

Prajakta Vartak

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

WRIT PETITION NO. 6713 OF 2014

Vilas Mahadeo Padale

..Petitioner

Vs.

Kolhapur District Central Co-op. Bank Ltd. & Ors.

...Respondents

Mr. A. Y. Sakhare, Senior Advocate i/b. Ms. Nikita Trivedi for Petitioner.
Mr. Kush Lahankar i/b. Mr. S. R. Ganbavale for Respondent No.1.
Mr. Vaibhav Sugdare for Respondent No.7.

CORAM : G.S. KULKARNI, J.

DATE : JANUARY 12, 2023

P.C.:

1. Heard Mr. Sakhare, learned senior counsel for the petitioner, Mr. Lahankar, learned counsel for respondent no.1 and Mr. Sugdare, learned counsel for the contesting respondent.

2. Challenge in this petition is to the judgment and order dated 29 March, 2014 passed by the Co-operative Appellate Court, whereby an appeal filed by respondent no.1-Kolhapur District Central Co-op. Bank Ltd. against an order dated 12 February, 2008 passed by the learned Judge of the Co-operative Court No.I, Kolhapur on an application dated 28 March, 2006 filed by the petitioner/original opponent no.7 was allowed in terms of the following order:-

“ **ORDER**

- 1) The A. O. No.75/2008 is hereby allowed.
- 2) The order dated 12-02-2008 passed by the judge coop court No.1 at Kolhapur, below application dated 28-03-2006 in dispute No.1678/2000 is hereby set aside.
- 3) The application dated 28-03-2006 filed by the opponent no.7 to delete his name from the dispute in dispute No.1678/2000 is hereby rejected.
- 4) There is no order as to costs.”

3. It is seen from the record that respondent no.1-bank had filed Dispute No.1678 of 2000 before the Co-operative Court praying for the recovery of Rs.3,47,19,894/- against the Deccan Co-operative Spinning Mills/Opponent No.1 and its Directors who were arraigned in the said proceedings as Opponent Nos.1 to 13. The petitioner was arraigned as opponent no.7 in the said dispute. He was the nominated Director and therefore, he was not proper party to the proceedings. He made an application on 28 March, 2006 praying that his name be deleted from the case of the dispute. Such application, as observed in the impugned order, was initially not sought to be pressed, however, the learned Judge of the Co-operative Court by an order dated 12 February, 2008 allowed such application thereby deleting the name of petitioner as party opponent no.7 in the said dispute. Such order as passed by the learned Judge, Co-operative Court was assailed by respondent no.1-Kolhapur District Central Co-op. Bank Ltd. in an appeal filed before the Co-operative Appellate Court, Mumbai, Bench Pune.

4. Perusal of the appeal memo clearly shows that the appeal has been filed under Section 97 of the Maharashtra Co-operative Societies Act, 1960. Mr. Sakhare at the outset has submitted that the appeal as filed by respondent no.1 was not maintainable considering the provisions of Section 97 which does not provide for any appeal against any order passed by the Co-operative Court under Section 94(3)(c) of the Maharashtra Co-operative Societies Act, 1960. To appreciate such contention as urged by Mr. Sakhare, it would be necessary to note the provisions of Section 97 which reads thus:-

“97. Any party aggrieved by any decision of [the Co-operative Court] under the last preceding section or order passed [by the Co-operative Court or the Registrar or the [authorised officer]] under section 95 may within two months from the date of the decision or order, appeal to [the Co-operative Appellate Court].”

5. Thus Section 97 provides that any party aggrieved by any decision of the Co-operative Court under the last preceding section or order passed by the Co-operative Court or the Registrar or the authorised officer under Section 95 may within a period of two months from the date of the decision or order, appeal to the Co-operative Appellate Court. No appeal is provided under Section 97 against which an order is passed under Section 94(3)(c). It is not in dispute that the appeal was filed by respondent no.1 under Section 97 being aggrieved by the order dated 12 February, 2008 passed by the learned Judge of the Co-operative Court No.1, Kolhapur whereby the application dated 28 March, 2006 filed by

the petitioner came to be allowed.

6. There are orders passed from time to time in the present proceedings, however, a reference is required to make to an order dated 19 July, 2016 passed by a Co-ordinate Bench of this Court which reads thus:-

“1 Not on board. Taken on board.

2 The matter has been circulated at the instance of respondent no.7. A grievance is made on behalf of respondent no.7 that the ad-interim relief granted on 29th January, 2015 has been affecting respondent no.7 adversely because the entire proceeding of the dispute before the Co-operative Court is stayed. The present petition arises out of the application filed by the petitioner for deletion of his name from the array of the respondents to the dispute. His application had been allowed initially by the Co-operative Court but later dismissed by the Cooperative Appellate Court. In these facts of the case, the ad-interim relief granted on 29th January, 2015 is required to be limited to the petitioner herein. Therefore, the order is modified to state that the order in terms of prayer clause (b) of the petition shall be restricted to the petitioner alone and the proceedings in Dispute No.1678 of 2000 before the Co-operative Court may proceed against the other parties to that dispute.

3 Since some of the respondents are yet to be served, stand over to 16th August, 2016 for completion of service.”

7. Thus by the aforesaid order, this Court clarified that the proceedings of the dispute only qua the petitioner/org. opponent no.7, would remain stayed, however, the proceeding of the disputes in regard to the other opponents has continued. It is submitted that in this manner, the proceedings have remained pending except against the petitioner.

8. Thus, in the aforesaid circumstances, the petition would be required to be allowed as the impugned order passed by the Co-operative Court is certainly without jurisdiction as noted above. Hence, the following order:-

ORDER

- i. The impugned order dated 29 March, 2014 passed by the Co-operative Appellate Court, Mumbai, Bench Aurangabad at Pune is quashed and set aside.
- ii. Respondent no.1-Kolhapur District Central Co-op. Bank Ltd. is at liberty to file such appropriate proceedings, if respondent no.1 is aggrieved by the order dated 12 February, 2008 passed by the learned Judge, Co-operative Court No.1, Kolhapur below application dated 28 March, 2006.
- iii. If any such proceedings are filed, all contentions of the parties in that regard are expressly kept open.
- iv. Needless to observe that as the present proceedings were pending and were being bonafide pursued, hence any fresh proceedings if filed by respondent no.1 assailing the order dated 12 February, 2008 passed by the Co-operative Court No.1, Kolhapur, the concerned authority shall have due regard to the pendency of the present proceedings in deciding any objection of limitation, if so raised.
- v. It is also required to be observed that the principal dispute (Co-operative Case No.1678 of 2000) is almost about 22 years

old. It appears that the same was delayed due to the interim proceedings not only before the Co-operative Court but also before this Court. The issue in the present proceedings was limited which is in regard to the petitioner/opponent no.7 namely whether the petitioner/opponent no.7 was a necessary party to the proceedings.

- vi. In the above circumstances, the Co-operative Court shall decide the said dispute as expeditiously as possible and in any event within one year from today, however, which shall be subject to any entitlement of respondent no.1-Kolhapur District Central Co-op. Bank Ltd. to initiate further proceedings against the impugned order dated 12 February, 2008 as noted above.
- vii. All contentions of the parties on the pending dispute before the Co-operative Court are expressly kept open.
- viii. Disposed of in the above terms. No costs.

[G.S. KULKARNI, J.]