

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

APPLN. FOR LEAVE TO APPEAL BY PVT. PARTY NO.181 OF 2019

**JAYPRAKASH NAGARI SAHAKARI PAT SANSTHA MARYADIT,
GEORAI, THROUGH MANAGER BALIRAMS/O. NATHARAO MORE
VERSUS
ASHOK S/O. SADASHIV DABHADE**

Mr. A. A. Joshi, Advocate h/f Mr. S. V. Natu, Advocate for the applicant
Ms. Ashwini A. Limte, Advocate h/f Mr. S. J. Salunke, Advocate for the respondent

CORAM : R. M. JOSHI, J.

DATE : 31st JULY, 2023

P.C. :-

1. Heard.
2. Learned counsel for the applicant/complainant states that the Trial Court has committed error in not considering the evidence on record such as the certificate issued by the Cooperative Authority under Section 101 of the Maharashtra Co-operative Societies Act with regarding recovery of sum of Rs.14,29,745/-. It is contended that the Trial Court has also committed error in not appreciating the admission of accused about issuance of the cheque and signature thereon. He further drew attention of the Court to the evidence of the accused wherein it is admitted by him that a loan was obtained by one Shinde and that he was guarantor to the said loan. It is contended that without there being any

rebutal of the presumption, learned Trial Court has wrongly held that the complainant has failed to prove the legally enforceable debt.

3. As against this learned counsel for the respondent/original accused submits that the accused by examining by himself has stated that the cheque in question was a blank cheque and issued at the time of signing of the blank loan application. It is her submission that the evidence laid by the complainant on record was insufficient to prove legally enforceable debt. It is also argued that as per resolution Exhibit 75 the witness i.e. Mr. Sewlikar had no authority and that since he also had no personal knowledge of the loan transaction his evidence could not be considered. According to her accused is rightly acquitted.

4. Any Negotiable Instrument carries presumptions under Section 118 and 139 of N.I. Act. Prima facie perusal of the material placed on record indicates that a certificate was issued by the Co-operative Society under Section 101 of the Act which indicate existence of legally enforceable debt. There is further no dispute about the fact that the accused has issued the cheque in question, which bears his signature. As far as the Exhibit 75 is concerned, the said resolution clearly shows that the witness Swelikar was authorized to depose on behalf of the complainant society. It is further apparent that there is no

dispute made by the accused as well as the borrower about obtainment of loan. Having regard to these facts it is clear that the statutory presumptions under N.I. Act are not rebutted. Hence case is made out by the applicant for hearing the appeal in detail. Hence application is allowed. Appeal be registered. On registration of appeal learned counsel for the respondent waives service of notice.

(R. M. JOSHI, J.)

ssp