

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2872 OF 2022

1. Prerana Nagari Sahakari Bank Ltd.,
N-9, TC Centre HUDCO Aurangabad
Through its Chairman,
Shri Jaggnath Vaijnath Kale,
Age : 55 years, Occu - Business,
R/o – N-9 TC Centre, HUDCO,
Aurangabad.
2. Prerana Nagari Sahakari Bank Ltd.,
N-9, TC Centre HUDCO Aurangabad
Through its CEO,
Shri Trimbak Vitthalrao Mangate,
Age : 45 years, Occu - Service

...Petitioners
(Org. Respondents)

Versus

1. Divisional Joint Registrar,
Co-operative Societies, Aurangabad,
Division Aurangabad.
2. District Deputy Registrar,
Co-operative Societies, Aurangabad,
District Aurangabad.
3. Smt. Amrapali Kashikar,
Assistant Registrar, Co-operative
Societies, Tq. Khultabad, Dist.Aurangabad
4. Bajirao Kaduba Gade,
Age: 58 years, Occu: Service,
R/o : Chatrapati Nagar, Beed Bypass,
Aurangabad.
5. Suhas Siddheshwar Sahastrabudhe,
Age: 76 years, Occ: Retired, R/o Shrey nagar,
Aurangabad.
6. Prabhakar Shankarrao Mate,
Age: 55 years, Occu: Agril, R/o Mayur Park,
Jalgaon Road, Aurangabad.

7. Ratnakar Manikrao Kulkarni,
Age: years, Occu: Business,
T/o : Thakare nagar, Satara Parisar,
Aurangabad.

...Respondents
(Org. Petitioners)

Mr. K.J. Suryawanshi, Advocate for Petitioners
Mr K.B. Jadhavar, AGP for the State/Respondent Nos.1 to 3
Mr S.S. Thombre, Advocate for Respondent Nos. 4 to 7

CORAM : SANDEEP V. MARNE, J.

RESERVED ON : 14th NOVEMBER, 2022

DELIVERED ON : 17th NOVEMBER, 2022

JUDGMENT :

1. Rule. Rule made returnable forthwith. With the consent of parties, taken up for final hearing.

2. By the present petition, the petitioners assail order dated 10.11.2021 passed by the Divisional Joint Registrar, Co-operative Societies, Aurangabad in Revision Application No. 20 of 2021. By that order, the revision filed by respondent Nos. 4 to 7 has been partly allowed and the proceedings are remanded to the District Deputy Registrar, Co-operative Societies, Aurangabad for fresh decision about the membership of 1666 members of petitioner No.1 society. Earlier, both the Assistant Registrar, Co-operative Societies as well as District Deputy Registrar, Co-operative Societies had held that the issue of validity of resolution admitting 1666 members by the petitioner was not in their jurisdiction and respondent Nos. 4 to 7 were advised filing of dispute under section 91 of the Maharashtra Co-operative Societies Act, 1960 (for short 'Act of 1960'). It is common ground that in pursuance of those decisions of Assistant and

District Dy. Registrars, respondent Nos. 4 to 7 have filed dispute before the Co-operative Court challenging the proceedings of the meeting dated 22.03.2018 and resolution adopted therein.

3. The dispute between petitioners and respondent Nos. 4 to 7 has arisen on account of admission of 1666 new members in Petitioner society by adopting resolution in the meeting of the managing committee of petitioners on 22.03.2018. Respondent Nos. 4 to 7 were aggrieved by the admission of such new members and filed application dated 17.08.2019 before the District Deputy Registrar of Co-operative Societies seeking cancellation of the said new members. After conducting enquiry in the matter, the Assistant Registrar of Co-operative Societies, Khultabad recorded an opinion in his inquiry report dated 27.01.2021 that the issue of deciding validity of resolution adopting new members was outside the jurisdiction of Assistant Registrar and that same would fall under jurisdiction of the Co-operative Court under section 91 of the Act of 1960. Accordingly, the District Deputy Registrar issued communication dated 12.02.2021 to respondent Nos. 4 to 7 advising them to approach the Co-operative Court under section 91 of the Act of 1960.

4. Respondent Nos. 4 to 7 continued pursuing the matter before the District Deputy Registrar by filing complaint dated 16.03.2021 and again by communication dated 01/06.04.2021, the District Deputy Registrar advised them to approach the Co-operative Court under section 91 of the Act of 1960. Respondent Nos. 4 to 7 thereafter, filed dispute No. 94/2021 before the Co-operative Court challenging the proceedings of the

meeting dated 22.03.2018 and the resolution No. 3 adopted therein. The said dispute is pending. During pendency of that dispute, respondent Nos. 4 to 7 simultaneously moved the Divisional Joint Registrar by filing Revision No. 20/2021 in July, 2021. That revision came to be partly allowed by the Divisional Joint Registrar by order dated 10.11.2021 remanding the matter for fresh decision to the District Deputy Registrar. The petitioners are aggrieved by the order passed the Divisional Joint Registrar on 10.12.2021.

5. Appearing for the petitioners, Mr Suryawanshi, the learned counsel would submit that the revision filed before the Divisional Joint Registrar by respondent Nos. 4 to 7 was not maintainable in view of filing of Dispute No.94/2021 before the Co-operative Court. He would submit that respondent Nos. 4 to 7 cannot be permitted to adopt two parallel remedies in respect of the same cause of action. Mr Suryawanshi would further contend that respondent Nos. 4 to 7 accepted and acted upon the decisions taken by the Assistant Registrar and District Deputy Registrar to the effect that the issue of validity of resolution admitting new members was not within their jurisdiction and accordingly, filed dispute under section 91 of the Act of 1960 before the Co-operative Court. Having accepted those decisions, it was not open for them to turn around and file Revision before the Divisional Joint Registrar. Lastly, Mr Suryawanshi would contend that if two remedies were available under the law, the party adopting them is required to elect one of the two remedies.

6. In support of his contentions, Mr Suryawanshi has relied upon the following Judgments :-

- (i) Sunil Sitaram Mahajan Vs. Suryakant Pandurang Badave and Ors. reported in 2016 (3) Mh.L.J. 373
- (ii) Kamlabai Vitthal Rohankar Vs. Additional Collector & Ors reported in 2007 (3) Bom. C.R. 630
- (iii) Ramchandra Krushnarao Pitale Vs. The Scientific Co-operative Housing Society Ltd. And Ors. Reported in 2009 (4) All MR 553
- (iv) Mahalaxmi Majdoor Sahakari Sanstha Mydt. Vs. Kolhapur Jilha Majdoor Sahakari Sansthncha Sangh Ltd. and Ors. 2012 (4) Bom C.R. 827
- (v) Keshav Krishna Londhe (Dr.) Vs. Adarsh Gruha Nirman Sahakari Sanstha Limited & Ors. Reported in 2005 (5) Bom C.R. 404
- (vi) K.V. Sundaram and Anr. Vs. Raj Rajeshwari Co-op. Housing Society Ltd., and Ors. reported in 1908 Mh.LJ. 4
- (vii) Margret Almeida Vs. Bombay Catholic co-operative Housing Society Ltd., reported in 2012 (2) AIR Bom 535
- (viii) Jai Singh Vs. Union of India and Ors. Reported in 1977 AIR 898
- (ix) M/s. British Agro Products (India) P. Ltd. Vs. The Assistant Commissioner of Income Tax National e-faceless Assessment Centre, Delhi and Ors. (Writ Appeal No. 2894/2021 dated 09.02.2022)
- (x) CDE Asia Limited Vs. Jaideep Shekhar & Anr (C.S. (Comm) 124/2019 dated 24.02.2020)
- (xi) Prerna Nagari Sahakari Bank Ltd., and Ors. Vs. Shri Bajirao Kaduba Gade and Ors. (Copy of order passed by the Appellate Court in A.O. No. 4/2022)

7. Per contra, Mr Thombre, the learned counsel appearing for respondent Nos. 4 to 7 would oppose the petition and support the order passed by the Divisional Joint Registrar. He would submit that the Assistant Registrar as well as District Deputy Registrar of Co-operative

Societies have all the powers under section 11 of the Act of 1960 to decide the issue of eligibility of a person to become member of a cooperative society. He would therefore, submit that their earlier decisions were clearly erroneous and that therefore, the Divisional Joint Registrar has rightly remanded the matter for fresh decision to the District Deputy Registrar. He would further submit that the Dispute filed by respondent Nos. 4 to 7 before the Co-operative Court is for altogether different cause of action in respect of illegal resolution passed by Petitioners, whereas the matter before the Assistant/District Deputy Registrar was for membership of petitioner society. He would therefore submit that the two proceedings are not parallel. He would further submit that respondent Nos. 4 to 7 cannot challenge the resolution before the Assistant/District Deputy Registrar and therefore, respondent Nos. 4 to 7 have rightly approached the Co-operative Court for that reason. He would further submit that the admission of 1666 new members by the petitioner society was grossly arbitrary as they did not have accounts with the society-Bank, which is a mandatory requirement for becoming its member. In support of his contention, Mr Thombre would rely upon the Judgment of this Court in ***Karbhari Maruti Agawan Vs. State of Maharashtra and others reported in 1994 (2) Mh.L.J. 1527.***

8. The rival contentions of the parties are now fall for my consideration.

9. The short issue that needs to be decided in the present petition is whether the proceedings initiated by respondent Nos. 4 to 7 before

Assistant/District Deputy Registrar, Co-operative Societies and before the Co-operative Court are for the same cause of action. There is no matter of doubt that two separate remedies are provided under section 11 of the Act of 1960 for determining eligibility of members and under section 91 for challenging the validity of resolution adopted in the meeting of the Society. It would be necessary to reproduce both the provisions. Section 11 of the Act of 1960 reads thus -

“...11. When any question arises whether a person is an agriculturist or not, or whether any person resides in the area of operation of the society or not, (or whether a person is or is not engaged in or carrying on any profession, business or employment, or whether a person belongs or does not belong to such class of persons as declared under sub-section (1-A) of section 22 and has or has not incurred a disqualification under that sub-section,) such question shall be decided by the Registrar (and his decision shall be final, but no decision adverse to any such person shall be given without giving him an opportunity of being heard.)...”

10. Section No. 91 of the Act of 1960 reads thus -

91. (1) Notwithstanding (anything contained) in any other law for the time being in force, any dispute touching the constitution, (election of the committee or its officers) conduct of general meetings, management or business of a society shall be referred by any of the parties to the dispute, or by a federal society to which the society is affiliated, or by a creditor of the society, (to a Co-operative Court), if both the parties thereto are one of other of the following :-

(a)....

- (b)....
- (c)....
- (d)...
- (e)....

11. Thus, under section 11 of the Act, the Registrar has jurisdiction to decide the issue about eligibility of a person to become member of the society. On the other hand, under section 91 of the Act, the dispute relating to management or business of the society or conduct of meetings can be decided by Co-operative Court.

12. In the present case, the resolution No. 3 came to be adopted by the petitioner society in its meeting held on 22.03.2018, thereby, admitting 1666 new members. It is the case of respondent Nos. 4 to 7 that said 1666 new members are not eligible to become members *inter alia* on the ground that they do not have any accounts with the petitioner bank. The Assistant Registrar and District Deputy Registrar gave decisions that they do not have jurisdiction to decide validity of resolution adopted by the petitioner bank. The respondent Nos. 4 to 7 accepted those decisions and filed Dispute No. 94/2021 before the Co-operative Court challenging the resolution No. 3 adopted in the meeting of the petitioner bank held on 22.03.2018.

13. It is the contention of Mr Thombre that causes of action in respect of resolution No. 3 adopted in the meeting held on 22.03.2018 and in respect of eligibility of new members are entirely different. However perusal of the resolution no. 3 would indicate that decision taken therein is for admission of new members. No other decision has been taken vide

that resolution. It is the case of respondent Nos. 4 to 7 that such persons could not have been admitted as members essentially because they do not hold eligibility criteria to become members. Thus, the issue of eligibility of 1666 persons to become members and the validity of resolution No. 3 adopted on 22.03.2018 are clearly interlinked. The cause of action with regard to both the grievances is essentially same. In such a situation, whether respondent Nos. 4 to 7 could be justified in parallelly adopting proceedings under section 11 of that before the Registrar questioning eligibility of new members and simultaneously filed dispute before the Co-operative Court under section 91 challenging the resolution? To find an answer, it would be necessary to determine whether one out of the two authorities/court can decide both the grievances.

14. Mr Suryawanshi has contended that the Co-operative Court also has jurisdiction to decide the issue of admissibility of new members. He has relied upon the judgments of Single Judge and Division Bench of this Court in **Ramchandra Krushnarao Pitale** (supra). The Single Judge of this Court has held that a Co-operative Court cannot decide question as to whether disputant therein was a member of a society or not. In appeal, the Division Bench went into the issue of membership of the disputant and held that the dispute filed before the Co-operative Court to be maintainable. However, decisions in **Ramchandra Krushnarao Pitale** (supra) do not throw clear light on the exact issue involved in the present petition. In **Mahalaxmi Majdoor Sahakari Sanstha Maryadit** (supra), this Court was concerned with the issue of enrollment of new members. The dispute was filed challenging enrollment of new member before the Co-

operative Court, which rejected the same as not maintainable under the provisions of order VII, Rule 11 (d) of the Code of Civil Procedure holding that the Registrar has exclusive jurisdiction to decide entitlement of person to become a member. This Court has held as under :-

12. The next aspect that needs consideration is whether the question as to the dispute about membership could have been decided by the Co-operative Court. The Society has certainly disputed the status of the petitioner as a member. The question as to whether a disputant is or is not a member cannot be entertained by the Co-operative Court by virtue of the provisions contained in section 23 of the Co-operative Societies Act. The jurisdiction exclusively lies with the Registrar. In the circumstances, the petitioner ought to have first got determined the status as a member.

A bare look at the provisions of section 91 of the M.C.S. Act, 1960 will clearly indicate that a person claiming to be a member of a society can certainly file dispute against the society under section 91. The learned Single Judge however has proceeded on the basis that such a person must first get his right as member established by moving the Registrar and only thereafter he can file a dispute. In my opinion, the said judgment and observation in paragraph-12 clearly overlook the provisions of section 91 and hence do not constitute a binding precedent.

Thus, this Court has taken a view that the Co-operative Court can also go into the issue of entitlement of a person to become member of the Society.

15. Mr Thombre, has relied upon the decision of this Court in **Karbhari Maruti Agawan** (supra) in support of his contention that it is the Registrar alone, who is entitled to decide the issue about membership.

However, perusal of the said Judgment would indicate that the issue involved therein was essentially about the stage at which powers can be exercised by the Registrar under section 11 of the Act. The issue was whether the Registrar can go into the question of eligibility of a member after publication of provisional voters list. The decision therefore, has no application to the facts of the present case.

16. As held hereinabove the cause of action with regard to eligibility of new members and validity of resolution adopted by the petitioner society is common. Respondent Nos. 4 to 7 initially acted upon the decisions taken by the Registrar and filed dispute before the Co-operative Court. They later took a *volte face* and challenged the decisions of the Assistant/District Deputy Registrar before the Divisional Joint Registrar. In my opinion, adoption of such parallel remedies by respondent Nos. 4 to 7 cannot be countenanced. In this regard, reliance of Mr. Suryavanshi on judgment of the Apex Court in *Jai Singh* (supra) is apposite. It is held by the Apex Court as under:

The High Court dismissed the writ petition on the ground that it involved determination of disputed questions of fact. It was also observed that the High Court should not in exercise of its extraordinary jurisdiction grant relief to the appellant when he had an alternative remedy. After hearing Mr. Sobhagmal Jain on behalf of the appellant, we see no cogent ground to take a view different from that taken by the High Court. There cannot, in our opinion, be any doubt on the point that the extent of purity of the gypsum won by the appellant is a question of fact. **It has also been brought to our notice that after the dismissal of the writ petition by the High Court, the appellant has filed a suit, in which he has agitated the same question which is the subject matter of the writ petition. In our opinion, the appellant cannot pursue two parallel remedies in respect of the same matter at the same time.** (emphasis supplied)

17. Since the issue of validity of resolution and eligibility of members is interlinked, in the peculiar facts of this case, the Co-operative Court can go into the issue of membership as well. Parallel proceedings before the District Deputy Registrar (as remanded by the Divisional Joint Registrar) cannot be permitted to simultaneously go on so as to prevent conflicting decisions. The order passed by the Divisional Joint Registrar, therefore, deserves to be set aside. I accordingly proceed to pass the following order :-

ORDER

- (i) The order dated 10.11.2021 passed by the Divisional Joint Registrar in Revision No. 20/2021 is set aside.
- (ii) Respondent Nos. 4 to 7 would be at liberty to pursue Dispute No. 94/2021 pending before the Co-operative Court, Aurangabad and raise the issue of eligibility of 1666 persons to become new members of petitioner society while deciding the issue of validity of resolution No. 3 adopted in the meeting dated 22.03.2018. The Cooperative Court shall decide the Dispute uninfluenced by any of the observations made in this order. All points on merits are left open.
- (iii) With the above directions, the writ petition is allowed. No costs.
- (iv) The rule is made absolute in above terms.

[SANDEEP V. MARNE, J.]

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