This is not the stand of the respondent in its application (Exh. 42) and still the Revisional Court has made these observations which are perverse and arbitrary.

4. Learned advocate would further submit that the Revisional Court has also recorded a perverse observation that execution of all these documents has been admitted by the petitioner in its written statement, when, in fact the contentions in the written statement are otherwise. There was no error, perversity or arbitrariness in the order of the learned Judge of the Co-Operative Court and since the Co-Operative Appellate Court was exercising a revisional jurisdiction, it could not have readily interfered with the order passed by the Co-Operative Court.

5. I have carefully gone through the papers and considered the submissions of the learned advocate Mr. Brahme. It is a matter of record that the Revisional Court has at several places made certain observations which can be described as perverse and arbitrary since those travel beyond the stand of the respondent in its application (Exh. 42).

6. However, simultaneously, one cannot lose sight of the fact that the respondent-Society is fighting for the claim for more than a decade. The dispute is still at the stage of leading evidence. Though strictly speaking the documents now sought to be proved by leading secondary evidence may not be relevant and even may not have been produced in several other litigation between the parties. The fact remains that for whatever reason the respondent-Society has not been able to produce the original documents,

the photocopies of which were already produced on the record along with the dispute and are available to be led in evidence as secondary evidence of the original documents.

7. Needless to state that this is not the stage at which the worth of the documents is to be proved. Its proof and its bearing on the claim of the respondent can be considered at the main hearing. It would be for the Trial Court, depending upon the proof and veracity of these documents, taking into consideration all other attending circumstances, to decide as to whether the documents if genuine would have a bearing on the claim of the respondent. This is not the stage to go into all those aspects.

8. Apart from the above state of affairs, it is important to bear in mind that it is not the version of the petitioner that the original documents are still in the custody of the respondent-Society but are being held back with some ulterior motive. If this is so, one cannot comprehend as to how the Society by holding back the original documents would want to succeed in the dispute.

9. The learned Judge of the Co-Operative Court seems to have taken a hyper technical view and ventured into the assessment of circumstances being put forth by the respondent regarding loss of the original documents. Taking into account the aforementioned facts and circumstances, in my considered view the respondent-Society can be permitted to lead secondary evidence as prayed for by its application (Exh. 42) and no prejudice is likely to be caused to the petitioner.

10. Resultantly, though the learned Judge of the Revisional Court has erred in recording some perverse and arbitrary observations, in the nutshell, the view taken by it holding the respondent-Society entitled to lead secondary evidence cannot be said to be illegal.

11. The Writ Petition is dismissed.

12. The observations in the judgment shall not influence the learned Judge of the Trial Court. Veracity or otherwise and worth of the documents sought to be proved by leading secondary evidence is a matter to be looked into by it while deciding the dispute.

(MANGESH S. PATIL, J.)

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