

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 6060 OF 2021

Guru Ratnakar Sahakari	}	
Dudh Utpadak Sahakari	}	
Sanstha Maryadit, Ankdhah	}	Petitioner
Versus		
Kolhapur Zilla Sahakari	}	
Dudh Utpadak Sangh Limited	}	Respondent

Mr. Umesh R. Mankapure for the petitioner.

Mr. S. S. Patwardhan with Mr. Bhooshan Mandlik
for the respondent.

CORAM :- G. S. KULKARNI, J.

DATE :- SEPTEMBER 28, 2021

PC :-

1. Heard Mr. Mankapure, learned advocate for the petitioner and Mr. Patwardhan, learned advocate for the respondent.

2. The challenge in this writ petition is to an order dated 1st September 2021 passed by the learned Member of the Maharashtra State Co-operative Appellate Court, Bench at Pune, whereby, the appeal filed by the petitioner, against the order dated 22nd July 2021 passed below Exhibit 5 by the learned Judge, Co-operative Court No. II, Kolhapur in Dispute No. 143 of 2021, has been dismissed.

3. The relevant facts are: - The petitioner as a nominal member of the respondent entered into a contract with the respondent on 4th September 2015, under which, the petitioner was permitted to install a bulk milk cooling unit. The petitioner was collecting milk from 13 milk societies. The case of the petitioner is that suddenly on 7th June 2021, the respondent issued a letter and prohibited the petitioner from collecting milk, which was on the basis of a Resolution of its new managing committee dated 13th November 2020 to close the said unit of the petitioner.

4. Being aggrieved by such Resolution, the petitioner approached the Co-operative Court in dispute No. 143 of 2021 praying for a substantive relief of a permanent injunction, namely that the Resolution dated 13th November 2020 be held to be not binding; and for an injunction that the respondent society be restrained from implementing the letter dated 7th June 2021 issued pursuant to the impugned Resolution of the managing committee dated 13th November 2020. The learned Judge of the Co-operative Court, by an order dated 22nd July 2021, rejected the petitioner's application below Exhibit-5.

5. In the order passed on the petitioner's appeal, the Appellate Court confirming the findings as recorded by the trial Court, observed that the petitioner had failed to make out a *prima facie* case for grant of injunction. On examining the materials on record, the Appellate court observed that the Resolution dated 13th November 2020 was not passed by the respondent-society as a surprise to the petitioner. It was

observed that prior to passing of such Resolution, substantial correspondence was exchanged between the parties. One of such documents was the letter dated 7th October 2020, which indicated that the respondent had informed the petitioner well in advance, in regard to the low quality of milk as well as the complaints received from various members in respect of irregularities, in functioning of the petitioner's unit. It was observed that the Resolution passed by the respondent dated 13th November 2020 was also within the knowledge of the petitioner and the petitioner in fact did not approach the Court immediately. Mr. Mankapure, learned advocate for the petitioner fairly agrees that this is a case of termination of a contract dated 4th September 2015 as entered between the parties and that no suit was filed by the petitioner-society for specific performance of the contract.

6. Mr. Mankapure's principal submission assailing the concurrent findings of the courts below, is that although the respondent had produced before the Co-operative court notices/letters alleged to be issued to the petitioner; however, the same could not have been taken to be *prima facie* proof of such notices/letters. His next contention is that the petitioner had invested substantial amount in the bulk milk cooling unit, and huge losses were caused to the petitioner by such illegal termination/impugned resolution. Hence, according to him, the petitioner, on that count, was entitled to an injunction.

7. In my opinion such submissions of Mr. Mankapure cannot be accepted for two-fold reasons. Firstly, that in the event the material correspondence as produced on behalf of

the respondent-society was to be disputed and not acceptable to the petitioner, ample opportunity was available to the petitioner to rebut the same in the manner known to law. Such opportunity was not availed by the petitioner at any point of time. Even otherwise, the interim prayers as made by the petitioner before the trial Court were in the nature of a final relief. Such an injunction, if granted was to have the effect of restoring the contract by setting aside the termination and granting of a prayer for specific performance at the interim stage.

8. At this stage, Mr. Patwardhan points out that in fact the bulk cooling unit is already being utilized by third parties at the behest of the respondent. Thus, what remains is only a money claim of the petitioner for any alleged installation made by the petitioner society.

9. As a result of the above discussion, I find no perversity or any illegality in the orders passed by both the Courts, so as to interfere in exercise of the writ jurisdiction of this Court. The writ petition is without merit. It is accordingly rejected. No costs.

SALUNKE
J V

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(G. S. KULKARNI, J.)