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

WRIT PETITION NO. 14661 OF 2022

TJSB Sahakar Bank Limited, a Multi- State ... Petitioner.
Co-op. Bank, through its Manager.

Versus

Commissioner for Co-operation &
Registrar of Co-operative Societies,
Maharashtra State, Pune & Ors. ... Respondents.

**WITH
WRIT PETITION (ST.) NO. 7182 OF 2022**

M/s. Laxmi Industries & Others ... Petitioners.

Versus

Commissioner for Co-operation &
Registrar of Co-operative Societies,
Maharashtra State, Pune & Ors. ... Respondents.

Mr. Surel S. Shah, Advocate i/by Mr. Aadesh M. Patil for the
Petitioners.

Mrs. M. S. Bane, AGP for the State-Respondent No. 1.

Mr. Alankar Kirpekar, Advocate a/w. Mr. Sagar Kasar Ms.
Chaitali Bhogle for Respondent Nos. 2 to 9.

**CORAM : R.D. DHANUKA & S.G. DIGE, JJ.
DATE : NOVEMBER 29, 2022.**

P.C. :-

1. Writ Petition (st.) No. 7182 of 2022 (numbered as Writ

Petition No. 3531 of 2022) is not on board. Upon mentioning, taken on Board. By consent of the parties, both the petitions were heard together and are decided by this common order.

2. In Writ Petition No. 14661 of 2022, the Petitioner -Bank has prayed for writ of mandamus and certiorari for quashing and setting aside order passed by Respondent No.1 / the Commissioner for Co-operation and Registrar of Co-operative Societies, Maharashtra State, Pune under section 84 (4) of the Multi State Co-operative Societies Act, 2002.

3. Writ Petition (st) No. 7182 of 2022 is filed by the respondent no.2 in this petition who, interalia, prayed for quashing and setting aside the order dated 1st December, 2021 passed by the respondent no.1, thereby appointing the Arbitrator under section 84 (4) of the Multi State Co-operative Societies Act.

4. Mr. Shah, learned counsel for the petitioner in the writ petition no. 14661 of 2022 vehemently urged that once the arbitrator was already appointed by the authority under

section 84 (4) of the Act, the authority has no power to cancel the said appointment made by him. He submitted that the Petitioner had filed a dispute before the learned District Arbitrator, appointed by the Authority under the Act, against the respondent no.2. The dispute has been rejected by the learned arbitrator. The petitioner has already filed petition under section 34 of the Arbitration and Conciliation Act, 1996. It is submitted that the remedy of the respondent no. 2, if any, to challenge the jurisdiction of the arbitrator would be to file an application under section 16(2) of the Arbitration and Conciliation Act, 1996, which has to be dealt with by the learned arbitrator under the said provisions. He submitted that the mandate of the learned arbitrator could not have been terminated by the authority under section 84 (4) of the Multi State Co-operative Societies Act.

5. Learned counsel for the respondent no. 2, on the other hand, submitted that since the claim of the petitioner is already dismissed by the learned arbitrator and the said Award is subject matter of the arbitration petition under section 34 of the Arbitration and Conciliation Act, 1996, there

is no question of appointing the second arbitrator by the authority for the purpose of adjudication of the same claim, which is already the subject matter of the arbitration petition. He fairly submits that the writ petition filed for that purpose being Writ Petition (st.) no. 7182 of 2022, interalia challenging the appointment of the arbitrator would not survive now as the authority has already cancelled the said appointment. Statement is accepted.

6. In our view since the claim by the petitioner society having been already rejected by the learned arbitrator and the said Award is the subject matter of the writ petition filed under section 34 of the Arbitration and Conciliation Act, 1996 which is admittedly pending, there is no question of adjudication of the same claim again by appointment of another arbitrator. Though, Mr. Shah the learned counsel for the Petitioner is right in his submission that even if the authority had appointed another arbitrator for the purpose of decision of the claim that to be made by the Petitioner, the respondent no. 2 could have appeared before the learned Arbitrator himself by filing the application under section 16(2) of the Arbitration and

Conciliation Act, thereby raising the plea of jurisdiction.

7. Since the arbitration petition filed by the petitioner is pending before the appellate court arising out of the Award rendered by the learned arbitrator, we are not required to decide the issue raised by the learned counsel for the Petitioner about competency of the authority in cancelling the appointment of the arbitrator. The issue is academic and thus need not be decided at this stage. If for any reason, the proceedings are remanded by the learned District Judge, Nasik in the application filed under section 34 of the Arbitration and Conciliation Act by consent of the parties, in that event the petitioner would be at liberty to apply for appointment of arbitrator again under the provisions of section 84 of the Multi State Co-operative Societies Act.

8. Both the writ petitions are disposed off in the aforesaid terms. No orders as to costs.

(S. G. DIGE, J.)

(R.D. DHANUKA, J.)

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