

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 4467 OF 2017

PETITIONER : Ashti Sahakari Shetkari Kharedi Vikri
Samiti Maryadit, Tah. Ashti, Dist. Wardha,
through its Manager Shri Devidas Wasudeo
Mahatre, aged about 63 years, R/o. Ashti
Sahakari Shetkari Kharedi Vikri, Ashti (Shahid)
Mangalwarpur, Tah. Ashti, Dist. Wardha

...VERSUS...

RESPONDENTS:

1. Smt. Asha Mohan Nagpure, aged 58 years
Occ. AGriculturist, R/o. Khadki
Tah. Ashti, Dist. Wardha
2. Shri Virendra Mohan Nagpure, aged 38 years,
Occ. Agriculturist, R/o. Khadki
Tah. Ashti, Dist. Wardha
3. Shri Surendra Mohan Nagpure,
Minor, through Natural Guardian
Smt. Asha Mohan Nagpure, aged 35 years,
Occ. Agriculturist, R/o. Khadki
Tah. Ashti, Dist. Wardha
4. Shri Narendra Vishweshwarrao Nagpure,
aged 59 years, Occ. Agriculturist,
R/o. Khadki, Tah. Ashti, Dist. Wardha
5. Smt. Lilabai Prabhakar Kohale,
aged 75 years, Occ. Agriculturist,
R/o. Belwadi, Tah. Ashti, Dist. Wardha
6. Shri Prafulla Prabhakar Kohale,
aged 50 years, Occ. Agriculturist
R/o. Belwadi, Tah. Ashti, Dist. Wardha

Shri M.M.Sudame with Mr. Ibrahim Fidvi, learned
counsel for the petitioner.
None for respondents.

CORAM : AVINASH G. GHAROTE, J.
DATE : 11/02/2021.

1] Heard Shri M.M.Sudame, learned counsel for the
petitioner. None appears for respondents, though served.

2] The petitioner society claims to have engaged the
services of one Mohan Nagpure under an agreement dated
15.07.1987, under the terms of which, he was look after one of the
centres of the petitioner society for distribution of seeds and other
produce. Under the terms of the agreement, the said Mohan
Nagpure, had agreed to clear the loss in case it was so found. The
petitioner society claimed to have found shortage in the goods at the
centre worth of Rs.87,343/- consequent to which an audit was
claimed to have been conducted, in which the shortage was found to
be worth Rs.91,144/-. It is submitted that punchanamas were drawn
regarding the shortage of goods and on the basis of the punchnama

and the audit report, a dispute under Section 91 came to be filed by the petitioner society against the said Mohan Nagpure for recovery of the funds claimed to have been misappropriated by him to the tune of Rs. 91,144/- along with interest thereupon.

3] The Cooperative Court by judgment dated 26.6.2013 partly allowed the dispute and granted an award in favour of the petitioner society, against the legal heirs of the said Mohan Nagpure, who by that time had passed away.

4] The legal heirs of Mohan Nagpure challenged the award before the Cooperative Appellate Court, which reversed the judgment of the Cooperative Court, being aggrieved by which the present petition has been filed.

5] Mr. Sudame, learned counsel for the petitioner, submits that the judgment of the Appellate Court is incorrect, as the same does not consider that the claim was made on the basis of the audit report and the panchanama, which according to him, were duly proved. He attacks the finding of the First Appellate Court in this

regard by contending that they are not based upon the correct position of law.

6] With the help of learned counsel, I have gone through the record. The learned First Appellate Court, in my considered opinion, has rightly set aside the judgment and award passed by the Cooperative Court, for the reason that only one witness namely the manager of the society Mr. Devidas Wasudeo Mahatre was examined at Exh.21, who in his evidence has claimed to have proved the audit report as well as the panchanamas at Exh.37, 26 and 27 respectively. The Cooperative Appellate Court has, however, in my opinion, found correctly that the burden of proof was not discharged by the society, as neither the auditor nor the panchas who were witness to the panchnama were examined. It is a correct position of law as observed by the First Appellate Court that mere marking of a document does not dispense with the proof of the same. In the present case also, in absence of examining either the auditor or panch witnesses, the loss as claimed by the petitioner society was not proved. That being the position, the Cooperative Court could not have rendered a judgment

and award in favor of the petitioner society. No other point was raised.

7] The judgment as passed by the First Appellate Court is based upon the correct position of law and cannot be faulted with. The petition is, therefore, without any merit and is accordingly dismissed. Rule is discharged. No costs.

JUDGE

Rvjalit