

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

WRIT PETITION NO. 10811 OF 2021

Rameshwar Gangaram Godse,
Age 62 years, Occ. Agriculture,
R/o. Barad, Tq. Mukhed, Dist.
Nanded.

... **Petitioner.**
(Orig. Disputant/Appellant)

VERSUS

Large Multipurpose Co-Operative
Society, Ltd. Barad, Tq. Mudkhed,
Dist. Nanded, Through its Chairman,
Raghunathrao Dattarao Deshmukh,
Age 69 years, Occ. Agri. & Social
Service, R/o. Barad, Tq. Mudkhed,
Dist. Nanded.

... **Respondent.**
(Orig. Respondent)

...

Advocate for the Petitioner : Mr. Ashutosh S. Kulkarni.
Advocate for the Respondent : Mr. Shahaji B. Ghatol Patil.

CORAM : **MANGESH S. PATIL, J.**
DATE : **08.10.2021.**

ORAL JUDGMENT :

Learned advocate for the petitioner undertakes to pay the deficit court-fees.

2 Heard. Rule. The Rule is made returnable forthwith. With the consent of both the sides the matter is heard finally at the stage of admission.

3. The petitioner is the original defendant in a dispute filed by the respondent under the provisions of the Maharashtra Co-Operative Societies Act before the Co-Operative Court alleging that he was serving as the Manager in its cloth shop. There was loss of stock worth Rs. 3,26,635.25. It was his defence that there was a robbery in which even he was assaulted

and the stock was stolen. He had lodged an F.I.R. to that effect. After the parties led evidence the learned Judge of the Co-Operative Court dismissed the claim holding *inter alia* about the respondent having failed to prove the fact of misappropriation. The respondent challenged the judgment and order in appeal under Section 97 of the Maharashtra Co-Operative Societies Act, 1960. By the impugned judgment and order the Appellate Court has remanded the dispute for decision afresh by observing that there were several documents which were produced on the record by the respondent but were not considered by the Trial Court. Even the documents were produced in the appeal in respect of the second defence being raised by the petitioner that the stock was insured and the respondent could have claimed to be indemnified by the Insurance Company. It has been observed that even these documents produced at the appellate stage by the respondent were required to be considered. It was also noted that no proper issues were framed and there were no adequate reasons assigned by the learned Judge of the Co-Operative Court. For all these reasons the matter was remanded.

4. The learned advocate for the petitioner would vehemently submit that the onus was always on the respondent to establish the fact of misappropriation and prove its claim. The petitioner had done enough to discharge the onus cast upon him by pointing out that he had promptly lodged the F.I.R. regarding theft. He would also point out from the Roznama of the Appellate Court that after the matter was reserved for judgment, some documents were produced by the respondent which were allowed to be produced behind his back and have been considered by the Appellate Court in paragraph No. 21. This has caused serious prejudice to him. He would further submit that there was no sufficient and cogent reason to cause any interference in the judgment and order passed by the Co-Operative Court and the Appellate Court could have considered the entire material and could have arrived at independent conclusion.

5. The learned advocate for the respondent submits that no exception

can be taken to the observations in the impugned judgment of the Appellate Court wherein it has been pointed out that no weight has been attached and several documents have not been considered by the Trial Court. There were no adequate reasons. The issues were not framed properly and even the defence of the petitioner was not considered. No prejudice therefore is likely to be caused to the petitioner if the matter is now remanded to the Trial Court.

6. The learned advocate would further submit that though the documents were produced by it after the matter was reserved for judgment, the Appellate Court has not allowed the production and has merely observed that these documents would be relevant for just decision of the case. These documents have been sought to be produced pursuant to the defence being raised by the petitioner that it could have claimed the insurance.

7. I have considered the rival submissions. It is a matter of record that the fact of loss of stock is not in dispute. It is the cause that is. Though the onus is on the respondent to prove the claim, the fact that the petitioner also admits about the loss of the stock would change the entire scenario. It is his version that there was a theft about which he had lodged the F.I.R. Apparently, it is only the petitioner who had stepped into the witness box and did not examine any witness. As it transpires from the judgment of the Co-Operative Court, the learned Judge was alive to the fact that no record was produced in respect of the final report that must have been prepared and filed pursuant to the F.I.R. lodged by the petitioner. It also transpires that apart from the petitioner there were two other persons who were also present in the shop as servants. Neither their statements, if at all have been recorded under Section 161 of the Code of Criminal Procedure, have been produced by either of the parties or any attempt has been made by them to examine them to verify genuineness or otherwise of the petitioner's claim regarding there being theft in the shop. Again going by the F.I.R. he is stated to have sustained some injuries. It is also not clear as to why no injury

certificate was produced on the record. In spite of being alive to all the aforementioned facts and circumstances, the learned Judge of the Co-Operative Court has not taken pains to weigh these circumstances before arriving at any conclusion.

8. If such is the state of affairs, in my considered view no exception can be taken to the observations in the impugned judgment of the Appellate Court that the learned Judge of the Trial Court has not decided the dispute appropriately.

9. True it is that the respondent seems to have produced certain documents after the Appellate Court had reserved the matter for judgment and the Appellate Court seems to have referred to them in paragraph No. 21 of the judgment and has made observation that those documents are relevant for considering the other defence of the petitioner regarding availability of insurance claim with the respondent Society.

10. However it has simply pointed out as to how even those are relevant for just decision. Considering all the aforementioned facts and circumstances, though it is a matter of record that the dispute has been pending for years together, I find no perversity or arbitrariness in the impugned order directing the remand.

11. However, simultaneously it is also important to note that apparently without there being any request made before the Appellate Court, in Clause 4 of the operative part of the order, it has granted liberty to the parties to amend their respective pleadings. One cannot comprehend rather there is no material to ascertain as to what had weighed with the learned Judge of the Appellate Court in even permitting the parties to amend their plaint.

12. Again, nothing has been said in respect of the documents that were produced at the appellate stage. It is in view of these two aspects, therefore, some modification needs to be done in the impugned judgment and order.

13. The Writ Petition is partly allowed. The Writ Petition to the extent of challenge to the legality of the impugned judgment and order is dismissed. However, the direction in clause 4 of the operative part permitting the parties to amend the pleadings is quashed and set aside. It is further made clear that as far as the documents that were produced before the Appellate Court referred to in paragraph No. 21 of the judgment those may not be automatically allowed to be produced on the record. The respondent shall be at liberty to move an application for that purpose and the petitioner would be entitled to oppose it. The Trial Court would be obliged to decide it on its own merits.

14. Rule is made absolute accordingly.

(MANGESH S. PATIL, J.)

mkd/-