

IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

ORIGINAL SIDE

APO/82/2022

WITH

WPO/56/2014

**MANAGING DIRECTOR OF WEST BENGAL TRANSPORT
CORPORATION LTD. AND ANR.**

VS

**THE CALCUTTA TRAMWAYS EMPLOYEES' CO-OPERATIVE
CREDIT SOCIETY LIMITED & ORS.**

Before: The Hon’ble Justice Arijit Banerjee
&
The Hon’ble Justice Apurba Sinha Ray

For the Appellants : Mr. Kalyan Bandyopadhyay, Senior Advocate
Mr. Niladri Bhattacharjee, Advocate
Mr. Soham Bandyopadhyay, Advocate
Mr. Aditya Chaturvedi, Advocate

For the Respondents/Writ Petitioners : Mr. Saptanshu Basu, Senior Advocate
Mr. Shibnath Bhattacharya, Advocate
Mr. Abhishek Bhattacharjee, Advocate

For the State : Mr. Naba Kumar Das, Advocate
Mr. Subhabrata Das, Advocate

Judgment On : 17.05.2023

Apurba Sinha Ray, J. :-**Factual Matrix:-**

1. The writ petitioner/the Calcutta Tramways Employees' Cooperative Credit Society Limited states that as per Section 59(2) of the West Bengal Co-operative Societies Act, 2006, the appellants who are the employers of the members of the said Credit Society, were/are liable to deduct the amounts lent by the Society, from the salaries of the concerned members as per demands of the Society, that is, the writ petitioner, and after such deduction the employers were under an obligation to refund the said amount to the respondent Society within 15 days from the date of such deduction as if it was part of the wages payable by the company under the Payment of Wages Act, 1936.

1.1. Further, Section 59(3) of the West Bengal Co-operative Societies Act, 2006 imposes a strict liability upon the employer and the drawing and disbursing officer of the company in this regard by stipulating that if they fail to make deduction under Sub-section (2) of Section 59 or fail to remit the amount to the co-operative society, the drawing and disbursing officer shall be liable to make the payment to the Employees Cooperative Credit Society together with interest at 12% per annum and the entire amount shall be recoverable from the employer or drawing and disbursing officer by the co-operative society as an arrear of land revenue.

1.2. In the present case, the appellants defaulted in remitting the amount deducted from the salary of the employees of the company to the credit society for a couple of years and inspite of several correspondences from the side of the credit society, the present appellant-company failed to discharge its statutory obligation and for which several legal proceedings were initiated by the present respondent co-operative credit society.

1.3. It is an admitted case of the parties that after long persuasion and also after intervention from the court of law, the appellants ultimately paid off the entire amount which was deducted from the salaries of the concerned employees/members of the credit society and refunded the same to the coffers of the respondent credit society. However, the amount of interest which accrued on the deducted amount was not paid and for which the writ petitioner-credit society as aforesaid brought the present action praying, inter alia, for issuance of writ of mandamus directing the appellants to refund the deducted amount of Rs. 14,60,18,794.99 as on 10.01.2014 to the petitioners society together with interest at 18% per annum on the said principal amount to be calculated up to the date of payment.

1.4. The allegations were contested and after hearing both the parties the Learned Single Judge allowed the writ application directing the appellants to pay the balance due of interest at the statutory rate of 12% per annum till April 15, 2022 to the tune of Rs. 16,01,95,890/- to the respondent society as expeditiously as possible by four equal monthly

instalments, in default, the entire amount due, as on the date of such default along with 18% per annum interest on the entire due amount, from the date of default till the date of payment, shall be recovered in terms of Section 59(3) of the West Bengal Co-operative Societies Act, 2006 as an arrear of land revenue.

Submission from the Bar

2. Mr. Kalyan Bandyopadhyay, learned Senior Advocate appearing on behalf of the appellants, has argued that the appellants being the respondents in the writ petition had disputed the plea of interest of the writ petitioner as aforesaid, but the Learned Single Judge did not consider the same and went on to decide the writ petition directing the appellants to pay the alleged dues on account of interest till such date which was actually not claimed by the writ petitioner.

2.1. Learned Senior Counsel has also argued that there are several documents and orders of Coordinate Benches of this Court recording the objection of the appellants against the claim of interest as aforesaid, but the Learned Single Judge without considering the same and also without considering the fact that a writ court cannot go into the disputed and complicated factual aspects of a case, passed the impugned judgement directing the appellants to pay the amount with interest in gross violation of settled principles of law. The learned Counsel also challenged the observation of the Hon'ble Court that the writ petitioner can avail the

relevant provisions under Public Demands Recovery Act, 1913 to recover its alleged dues.

2.2. It is also argued from the side of the appellants that reliance upon the calculation sheet of a Chartered Accountant, unsupported by any affidavit, is totally misplaced, and the observation of the Learned Single Judge that such calculation sheet appended with written notes of argument of the writ petitioner not being denied by the appellants by way of furnishing counter calculation sheet went against the appellants, is hitherto unheard of.

2.3. Appellants' learned Counsel further argued that the disputed facts could have been adjudicated in a suit giving opportunity to the writ petitioner to prove its case in accordance with law and, in such proceedings the calculation of the alleged accrued interest by the Chartered Accountant could have been tested by cross examination on behalf of the present Appellants. That being not done, the Court cannot rely upon such report of the said Chartered Accountant against the interest of the appellants.

2.4. In support of his contention, learned Counsel has drawn the attention of this Court to the judicial decisions reported in **AIR 1988 SC 2181 (Para 13) (Bharat Singh and Others Vs. State of Haryana and Others), 2011 (2) SCC 439 (Para 8) (Godavari Sugar Mills Limited Vs. State of Maharashtra and Others), 2005 (12) SCC 725 (Paras 7 to 11)**

(Orissa Agro Industries Corporation Limited and Others Vs. Bharati Industries and Others) and 1994 Supp (2) SCC 466 (Eastern Coalfields Limited Vs. Ravi Udyog and Others).

3. Learned senior Advocate, Mr. Saptanshu Basu, appearing on behalf of the respondent no.1, has submitted that as the claim of the society is not covered under the provisions of Public Demands Recovery Act, 1913, the Writ Court is the only forum to enforce the statutory rights provided under Section 59(3) of the West Bengal Co-operative Societies Act, 2006. According to the learned Counsel of the respondent no.1, if it is presumed for the sake of argument that there is an alternative remedy, even then that alternative remedy is not an absolute bar to the maintainability of an application under Article 226 of the Constitution of India when the authority has acted wholly without jurisdiction and also when there is violation of principles of natural justice. In support of his contention, learned Counsel has referred to the decisions reported in **AIR 1965 SC 1321 (Municipal Council, Khurai and Another Vs. Kamal Kumar and Another)**, **AIR 1968 SC 98 (Zila Parishad Moradabad Vs. M/s. Kundan Sugar Mills, Amroha)**, **AIR 1971 SC 33 (HirdayNarain Vs. Income Tax Officer Bareilly)**, **AIR 1971 SC 1021 (Century Spinning & Manufacturing Co. Ltd. And Another Vs. Ulhasnagar Municipal Council and Another)**, **AIR 1987 SC 2186 (Dr. Smt. Kuntesh Gupta Vs. Management of Hindu Kanya Mahavidyalaya Sitapur (U.P.) and Others)**, **1971 (3) SCC 20 (Champalal Binani Vs. The Commissioner of Income Tax, West Bengal and Others)**, **1971 (1) SCC**

309 (State of West Bengal Vs. North Adjai Coal Co. Ltd.), 1998 (8) SCC 1 (Whirpool Corporation Vs. Registrar of Trade Marks Mumbai and Others), 1985 (3) SCC 737 (Bhag Singh and Others Vs. Union Territory of Chandigargh) and 2020 (19) SCC 241 (Popatro Vyankatrao Patil Vs. State of Maharashtra and Others).

3.1. The learned Counsel of respondent No.1 has also argued that the appellants after paying the principal outstanding till 2018 is not entitled to say that the Writ Petitioner is not entitled to the accrued interest on principal outstanding amount under Section 59 (3) of the Co- operative Societies Act and such submission has been noted by the Hon'ble Court as being made with intention to deprive the Society from its legitimate claim.

3.2. The learned Counsel has also pointed out that the Hon'ble Apex Court in **2009 (1) SCC 540 (Corporation Bank Vs. Saraswati Abharansala & Anr.)** held that the provisions of a statute should not be considered in such a manner so as to encourage defaulters and the same should be read in such a manner as to do justice to the parties.

3.3. Learned counsel of the respondent no.1 has categorically stated that the decisions submitted by the appellants are not at all applicable to the present factual scenario of the instant case. In **Orissa Agro Industries Corporation Limited and Others (supra)**, the High court issued direction even after noting that disputed facts did exist. The Hon'ble Apex Court set aside the said order. But in this case, according to the learned Counsel of

the respondent no.1, there is no disputed question of fact, rather, default is admitted. In **Eastern Coalfields Limited (supra)** the High Court directed two separate courses but Hon'ble Supreme Court observed that such twin course is wrong. In **Godavari Sugar Mills Limited (supra)** the High Court held that writ is not maintainable to enforce a civil liability. But the subject matter of the present proceedings is statutory liability.

3.4. Learned Counsel of the respondent no. 1 has drawn the attention of this Court to the order dated 02.03.2016 passed by Hon'ble Justice I. P. Mukherjee wherein His Lordship observed that if the deposits would have been made by the employees, they would have earned interest on the sum.

3.5. According to the said Counsel, as the default is admitted on the part of the appellants, they are liable to make payment of interest accrued on the principal outstanding dues at the statutory rate of 12%.

Decisions with reasons

4. At the outset, I would like to point out two aspects of the arguments placed before us. First, the contention from the side of the respondent No.1 that as there is no provision under Bengal Public Demand Recovery Act 1913, Writ Jurisdiction is the only jurisdiction to recover the dues on account of interest under section 59(3) of the West Bengal Co-operative Societies Act, 2006 (in short 'Act 2006'). After perusing the provisions of

Public Demand Recovery Act 1913,(in short “Act, 1913”) the above contention of the respondent no1 does not appear to be sound since Section 5 of the Act, 1913 read with Schedule I, Clause 4 has made provisions for recovery of the dues under challenge from the concerned authority.

4.1. According to section 5 of the Act, 1913:

Requisition for the certificate in other cases.- (1) *When any public demand payable to any person other than the Collector is due, such person may send to the Certificate Officer a written requisition in the prescribed form:*

Provided that no action shall be taken under this Act on a requisition made by a land mortgage bank registered or deemed to be registered under the Bengal Co-operative Societies Act, 1940 (Ben. Act XXI of 1940), or an assignee of such bank, unless the requisition be countersigned by the Registrar of Co-operative Societies, West Bengal.

(2) Every such requisition shall be signed and verified in the prescribed manner, and, except in such cases as may be prescribed, shall be chargeable with the fee of the amount which would be payable under the Court-fees Act, 1870 (VII of 1870), in respect of a plaint, for the recovery of a sum of money equal to that stated in the requisition as being due.

Clause 4 of schedule I:

Any money which is declared by any enactment for the time being in force-

- (i) To be a demand or a public demand, or*
- (ii) To be recoverable as areas of a demand or public demand, or as a demand or public demand, or*
- (iii) To be recoverable under the Bengal Land Revenue Sales Act, 1868 (Ben. Act VII of 1868).*

4.2. Taking a cue from the above provisions, it appears that section 59(3) West Bengal Cooperative Societies Act, 2006 has specifically mentioned that dues under challenge can be recovered as public demand, and therefore by virtue of Section 5 read with Schedule I, clause 4 of the Act 1913, the dues under Section 59(3) of Act, 2006 can be recovered through the processes laid down in the provisions of the Act, 1913.

5. The second point is that the Hon'ble Single Judge has pointed out that as the present appellant no. 1, that is, the Company, did not submit any calculation to counter the calculation placed before the court from the side of the writ petitioner with its written notes of argument, such calculation of the writ petitioner, according to learned Single Judge, goes unrebutted and therefore, the said calculation of the writ petitioner has been taken into consideration by the learned Single Judge in forming opinion against the present appellants.

5.1. The aforesaid also does not appear to be acceptable since written notes of argument submitted by the parties are adverted to by the Court to ensure that none of the points of fact or law argued by the learned counsel of the

parties is missed out, and the written notes are neither verified nor signed by the parties and therefore do not form part of pleadings of the parties. So, even if the appellants chose not to file any counter calculation sheet along with their written notes of argument, such non-submission of counter calculation sheet cannot be held against the company. But if the said calculation sheet was filed with the writ petition as annexure and the same remained unchallenged from the side of the appellants, then the consequence for such non-submission of a counter could be otherwise. However, we shall see later on whether such calculation sheet was filed with the relevant writ petition or not. So far as regards the present discussion, non-submission and non-traversing of the contents of any document appended to the written notes of argument, does not weaken the case of any party nor strengthens the case of the other side.

6. The basic points, which the learned counsel for the appellants placed before us, are that there is an alternative remedy in adjudicating the claim of the writ petitioner in the suit courts and the appellants should have been given an opportunity to contest such claim in the trial court since the appellants, all along during the writ proceedings, disputed the claim of interest. It was also argued on behalf of the appellants that the writ court cannot usurp the function of the suit Court in deciding disputed claims since it requires huge material of evidence, both oral and documentary, to be placed before the said court, and such adjudication is necessary for the purpose of rendering effective justice to the parties.

7. Learned Counsel of the Respondent no.1, on the other hand, has submitted that the case of the writ petitioner regarding default in payment of outstanding dues has been admitted by the appellants on a number of occasions and the learned single Judge has rightly passed the judgement directing the appellants to pay the dues with interest. The learned Counsel has also argued that time and again the appellants were asked to provide detailed break-up of calculation of the principal dues along with statutory interest but unfortunately the appellants did not assist the Court in this regard. According to him, the writ court is not powerless to adjudicate the claims, if the claims are admitted by the parties and the objection regarding existence of alternative remedy is no more a valid and sacrosanct ground, if there are justified causes to adjudicate the same in writ proceedings.

8. After considering the rival contentions of the parties, it appears that admittedly, after several rounds of litigation the principal dues have been liquidated by the appellants, and the writ petitioner is now claiming the interest part on the outstanding dues. In the relevant G. A being no. 5 of 2021, the writ petitioner has annexed one calculation sheet containing detailed breakup of interest on principal dues on month to month basis. The said calculation sheet was checked by one chartered accountant and his letterhead along with calculation sheet was annexed with the relevant petition. It appears that the appellants being the respondents therein did not challenge such calculation of the chartered accountant. Now the question is

whether or not such uncontroverted and undenied calculation sheet of accrued interest checked by the Chartered Accountant could be relied upon by the Learned Single Judge.

9. It is trite that a relevant fact is required to be proved by way of producing best evidence. The said report of the Chartered accountant was not supported by any affidavit. The report further shows that the Chartered accountant had merely checked the calculation, and he even did not issue any certificate to the effect that he actually prepared the report and verified the same from official records. Therefore, the questions arise who prepared the same, who verified the entries from the records and what are the records which form the basis of such calculation sheet? These questions remain unanswered from the side of the writ petitioner. A calculation sheet, merely checked by a Chartered accountant, even if uncontroverted, cannot be the basis of a judgement particularly when, rightly or wrongly, the appellants are denying the amount of interest. The cardinal principle of law that a petitioner should win on the strength of his material, not on the weakness of the respondent, should not be lost sight of.

10. According to the respondent no. 1, as the appellants admitted in several documents that it has defaulted in making payment of dues, no other evidence is required to establish the case of the writ petitioner. In this regard the learned counsel of the respondent no. 1 has drawn the attention of this court to paragraphs 6 and 7 of the affidavit affirmed in the month of

June 2016 by the Principal Secretary, Finance Department, Government of West Bengal, inter alia, admitting the liability and undertaking to take necessary steps to clear the dues at the earliest. The learned counsel of the respondent no. 1 has also pointed out that on 14 June, 2018 the company had issued a letter (volume 2 page 230) intimating the finance department about the details of outstanding to the society up to 31 May, 2018.

11. The learned counsel has further drawn our attention to the affidavit-in-opposition dated June 16, 2014 (Volume 1 page 66) wherein in paragraph 11 the appellants being the respondents in the writ petition have admitted that they have failed to refund the total deducted amount. Moreover, in the affidavit sworn on January 24, 2016 (volume 1 page 99) it was admitted by the appellants that the company could not pay back the deducted amount and as on 31 March, 2016 a sum of Rs. 28,66,40,585/- became due and outstanding and payable to the society.

12. It is settled law that admission of a relevant fact must be clear, unambiguous and free from doubts. According to the respondent no. 1 as the several documents of the appellants admit that the company made default in sending the deducted amount to the credit of the society, the Hon'ble Court can decide the issue of the amount of interest payable to the society on the principal outstanding dues on the basis of such admission. Therefore, it is necessary for this court to go through such alleged admissions on the part of the appellants and to ascertain whether the

amount of interest payable to the society was clearly and unambiguously admitted by the appellants during the writ proceedings.

13. If we peruse the affidavit affirmed in June 2016 (volume 1 page 111) by the Principal Secretary, Finance Department, Government of West Bengal, we shall find that though in paragraph no. 4 it has been stated that “as a consequence, over the years CTC has incurred a cumulative liability of 28,66,40,535/- towards CTC employees co-operative society”.... there is no clear and unambiguous admission regarding the amount of interest payable to the society in the said affidavit.

14. Now if we turn to the letter dated June 14, 2018 (volume 2 page 230) we shall find that total amount of ECS dues up to 31.05.2018, as per the said letter issued by the Managing Director, West Bengal Transport Limited is Rs. 18,20,11,166/- as on 16.07.2018, but there is no clear admission from the side of appellants regarding the amount of interest as alleged.

15. In paragraph 11 of affidavit-in-opposition sworn on June 16, 2014 it has been averred that the appellant company was undergoing a severe financial crisis and “the government is sanctioning only 75% of the monthly gross salary on account of subsidy for payment of monthly salary. So there is a gap of approximate 3.80 crores per month. It is difficult to meet up the operational cost from the traffic earning. The company has no such other income to meet up the gap to make payment of salary every month. So after

paying 100% net salary to the entire staff its hard to refund the total deducted amount to the petitioners society. As a result the dues accumulated every month for which the present situation has arisen.”

16. From the said averments it is found that there is no admission regarding the amount of interest payable to the society.

17. Though the respondent no. 1 is claiming that the writ court was justified in passing the impugned order on the basis of admission on the part of the appellants being respondents in the writ petition, we do not find that there is any clear, unambiguous admission on the part of the appellants regarding the amount of interest payable to the society. Needless to mention, the writ petition along with G.A.No.5 of 2021 was filed only to recover the amount of interest which allegedly fell due on the principal outstanding dues and therefore, the issue was required to be decided by the writ court whether any interest was liable to be paid to the society and, if so, what was the amount of such statutory interest as per Section 59(3) of the Act, 2006. It appears that the writ court, though there is no clear admission of amount of interest on the part of the appellants being the respondents in the writ petition, has proceeded to determine the amount of interest on the basis of calculation sheet checked by one chartered accountant engaged by the society. As there is no clear admission of the amount of statutory interest on the part of the appellants rather the appellants always disputed the claim of interest raised by the writ petitioner, it was not proper for the

writ court to pass the impugned order after quantifying the amount of interest on the basis of calculation sheet submitted by the writ petitioner which was merely checked by a chartered accountant.

18. It is pertinent to refer to two decisions of our Hon'ble Apex Court in this regard. **In (2011) 15 SCC 273 (Himani Alloys Limited vs. Tata Steel Limited)**, the Hon'ble Court has been pleased to observe (Para 11 of Page 276-277) :

“ It is true that a judgment can be given on an “admission” contained in the minutes of a meeting. But the admission should be categorical. It should be a conscious and deliberate act of the party making it, showing an intention to be bound by it. Order 12 Rule 6 being an enabling provision, it is neither mandatory nor peremptory but discretionary. The court, on examination of the facts and circumstances, has to exercise its judicial discretion, keeping in mind that a judgment on admission is a judgment without trial which permanently denies any remedy to the defendant, by way of an appeal on merits. Therefore unless the admission is clear, unambiguous and unconditional, the discretion of the Court should not be exercised to deny the valuable right of a defendant to contest the claim. In short the discretion should be used only when there is a clear “admission” which can be acted upon”

18.1. Moreover, in **(2010) 6 SCC 601 (Jeevan Diesels and Electricals Limited Vs. Jasbir Singh Chadha (HUF) And Another)**, the Hon'ble Supreme Court has been pleased to point out that whether or not an admission can be found to be unambiguous depends upon the facts of each

case. However, if there is no clarity on the nature of admission, the judgment, merely on the basis of such admission, is liable to be set aside.

18.2. Therefore, in the impugned judgment before us, we find that the learned Single Judge was not properly apprised of as to existence of any clear, unambiguous admission of the present Appellants enabling the Hon'ble Court to pass the judgment on admission in accordance with law.

19. It is also argued from the side of the respondent no. 1 that time and again the appellants being the respondents in the writ petition were directed by the Hon'ble Court to produce all the relevant materials before the court regarding the outstanding dues including the interest payable to the society from the side of the company. But the appellants did not produce such materials and did not assist the court to come to a proper calculation. The question necessarily arises whether non-compliance of such order justified the Learned Single Judge drawing adverse inference against the appellants being the respondents in the writ petition.

20. Needless to mention that outstanding dues on account of sums deducted from salaries have already been admittedly liquidated by the Appellants. At present, the parties are at loggerhead on the amount of statutory interest payable to the respondent no.1. Let us examine the extent and nature of actual directions issued by the Hon'ble Court upon the Appellants being the respondent in writ application.

21. Order dated January 6, 2016, Order dated January, 18, 2016 Order dated March 2, 2016 and Order dated April 19, 2016 passed by the Hon'ble Justice I. P. Mukherjee, include, inter alia, queries of the Hon'ble Court regarding details of deduction and deposit with the accounts of the writ petitioner.

21.1. The first relevant order involving statutory interest, passed on the writ petition was that of 29.01.2019 (Vol. IV, Pg 430). The order reads as follows:-

“Upon considering the submission of the Learned Advocates for the parties, the matter stands adjourned for a period of two weeks to enable the corporation as well as the State to take instruction on the question of amount of interest, if at all, that they may be willing to give to the writ petitioner on outstanding debt that has already been paid.”

21.2. The Order dated January, 21, 2021, February, 4, 2021, February, 24, 2021 and April 7, 2021 are related with the amount of dues payable to the society and court's queries regarding proposed scheme of payment of such dues.

21.3. Order dated December, 1, 2021 deals with the writ application including GA No. 5 of 2021 praying for release of Rs. 16,01,93,134.70 on account of statutory interest calculated upto March 15, 2021. Further,

Order dated January 5, 2022 indicates that some of the employees of the Appellants approached them for recalculation of their dues payable by the Appellants.

21.4. Therefore, from the above orders, it transpires that no specific direction was given to the respondent/ Appellants herein to produce any document/ material in their custody to show the actual amount of interest allegedly payable to the Writ petitioner at least till 23.03.2022.

22. It was for the first time, on April 18, 2022, that the learned Single Judge passed the following order which states, inter alia, (Page 827 vol.VII of paper book)

“Although the primary arguments of both the parties have been elaborately advanced today, since there is a dispute as regards the actual amount, if any, due in lieu of interest, this Court feels it necessary to request learned counsel appearing for the parties to file their respective written notes of arguments, indicating therein, apart from the points/contentions of argument, relevant judgments and/ or provisions of law, if any, the actual amount, if at all due from the respondent/employer to the writ petitioner. If so, the parties shall indicate the basis and break-up of such dues, if any, in the written notes of arguments.”

22.1. It appears from the above, the learned Single Judge specifically asked the parties to submit, inter alia, relevant calculations with the notes of their written argument. Though the writ petitioner submitted calculation sheet checked by a Chartered Accountant, the Appellants did not. Now, the

relevant excerpts (Para 20, Para 21 of the impugned Judgment dated 20.05.2022) (Vol. VII, Pg 835) are as follows:

“20. On the other hand, the petitioner-society, in its written notes of arguments, has clearly disclosed the due amount, supported by a detailed break-up of calculations by a registered Chartered Accountant. Although not on oath, which rules out the strict applicability of the doctrine of non-traverse, the said break-up disclosed by the petitioner has not been rebutted by any alternative calculation by the respondents.

21. In any event, since the dues of interest disclosed by the petitioner-society in its written notes of arguments have been computed at the statutory rate of twelve per cent per annum and are backed up by detailed consideration of the parts of the principal dues paid at each stage (as borne out by the supporting detailed break-up given by a registered Chartered Accountant), there is nothing before the court to disbelieve such calculations.”

23. The question is whether it was proper for the learned Single Bench to draw adverse inference for non submission of counter calculation sheet on behalf of the respondents/ Appellants herein.

23.1 From the judgment itself, it appears that the learned Single Judge has recorded that there was a dispute regarding the plea of statutory interest between the parties in the Order dated 18.04.2022, as indicated in earlier paras 22, 22.1, and therefore, when the amount of statutory interest is disputed, the direction of the Learned Single Judge upon the respondents/ Appellants herein to disclose the actual amount of interest payable to the Society was beyond the scope of writ jurisdiction.

23.2. There is indeed a complicated issue of facts. The learned counsel for the respondent no. 1 has drawn the attention of this court to the statement filed on behalf of the appellants which has been incorporated as page no. 603 of volume V of the paper book. In fact the learned counsel of the respondent no. 1 has tried to impress upon this court that the amount of outstanding dues have already been admitted in the said document from the side of the appellants. The learned counsel of the respondent no. 1 has also put his submission in this regard in black and white in his written notes of arguments more particularly in para 16. In other words, he relies upon the said document of the appellants to buttress his points of argument. According to the learned counsel of the respondent no. 1, from the said document it will be found that till 2010-2011 there was outstanding dues of Rs. 3,73,09,351/- and from 2010-2011 dues increased to Rs. 4,21,29,045/-. In 2011-2012 dues further enhanced to Rs. 4,72,72,900/- and in 2012-2013 dues enhanced to Rs. 5,15,18,826/-. Moreover in 2013-2014 dues again increased to Rs. 18,28,20,414/- and in 2014-2015 dues further enhanced to Rs. 26,26,71,465/-. In 2015-2016 dues enhanced to Rs. 28,67,37,304/- and in 2016-2017 dues became Rs. 25,64,78,235/-. Further in 2017-2018 dues became Rs. 28,60,47,943/- (21,60,47,943/-).

23.3. It appears that though the respondent no. 1 has relied on the said document of the appellants to buttress its claim that the appellants have admitted the outstanding dues, the respondent no. 1 did not mention the other subsequent entries as mentioned in the said statement as aforesaid.

The respondent no. 1 cannot blow hot and cold at a time nor it can rely upon some entries of a document and deny the authenticity of other entries in the same document. If we scrutinize the said document of the appellant which was relied on by the respondent no. 1, we shall find that in 2017-2018 the dues became Rs. 21,60,47,943/- and in the year 2018-2019 on payment of Rs. 26,82,13,919/- the dues became Rs. 67,17,092/- and in 2019-2020 on payment of Rs. 8,42,26,796/- dues became Rs. 69,22,344/-. It is also found from the said report, which was not challenged by the respondent no. 1 rather supported it, that in 2020-2021 on payment of Rs. 7,35,69,177/-, there was an excess payment of Rs. 3,53,822/-

23.4. If that be so, there is a serious dispute as to whether or not the appellants submitted correct statements, or why the respondent no. 1 did not make any whisper regarding the subsequent entries in the said statement that is from 2018-2019, 2019-2020 and 2020-2021. It is also very intriguing that why the said subsequent entries were not challenged, particularly when the respondent no. 1 has admitted that other entries have been correctly mentioned in the said report.

23.5. From the affidavit of Principal Secretary made in June 2016 it appears that Principal Secretary, Finance Department, Government of West Bengal has admitted that “as a consequence over the years CTC has incurred a cumulative liability of Rs. 28,66,40,535/- towards CTC Employees Co-operative Society” . From the statements incorporated in page 603 of paper

book volume V, it appears that since the admission of the Principal Secretary, Finance Department, Government of West Bengal, during 2016-2017 the appellants deducted Rs. 5,72,70,931/- from the salaries and a sum of Rs. 8,75,30,000/- was paid to the account of the society, as per the said statement, which was not disputed rather supported by the respondent no. 1. In 2017-2018, Rs. 6,43,69,708/- was deducted from the salaries and the amount credited to the society was Rs. 10,48,00,000/-. In 2018-2019, Rs. 5,89,36,068/- was deducted from the salaries of the concerned employees and a sum of Rs. 26,82,13,919/- was remitted to the accounts of the society. In 2019-2020 amount deducted from salaries of the employees was Rs. 8,43,79,048/- and the amount credited to the society was Rs. 8,42,26,796/-. In 2020-2021 amount deducted from the salaries of employees was Rs. 6,62,93,011/- and the amount remitted to the credited to the society was Rs. 7,35,69,177/-. Therefore, there is a serious dispute regarding the amount deducted and amount credited to the society and further, there is also a dispute over the statement prepared from the side of the respondent no. 1 regarding amount of interest which was checked by a Chartered Accountant. In the said statement, it is found that even for a default of one day the statutory interest was charged. If the respondent no. 1 is entitled under law to do so, there is no wrong on the part of the society. But the period of default is certainly a disputed fact. Therefore, I find there are serious and complicated factual issues which are required to be tested by examination and cross-examination of the available witnesses touching the important documents, as already referred above.

24. It is settled principle of law propounded by the Hon'ble Supreme Court that the Writ Court should refrain from exercising its jurisdiction to entertain serious disputed questions of fact. In our case, the factual aspects, indeed, need voluminous evidence, both oral and documentary, to be recorded but the writ court is not the proper or convenient forum to do so. Therefore, the Learned Single Judge's exercise of discretion under the high prerogative writ jurisdiction, in the facts and circumstances of the case, cannot be said to be reasonable and sound. In the facts of this case, the judicial decisions reported in **Municipal Council, Khurai and Another (supra)** and in **Zila Parishad Moradabad (supra)** are not applicable. Moreover, in **State of West Bengal (supra)**, and in **Century Spinning & Manufacturing Co. Ltd. (supra)**, there was either no dispute as to factual aspects or dispute as to elementary facts. In our case, there are disputed questions of fact as to quantum of statutory interest and its basis, and therefore not only the above decisions, but also the decision reported in **HirdayNarain (supra)** is not applicable. We have already discussed that in the present case, as elaborate evidence is required to be adduced, the case law reported in **Popatro Vyankatrao Patil (supra)** is not applicable.

25. The decision in **Bhag Singh and Others (supra)** lays down that the Government should not be allowed to take technical point to refuse the genuine claim of the citizens. In our case, on the teeth of the objection of the respondents in the writ application being the appellants herein, it was not reasonable on the part of the learned Single Judge to adjudicate on the

amount of interest, which involves a series of facts to be examined and cross examined.

26. Further, it is settled law that where there is an alternative remedy, as laid down in **Champalal Binani (*supra*)**, the High Court should be slow to exercise its jurisdiction under Article 226 of the Constitution. Moreover, in the present case the subsequent events were allowed to be pleaded in the writ proceedings, and therefore, the principles enunciated **AIR 1973 SC 171 (M/s. M. Laxmi & Co. Vs. Dr. Anant R. Deshpande and Another)** have been accepted in the present case.

27. Before concluding, I would like to state very clearly that I am not saying that there are no dues on account of statutory interest payable to the respondent no. 1 from the side of the appellants. If the respondent no. 1 is entitled to any such statutory interest it may take appropriate steps in appropriate civil forum, if it is so advised. I just hold that it was not proper for the learned Single Judge to adjudicate the 'lis' in writ proceedings, particularly in view of disputed facts, which in my opinion, are required to be adjudicated in appropriate civil forum. I am not curtailing any of the rights and remedies of the parties to this proceeding and they are at liberty to take appropriate steps in civil forum in accordance with law, and Section 14 of Limitation Act will govern the subsequent proceedings, if any.

28. In the facts and circumstances I am constrained to allow the present appeal. The impugned judgment dated 20.05.2022 passed in WPO 56 of 2014, along with IA No. GA/1/2015 (OLD No. GA/3881/2015) and GA/5/2021 is hereby set aside. The appeal is, thus, allowed on contest. No order as to costs.

Arijit Banerjee, J.:

1. I have had the occasion to read the elaborate judgment authored by my learned Brother Justice Apurba Sinha Ray. I completely agree with the reasoning recorded in the judgment and conclusion reached by my brother. However, I take this opportunity to add a few words.

2. Although there is no absolute principle of law that the High Court in exercise of its high prerogative writ jurisdiction cannot entertain matters involving disputed questions of fact, generally the High Court declines to exercise jurisdiction when there are seriously disputed factual issues. This is because writ proceedings are in the nature of summary proceedings. A writ application is decided on the basis of affidavits. No trial is held. Therefore, the writ Court is not a convenient or appropriate forum for deciding disputed factual issues.

3. It would appear from the facts of this case recorded eloquently by my learned Brother that there are seriously disputed factual issues in the present case. The appellants claim to have made over-payment to the respondent no. 1 Society. This is naturally disputed by the Society. This is essentially an accounting issue. Statements of accounts will have to be gone into. Correctness of such statements may be under challenge. The statement of accounts, that the Society says has been certified by a chartered accountant, also does not appear to be sacrosanct. The fulcrum of the judgment and order impugned in this appeal is the so called statement of the chartered accountant. The appellant did not have an opportunity to cross examine the chartered accountant. Further, as noted by my brother, the Chartered accountant appears to have merely said that he has seen the statement. He does not even certify that he has himself prepared it.

4. Further, interest on delayed remittance of the principle amount deducted from the salaries of the member of the Society, even if payable, will have to be computed separately for each individual member. For doing this exercise, one would need to know the date on which deduction was made from a particular person's salary and the delay, if any, in remitting such amount to the account of the Society. Such information was neither available before the learned Single Judge nor is available before us.

5. The aforesaid exercises can hardly be carried out in a writ proceeding. The obvious forum for such exercise is the Civil Court.

6. Hence, I whole-heartedly agree with my learned Brother that the instant appeal deserves to be allowed.

7. Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

(ARIJIT BANERJEE, J.)

(APURBA SINHA RAY, J.)