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

WRIT PETITION NO. 3041 OF 2022

Indira Gandhi Mahila Sahakari Soot Girni Ltd. ... Petitioner

V/s.

The Kolhapur District Central Co-operative
Bank and Ors. ... Respondents

Mr. Ashutosh M. Kulkarni for the Petitioner
Mr. S.S. Patwardhan for the Respondent No.1
Ms. K.N. Solunke, AGP for the Respondent - State

***CORAM : NITIN JAMDAR &
SHARMILA U. DESHMUKH, JJ.***

DATE : 11 NOVEMBER 2022

P.C. :-

Heard the learned Counsel for the parties.

2. This Petition is filed by the Petitioner – a spinning mill
with the following prayer :-

*“(b) To direct the Respondent No.1 – bank to make
fresh calculations with regard to the Petitioner’s loan
account in terms of the Government Resolution dated
17.03.2007 and to refund the excess amount to the*

Petitioner along with interest @ 18% p.a. from the date of payment of 8th installment made by the Petitioner to the Respondent No.1 – bank i.e. from 16.10.2007 till actual refund, within a time bound manner.”

3. The Petitioner is a spinning mill incorporated under the Maharashtra Co-operative Societies Act, 1960. The Petitioner is a member of Respondent No.1. The Petitioner had obtained certain financial assistance from the Respondent No.1. On 17 March 2009, the State of Maharashtra by issuance of a resolution provided guidelines for the rate of interest and that a contractual argument be made accordingly. On 24 March 2008, the Petitioner wrote to the Respondent No.1 to give it a benefit of a Government Resolution dated 17 March 2007. According to the Petitioner, the Respondent No.1 by misapplying and misinterpreting the Government Resolution dated 17 March 2007 has calculated the component of interest and by bare perusal of the language of the Government Resolution dated 17 March 2007, the erroneous calculations made by the Respondent No.1 can be seen. It is the contention of the Petitioner that the State Government should be directed to enforce the Government Resolution dated 17 March 2007 as against the Respondent No.1 directing it to calculate the interest in terms of the Government Resolution.

4. It is the stand of the Respondent No.1 that they have followed the Government Resolution dated 17 March 2007 and have applied

the rate specified therein, however, the dispute has arisen on calculation after applying the rate and this dispute will have to be decided by the Competent Forum provided under Section 91 of the Act of 1960.

5. As regard the existence of remedy under Section 91 of the Act of 1960 is concerned, there is no dispute at the bar but it is the grievance of the Petitioner that this remedy will take long time and considering the short issue, directions to the State Government can be issued.

6. The learned Counsel for the parties have drawn our attention to the order passed by the learned Single Judge in Writ Petition No.631 of 2019 dated 10 February 2020. The State Government through the Divisional Joint Registrar had passed an identical order in favour of the Petitioner on 20 May 2016 under Section 79(AA)(1) of the Act of 1960 which is confirmed in Appeal in order dated 13 July 2018. By these orders, the Respondent No.1 was directed to re-examine the Memorandum of Understanding entered into between the parties and the amount should be revoked. The Respondent No.1 had challenged this order before the learned Single Judge. The learned Single Judge found that the State Government had no such power under Section 79(A) or 79(AA) of the Act of 1960 and had set aside the impugned order. Thereafter, the Petitioner had challenged the order of the learned Single Judge in

the Hon'ble Supreme Court and the Special Leave to Appeal was dismissed as withdrawn.

7. The dispute after applying the rates as per the Government Resolution has arisen from a contract. The Government Resolution dated 17 March 2007 provides guidelines and thereafter, contemplates the Memorandum of Understanding to be entered into between the parties. Perusal of the Government Resolution dated 17 March 2007 shows that it prescribes certain rates of interest and execution of Memorandum of Understanding. There is reference to the establishment of any authority to adjudicate in dispute that arises from working of the Memorandum of Understanding. To confer a power for adjudication upon an authority to resolve the dispute arisen from a contract between the parties will have to be a specific provision. Direction given by the State Government under Section 79(AA) and the learned Single Judge found that it could not have been issued either under Section 79(A) or 79(AA). Therefore, neither any statutory provision empowering in the State Authority is shown nor from the language of the Government Resolution, it is demonstrated that there exist an adjudicatory forum. Had the parties agreed before us that an officer of the State should intervene and resolve the dispute, such order could have been passed. However, that is not the position.

8. On the other hand, a specific adjudicatory forum under

Section 91 of the Act of 1960 is provided. It is not debated before us that the dispute raised and existent between the parties can be decided by the Competent Court under Section 91 of the Act of 1960. There is now reason why the Petitioner cannot approach this forum. As regards the delay in disposing of the proceedings under Section 91 of the Act of 1960, it is always open to the Petitioner to make appropriate request to the concerned Court to take up the matter expeditiously.

9. In the light of this position, keeping the remedy of the Petitioner open to approach the Competent Forum under Section 91 of the Act of 1960, we dispose of the Petition. In case any issue of delay arises, the concerned Court will no doubt consider the time spent in the earlier litigation.

10. Writ Petition is disposed of in the above terms.

SHARMILA U. DESHMUKH, J.

NITIN JAMDAR, J.