Meena

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.833 OF 2019

THE BICHOLIM URBAN CO-OPERATIVE BANK LTD. having its office at Nandanvan, Central Office, Bicholim- Goa. Represented by its Managing Director – Actg. Mr. Vithal G.P. Desai, Aged 59 years, married resident of Khorlim, Mapusa- Goa.	...Petitioner
Versus	
THE GOA STATE CO-OPERATIVE BANK LTD. having its office at Dayanand – Smruti, Swami Vivekanand Road, Panaji- Goa.	...Respondent

Mr. R.G. Ramani, Senior Advocate with Mr. Pravav Sinai Kakodkar, *Advocate for the Petitioner.*

Mr. S.R. Rivankar, Senior Advocate with Mr. Rama Rivankar*, Advocate for the respondent.*

CORAM: MANISH PITALE, J.

DATED: 11th October, 2021.

ORAL ORDER:

1. The question involved in the present petition was stated in the order dated 15/01/2021 passed by this Court when notice was issued in the Writ Petition. It was noted that the petitioner claims that the Registrar in the present case committed an error in holding that the dispute raised by the petitioner - Cooperative Bank could not be decided by the Registrar under Section 74 of the Multi State Co-operative Societies Act, 1984, and that therefore, the grievance, if any, could be raised before the competent Civil Court. Hence, the question that needs to be decided is, as to whether the petitioner, who is a member of the respondent Multi State Co-operative Society, was entitled to raise the dispute before the Registrar under the provisions of the aforesaid Act.

2. The facts in brief leading to the filing of the present Writ Petition are that the petitioner filed a dispute on 11/06/2001, before the Registrar of the Co-operative Societies under Section 74 of the aforesaid Act. The petitioner claimed that it was entitled for a direction in its favour and against the respondent- Multi State Cooperative Bank for payment of a sum of Rs.95,25,360/- with interest thereon, on the basis of a charge that the petitioner-Bank had on the property in question. The petitioner-Bank also sought a direction restraining the respondent from selling the property in question, without making payment of the said amount.

3. The petitioner-Bank claimed that it had advanced loan to a person who was its member and in that regard the subject property belonging to another person was mortgaged to it. Since, there was a default in repayment of the loan, the petitioner-Bank intended to proceed against the defaulter. But, it was realized that as against the very same property, the respondent-Bank had advanced loan and the very property was mortgaged to the respondent-Bank also. The petitioner claimed that when the respondent-Bank intended to sell the property, as there was a default in return of the loan advanced by it, the charge of the petitioner-Bank on the said property ought to have been disclosed. It was further claimed that even if the mortgage in respect of the said property was executed in the context of the respondent-Bank prior in point of time, the Mortgage Deed executed qua the petitioner-Bank was registered before the registration of Mortgage Deed concerning the respondent-Bank. It was contended that this dispute pertained to and touched upon the business of the society and that therefore, the same ought to be decided by the Registrar under Section 74(1) (b) of the aforesaid Act.

4. In the said proceeding, on 29/11/2005, the Registrar had passed an order whereby the respondent-Bank was permitted to go ahead with the auction process but it was directed that the sale proceeds from the auction shall not be appropriated, but they shall be kept in suspense account until further orders. On 18/01/2013, the petitioner-Bank moved an application seeking an early date of hearing of the dispute and further sought clarification regarding the disposal of the property and appropriation of the sale proceeds.

5. The said application was dismissed by judgment and order dated 13/02/2014, whereby the Registrar held that the dispute sought to be raised by the petitioner-Bank was beyond the jurisdiction of the said authority and that the authority had no power to entertain the said application.

6. Thereafter, the petitioner-Bank moved an application on 15/04/2014 in the pending dispute, seeking expeditious hearing before the Registrar. By the impugned judgment and order dated 22/09/2017, the Registrar held that the dispute itself could not be entertained due to want of jurisdiction. It was recorded that in the earlier order dated 13/02/2014, the Registrar had held that it had no jurisdiction to entertain the dispute, as it was a dispute of civil nature beyond the ambit and jurisdiction of the Registrar. On this basis, it was held that the dispute application could not be allowed.

7. Aggrieved by the said order the petitioner-Bank filed the present Writ Petition in which notice was issued on 15/01/2021, taking note of the aforesaid question that arises for consideration.

8. Mr. R.G. Ramani, learned Senior Counsel appearing for the petitioner-Bank submitted that the Registrar committed a grave error in holding that the dispute was not maintainable. Attention of this Court was invited to Section 74 of the aforesaid Act, pertaining to disputes and much emphasis was placed on Section 74 (1)(b) of the Act, which pertains to disputes between a member and the Multi State Co-operative Society. It was brought to the notice of this Court that the petitioner-Bank admittedly is a member of the respondent-Multi State Co-operative Society/Bank and that the dispute raised by the petitioner pertained to and touched upon the business of the Multi State Co-operative society, due to which it was only the Registrar who had the authority and jurisdiction to decide the dispute.

9. The learned Senior Counsel also referred to Section 76(3) of the aforesaid Act to indicate that an interlocutory order could be passed in pending disputes and that in the present case, as a matter of fact, such an interlocutory order was indeed passed. The learned Senior Counsel also referred to Rule 22 (11)(e) and (f) of the Multi State Co-operative Societies Rules, 1985, to emphasize that the nature of dispute raised in the present case was clearly covered under Section 74 of the said Act and that it was incumbent upon the respondent-Bank to have at least informed the purchaser in the auction proceedings about the encumbrance on the property in the form of the aforesaid charge claimed by the petitioner-Bank. The learned Senior Counsel placed reliance on the judgment of the Hon'ble Supreme Court in the case of **Co-**

operative Central Bank Ltd. and Ors. v/s. Additional Industrial Tribunal and Ors. [(1969) 2 SCC 43].

10. On the other hand, Mr. S.R. Rivankar, learned Senior Counsel appearing for the respondent-Bank submitted that the aforesaid question was no longer res integra, because the position of law was settled way back in the year 1969 by the Hon'ble Supreme Court in the judgment in the case of **Deccan Merchants Co-operative Bank Ltd. v/s. M/s. Dalichand Jugraj Jain and others** [AIR 1969 SC 1320]. By relying upon specific paragraphs of the said judgment the learned Senior Counsel submitted that the true purport of the expression "touching upon the business of the society", in a pari materia provision was considered in the said judgment and it was authoritatively laid down that unless there was a transaction between the two parties, it could not be related to the business of the society in question. Reliance was placed on the judgment of Hon'ble Supreme Court in the case of **Bhanushali Housing Cooperative Society Limited v/s. Mangilal and others** [(2015) 10 SCC 277], wherein the position of law was further clarified by placing reliance on the said earlier judgment in the case of **Deccan Merchants Co-operative Bank Ltd. v/s. M/s. Dalichand Jugraj Jain and others** (supra). It was emphasized that the Hon'ble Supreme Court specifically laid down that business of the society necessarily concerned bilateral business between the two parties to the alleged dispute.

11. It was submitted that in the case of **Lokmitra Co-Operative Housing Society Ltd. and another v/s Yojana Co-Operative Housing Society Ltd.** [1991 (1) Bom C.R. 131], a case closer on facts to the present case, this Court followed the position of law as laid down by the Hon'ble Supreme Court to hold that under the pari materia provision concerning The Maharashtra Co-operative Societies Act,1960, jurisdiction would not lie with the Co-operative Court and instead the controversy would have to be resolved by the Civil Court. On this basis, it was submitted that the Writ Petition deserved to be dismissed.

12. Heard learned Counsel for the rival parties and perused the material on record. As noted above, the question that arises in the present petition concerns Section 74 of the said Act, particularly the interpretation of the expression "touching the business of a Multi-State Co-operative Society". In the present case, there is no dispute about the fact that the petitioner-Bank is a member of the respondent which is a Multi-State Co-operative Society. Therefore, if there is a dispute between the two, it prima facie would be covered under Section 74 (1)(b) of the said Act. But, such a dispute would have to be a dispute touching upon the business of the Multi State Co-operative Society.

13. In the present case, there does not appear to be a dispute about the fact that the same property was the subject matter of mortgage with the petitioner as well as the respondent-Bank in the context of loans advanced by the said Banks. The person to whom the loan was advanced by the petitioner-Bank is not the same person to whom the respondent-Bank had advanced the loan, yet the property which was the subject matter of mortgage was the same. It is for this reason that the petitioner-Bank has raised the dispute, contending that the respondent-Bank was not entitled to unilaterally dispose of the property for realizing its dues, for the reason that the petitioner-Bank had a charge on the said property.

14. The question for consideration is, as to whether the dispute was covered under Section 74 of the said Act, only for the reason that the property in question was the same. Would that be enough to satisfy the expression "touching upon the business of the multi-state cooperative society", to demonstrate that the Registrar had jurisdiction to entertain the dispute?

15. As to what would be the purport of such an expression came up for consideration before the Hon'ble Supreme Court in the case of **Deccan Merchants Co-operative Bank Ltd. v/s. M/s. Dalichand Jugraj Jain and others** (supra) in the context of a pari materia provision contained in the Maharashtra Co-operative Societies Act,1960. This is evident from paragraph 5 of the judgment, which refers to the very same phrase and the Hon'ble Supreme Court has proceeded to interpret the phrase to derive its true purport and meaning. The relevant portion of the said judgment reads as follows:

> *18. The question arises whether the dispute touching the assets of society would be a dispute touching the business of a society. This would depend on the nature of the society and the rules and bye-laws governing it. Ordinarily, if a society owns buildings and lets out parts of buildings which it does not require for its own purpose it cannot be said that letting out of those parts is a part of the business of the society. But it may be that it is the business of a society to construct and buy houses and let them out to its members. In that case letting out property may be part of its business. In this case, the society is a co-operative bank and ordinarily a co-operative bank cannot be said to be engaged in business when it lets out properties owned by it. There fore, it seems to us that the present dispute between a tenant of a member of the bank in a building, which has subsequently been acquired by the bank, cannot be said to be a dispute touching the business of the bank, and the appeal should fail on this short ground.*
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> *19. The High Court had followed the observations of the Full Bench of the Bombay High Court in Farkhundali v. Potdar 63 Bom LT 985[AIR 1962 bOM 162](FB), wherein it was observed :*
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> *" The nature of business, which a society does, is to be ascertained from the objects of the society. But whatever the society does or is necessarily required to do for the purpose of carrying out its objects can be said to*

be part of its business. The word " touching " is also very wide and would include any matter which relates to, concerns or affects the business of the society."

20. The Full Bench was construing Section 54 of the Bombay Co-operative Societies Act, 1925 (Bombay Act VII of 1925), which, inter alia, provides :

"54. (1)(a) If any dispute touching the constitution or business of a society arises between members or past members of the society or persons claiming through a member or past member or between members or past members or persons so claiming and any officer, agent or servant of the society, past or present, or between the society or its committee, and any officer, agent, member or servant of the society, past or present, it shall be referred to the Registrar for decision by himself or his nominee."

21. The question before the Full Bench was whether it was open to an employee of a co-operative society to proceed against the society in respect of a claim for wages either under the Payment of Wages Act, 1936, or under Section 54 of the Bombay Co-operative Societies Act, 1925.

22. While we agree that the nature of business which a society does can be ascertained from the objects of the society, it is difficult to subscribe to the proposition that whatever the society does or is necessarily required to do for the purpose of carrying out its objects can be said to be part of its business. We, however, agree that the word " touching " is very wide and would include any matter which relates to or concerns the business of a society, but we are doubtful whether the word " affects " should also be used in defining the scope of the word " touching "."

16. This position of law appears to have been consistently followed and in a latter judgment in the case of **Bhanushali Housing Cooperative Society Limited v/s. Mangilal and others** (supra) where the Hon'ble supreme Court was called upon to interpret an identical provision i.e. Section 64 of M.P. Co-operative Societies Act, 1960, the position of law as laid down in **Deccan Merchants Co-operative Bank Ltd. v/s. M/s. Dalichand Jugraj Jain and others** (supra) was followed and the position of law was further clarified. In the said case also, the Hon'ble Supreme Court considered the question as to whether the dispute concerned or touched upon the business of the society. While considering the question as to what would be the true purport of the phrase "touching upon the business of the society", the Hon'ble Supreme Court deliberated upon the true meaning of the words "business transactions". After referring to the said expression, the Hon'ble Supreme Court held as follows:

> *20. What is the true scope and meaning of the expression "business transactions" appearing in clause (c) of Section 64(1) of the Act is what falls for our consideration. That expression has not been defined in the Act or elsewhere. Advanced Law Lexicon (3rd Edition, 2005) by P. Ramanatha Aiyar describes the expression "Business transaction" as under: "Business transaction is a generic expression used in the sense that it is a transaction which a businessman, in a commercial business, would enter into."*

> *21. The above meaning ascribed to the expression is fairly accurate hence acceptable. All that may be added is that in order that a transaction may be treated as "business transaction", it must be a transaction that answers the above description from the standpoint of both the parties to the transaction. It cannot be a business transaction from the standpoint of one party to the transaction and something else from the other. It must be business bilaterally. So viewed a single transaction where an owner of immovable property agrees to sell his land to a society may or may not constitute a business transaction, depending upon whether the seller is in the business of selling property for profit. If the seller is not in any such business, the transaction from his stand point will not be a business transaction no matter, from the point of view of the society the transaction may be a business transaction because the society is in the business of buying land and developing it for the benefit of its members. A transaction of sale of property would in such a case fall outside the expression "business transaction"."*

17. The Hon'ble Supreme Court emphasized upon the position of law that although the expression "business" may have a very wide import but in the context of such a provision it had to be given a very narrow meaning, as held in the aforementioned earlier judgment in the case of **Deccan Merchants Co-operative Bank Ltd. v/s. M/s. Dalichand Jugraj Jain and others** (supra).

18. In the case of **Lokmitra Co-Operative Housing Society Ltd. and another v/s Yojana Co-Operative Housing Society Ltd.**(supra), this Court was called upon to decide as to whether the dispute between two societies concerning the same plot of land could be covered under Section 91 of the Maharashtra Co-operative Societies Act,1960. It was a situation where the societies were raising competing claims as regards title in the very same plot of land. In that context, while construing the phrase "touching upon the business of the society", this Court held as follows:

> *"11. The learned advocate for the respondent in this behalf has urged that the problem should be viewed in the following background.*
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> *Here is a case where the plaintiff/society has claimed title over the plot allotted to it for which there is a property card. The defendant/society objected to the plotting on the land of the plaintiff/society on the ground that land was allotted to the defendant/society. This is a dispute which relates to the title which is being challenged by the defendant/society. This is a question which relates to the rival title set up by both the societies and such question does not at all come within the phrase 'business of the society' The word 'business' with reference to the affairs of the society has been defined as the business of the society viz. activities of the society. Such business can be spelt out from the section of the Act, the Rules framed under the Act and the bye-laws of the society. In this behalf no bye-laws are produced and the learned advocate for the petitioner relied on the above definition of the housing society and that, if provision is looked into, it only provides for allotment of plots and providing common amenities. The business of the housing society does not at all envisage the question of rival title against the*

other society. In that behalf, section 91 sub-section (1) sub-clause (c) will not come into operation at all. This is a case where the plaintiff is seeking title over the same plot over which even the defendant/society lays claim. By no stretch of imagination, it can be contended that the question of title over a plot would fall within the purview of 'dispute relating to business of the society'. Disputes regarding titles to properties between societies or erosion of any rights or inflicting encroachments by one society over the other or like disputes between third party and the society would certainly not fall within the scope of the phrase "dispute touching the business of the society". Such disputes shall have to be resolved by the Civil Courts and none else.

12. Incidentally, in A.I.R. 1988 Madhya Pradesh 94, in the case of (Madhyam Vargiya Grih Nirman Sahakari Sanstha v. Vasantrao and another), there is a slight indication to show the magnitude of this phrase. In that case it was observed that where a Co-operative Housing Society had sold a plot to its members, and the member in turn sold it to another person in violation of terms and conditions of sale-deed executed by the society in favour of the member and consequently the society filed a suit against both of them, with a prayer of cancellation of sale deed executed by the member and for removal of construction made by another person, it could not be said that the averments in the plaint raised a question only touching the business of the society within the said Act. This would, therefore, show that when the question other than the question relating to allotment and recovery of possession from the member is concerned, the matter would not fall within section 91 Maharashtra Co-operative Societies Act. In this case, it is manifestly clear that one society is raising claim

> *against the other in respect of the same plot. This would be, therefore, no dispute which exclusively falls within the domain of Co-operative Court. On the other hand, it clearly falls within the domain of the Civil Court. The learned Appellate Judge has correctly held that this is not an issue, which should be referred to the Co-operative Court . I, therefore, feel that the civil revision application is devoid of merit and is accordingly dismissed. However, in the circumstances of this case, there shall be no order as to costs."*

19. As regards the judgment in the case of **Co-operative Central Bank Ltd. and Ors. v/s. Additional Industrial Tribunal and Ors.**(supra) relied upon by the learned Senior Counsel appearing for the petitioner, it appears that there is a reference made to the judgment of the Hon'ble Supreme Court in the case of **Deccan Merchants Co-operative Bank Ltd. v/s. M/s. Dalichand Jugraj Jain and others** (supra) and the position of law as clarified by the Hon'ble Supreme Court is applied to the facts of the said case. After applying the said test, it was found that a dispute raised by an employee with reference to specific reliefs sought, which only the industrial tribunal could grant, the Registrar exercising power under the provision of the Andhra Pradesh Co-operative Societies Act, could not have granted. But, the position of law as laid down by the Hon'ble Supreme Court in the aforesaid judgment in the case of **Deccan Merchants Co-operative Bank Ltd. v/s. M/s. Dalichand Jugraj Jain and**

others (supra) was not departed from and in fact, it was followed and applied to the facts of the said case.

20. In this backdrop, when the facts of the present case are appreciated, it becomes clear that although the petitioner-Bank is also claiming a charge on the property in question on the basis of Mortgage Deed, in respect of which the respondent-Bank has proceeded to undertake auction proceedings, that in itself would not necessarily mean that the dispute would be covered under Section 74 (1)(b) of the aforesaid Act. It is crucial that the business of the Multi State Co-operative Society, in the present case the respondent-Bank, should have been touched upon by the dispute sought to be raised by the petitioner-Bank. It has been laid down in the abovementioned judgments of the Hon'ble Supreme Court that for the dispute to touch upon the business of the society, there has to be a transaction between the two entities with the bilateral nature of such transaction discernible from the material on record.

21. In the present case, other than claiming that the very same property was the subject matter of mortgage concerning the petitioner-Bank as well as the respondent Multi State Co-operative Bank, there is nothing to show any business transaction between the petitioner-Bank on the one hand and the respondent Multi State Co-operative Bank on the other. This aspect goes to the root of the matter and applying the position of law as laid down by the Hon'ble Supreme Court and followed by this Court, it becomes clear that the nature of dispute sought to be raised by the petitioner-Bank is beyond the jurisdiction of the Registrar under Section 74 of the said Act. The dispute could certainly be raised before the appropriate Civil Court.

22. The Registrar in the impugned order has indeed held against the petitioner-Bank on this very basis, but it would have been appropriate for the Registrar to have considered the question that arose in the matter in a more elaborate manner. Nonetheless, the finding rendered by the Registrar regarding jurisdiction under the provisions of the said Act is found to be correct and therefore, this Court is of the opinion that no interference is warranted in the impugned order.

23. Consequently, the Writ Petition is found to be without any merit and it is dismissed.

MANISH PITALE, J.