

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12485 OF 2016

WITH

WRIT PETITION NO.12483 OF 2016

Survarnayug Sahakari Bank Ltd.
A Cooperative Bank, registered under
the Maharashtra Co-operative Societies
Act, 1960, having its Registered office
at 1102/ 1110/1111 "Marne Heights"
Budhwar Peth, Pune 411002.
(through the authorized Officer namely
Shri. Sunil V. Bari)

.... Petitioner

Vs.

1. Suresh Shivajirao Kale
Aged adult, Occ. Nil,
residing at 1, Erandwane, B-2/9,
Krishna Nagar Society, Pune 411004.
2. Prakash Kamble (Ashtekar)
The Ex-Administrator,
Suvarnayug Sahakari Bank Limited,
Office of the Commissioner for
Cooperation Cooperative Department
(Urban Banks Section), Central Building
Pune 411001.

....Respondents

...

WITH

WRIT PETITION (STAMP) NO.34427 OF 2016

Suresh Shivajirao Kale
Aged 61 Years, Occ. Nil,
R/o : 403, Yugay Garden,
17, Erandwane Housing Society Ltd.
Patwardhan Bag, Pune 411 004.

....Petitioner

Vs.

01 Survarnayug Sahakari Bank Ltd.
Through its Executive Officer/
Authorized Representative,
A Cooperative Bank, registered under
the provisions of Maharashtra Co-operative
Societies Act, 1960, Having its office
at "Marne Heights" 1101/ 11,
Budhwar Peth, Pune 411002.

02 Prakash Kambale (Ashtekar)
The Ex-Administrator,
Suvarnayug Sahakari Bank Ltd.,
C/o Office of Commissioner for
Cooperation and Registrar, Cooperative
Societies, (Urban Banks Section),
Central Building, Pune 411 001.

....Respondents

...

Mr. Shankur P. Thorat a/w Mr. Gurunath B. Walawalkar for the Petitioner-Bank in WP Nos.12483 of 2016 and 12485 of 2016 and for Respondent No.1 in WP (Stamp) No.34427 of 2016.

Mr. Shrivallabh S. Panchpor a/w Mr. G.D. Tamboli i/b M/s. SNP Legal for Respondent No.1 in WP Nos.12485 of 2016, 12483 of 2016 and for Petitioner in WP (Stamp) No.34427 of 2016.

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CORAM	:	SANDEEP V. MARNE, J.
RESERVED ON	:	SEPTEMBER 27, 2023
PRONOUNCED ON	:	OCTOBER 06, 2023

JUDGMENT:

1 **Rule.** Rule is made returnable forthwith. With the consent of the learned Counsels for the parties, these three Petitions are taken up for final hearing.

2. These three Writ Petitions involve challenge to judgment and order dated 21 June 2016 passed by the Maharashtra State Co-operative Appellate Court, Mumbai. The judgment and order dated 21 June 2016 has been passed by the Co-operative Appellate Court in two proceedings bearing Appeal No.169 of 2015 and Appeal No.178 of 2015. Appeal No.169 of 2015 was filed by Suvarnayug Sahakari Bank Limited (**Petitioner-Bank**) challenging the judgment and order dated 15 September 2015 passed by the Co-operative Court No.1, Pune, in Dispute No.184 of 2008 setting aside termination order of the Respondent-employee and directing payment of compensation of Rs. 31,00,000/- in lieu of back-wages alongwith future interest at the rate of 6% per annum. The Respondent-employee had also challenged the judgment and order of the Co-operative Court dated 15 September 2015 by filing Appeal No.178 of 2015 to the extent of restriction of compensation at Rs.31,00,000/- and for its enhancement. The Co-operative Appellate Court dismissed Appeal No.169 of 2015 filed by the Petitioner-Bank. It however partly allowed Appeal No.178 of 2015 filed by the Respondent-employee modifying the decision of the Co-operative Court by increasing the rate of interest from 6% to 9% on the amount of compensation of Rs.31,00,000/-.

3. Petitioner-Bank is aggrieved by the judgment and order dated 21 June 2016 passed by the Maharashtra State Co-operative Appellate Court and has filed Writ Petition No.12485 of 2016 to the extent of dismissal of its Appeal No.169 of 2015. It has also filed Writ Petition No.12483 of

2016 to the extent of partly allowing Respondent-employee's Appeal No.178 of 2015 by increasing the rate of interest from 6% to 9% on the amount of compensation of Rs.31,00,000/-.

4. The Respondent-employee is also aggrieved by the decision of the Maharashtra State Co-operative Appellate Court dated 21 June 2016 and has filed Writ Petition (Stamp) No.34427 of 2016 to the limited extent of the date from which interest at the rate of 9% has been awarded. It is Respondent-employee's grouse that the interest should have been awarded from the date of filing of the dispute and not from date of passing of the Award.

5. Since all the three Petitions challenge the same decision of the Maharashtra State Co-operative Appellate Court, they are taken up for hearing and decision together.

6. The challenge arises in following factual background. Petitioner-Bank is registered under the provisions of Maharashtra Co-operative Societies Act, 1960 (**Act of 1960**) and has been issued banking license by the Reserve Bank of India. Shri Suresh Shivajirao Kale was appointed by the Petitioner-Bank as its Chief Executive Officer. He is referred to as '**Respondent-employee**' in all the three Petitions for the sake of convenience. The Respondent-employee was appointed on the post of General Manager on 25 November 1999. He disputes that he was ever appointed as the Chief Executive Officer of the Petitioner-Bank and asserts that he always acted in capacity as General Manager.

7. Petitioner-Bank contends that some financial irregularities were noticed on the part of Respondent-employee and the Board of Directors of the Petitioner-Bank and the Commissioner-Co-operation decided to appoint an Administrator over the Petitioner-Bank. Accordingly, Shri Prakash Kamble (Ashtekar) came to be appointed as Administrator of Petitioner-Bank by order dated 28 May 2002. FIR came to be filed against the Board of Directors of the Petitioner-Bank and against Respondent-employee for offences punishable under sections 406, 409 and 420 read with section 34 of the Indian Penal Code. In pursuance of that FIR, Respondent-employee came to be arrested on 13 November 2002. He was placed under suspension. By letter dated 5 January 2004, decision was taken to initiate Disciplinary Enquiry against the Respondent-employee. A charge-sheet was annexed alongwith the letter dated 5 January 2004. The Respondent-employee initially questioned maintainability of the charge-sheet and after his objection was repelled by the Administrator on 17 February 2004, he submitted Reply to the charge-sheet on 24 February 2004 denying the charges. An Enquiry Officer was appointed to conduct the enquiry in respect of the charges framed against the Respondent-employee. An enquiry into the charges were held and report was submitted on 15 May 2006 holding him guilty of charges. The report of the Enquiry Officer was served on him and his explanation was called for. He submits that his explanation was filed on 8 June 2002. By order dated 11 July 2006, the Petitioner-Bank removed the Respondent-employee from service.

8. The Respondent-employee approached the Co-operative Court No.1, Pune, by filing Dispute No.184 of 2008 challenging suspension order, charge-sheet, enquiry report, removal order and sought a declaration that he is continued in service. He also demanded amount of Rs.1,23,78,268/- towards damages and/or compensation for wrongful and illegal termination.

9. The Dispute was resisted by the Petitioner-Bank by filing Written Statement *inter alia* questioning the jurisdiction of the Co-operative Court to entertain service dispute under section 91 of the Act of 1960. The Co-operative Court proceeded to allow the Dispute of the Respondent-employee by judgment and order dated 15 September 2015 holding the termination order dated 11 July 2006 to be illegal, null and void and set aside the same with a declaration that the Respondent-employee is declared to be continued in service of the Petitioner-Bank. The Co-operative Court also directed payment of compensation of Rs. 31,00,000/- in lieu of back-wages and consequential benefits alongwith future interest at the rate of 6% per annum from date of its order i.e. 15 September 2015 till realization of the entire amount.

10. Both Petitioner-Bank as well as Respondent-employee got aggrieved by the decision of the Co-operative Court dated 15 September 2015. Petitioner-Bank instituted Appeal No.169 of 2015 challenging the entire judgment and order of the Co-operative Court. On the other hand, Respondent-employee instituted Appeal No.178 of 2015 to the limited extent of non-award of entire amount of compensation of

Rs.1,23,78,268/- as well as non-award of interest from the date of dispute. By common judgment and order dated 21 June 2016, Maharashtra State Co-operative Appellate Court proceeded to dismiss the Petitioner-Bank's Appeal No.169 of 2015 while partly allowing Appeal No.178 of 2015 filed by the Respondent-employee. It has increased the rate of interest from 6% to 9% and directed its payment with effect from the date of the order of the Co-operative Court i.e. 15 September 2015.

11. Petitioner-Bank is aggrieved by judgment and order dated 21 June 2016 in its entirety and has filed Writ Petition Nos.12485 of 2016 and 12483 of 2016. The Respondent-employee is also partly aggrieved by the decision of the Co-operative Appellate Court and has challenged the judgment and order dated 21 June 2016 to the extent of non-award of interest from the date of filing of the Dispute.

12. I have heard Mr. Thorat, the learned Counsel appearing for the Petitioner-Bank. He questions the jurisdiction of the Co-operative Court to entertain Dispute No.184 of 2008 filed by Respondent-employee. According to him, the Dispute involved a pure service dispute which is not covered by the provisions of section 91 of the Act of 1960. That the service dispute between the Petitioner-Bank and the Respondent-employee does not touch upon management or business of the Society and that therefore the Co-operative Court did not have jurisdiction to entertain the Dispute filed by the Respondent-employee. In support of his contentions, he relies upon the judgment of the Apex Court in

Maharashtra State Co-operative Housing Finance Corporation Limited vs. Prabhakar Sitaram Bhadange, (2017) 5 SCC 623. Mr. Thorat has also made submissions on merits of the orders passed by the Co-operative Court and Co-operative Appellate Court. However, considering the limited controversy that has been dealt with in the present Petitions, it is not necessary to record those submissions.

13. On the other hand, Mr. Panchpor the learned Counsel appearing for the Respondent-employee would submit that the Co-operative Court possessed jurisdiction to decide Dispute No.184 of 2008 instituted by the Respondent-employee. He would submit that the Respondent-employee has taken part in management and business of the Society in his capacity as General Manager thereof. He would take me through the charges leveled in the charge-sheet issued to Respondent-employee to demonstrate that all the allegations in the charge-sheet relate to his participation in business and management of the Society. He would invite my attention to the proceedings initiated against the Respondent-employee under Section 88 of the Act of 1960 and would submit that such proceedings could be initiated only against a person who takes part in business and management of the Society.

14. Mr. Panchpor would submit that every service dispute would not fall outside the scope of section 91 of the Act of 1960 and it would depend on facts and circumstances of each case. That in present case, invocation of section 88 of the Act of 1960 would demonstrate Respondent-employee's involvement with business and management of

the Petitioner-Bank. That once it is proved that the charge leveled against him touches the business and management of the Petitioner-Bank, jurisdiction of the Co-operative Court under section 91 of the Act of 1960 would not be ousted. Relying upon the judgment of the Apex Court in ***U.P. Co-operative Cane Union Federation Ltd. & Anr. vs. Liladhar & Ors.***, 1980 (Supp) SCC 437, Mr. Panchpor would contend that a dispute between a Co-operative Society and its Officer, which touches upon the business of the Society, falls within the jurisdiction of Co-operative Court under section 91 of the Act of 1960. That Respondent-employee undoubtedly is an Officer of the Petitioner-Bank. He would invite my attention to the definition of the term 'Officer' within the meaning of section 2(20) of the Act of 1960 under which a manager is to treated as an 'officer'. That since the Respondent-employee was appointed on the post of General Manager, he would fit in the definition of the term 'officer' and the dispute raised by him would be amenable to the jurisdiction of Co-operative Court under section 91 of the Act of 1960. He would place reliance on the judgment of the learned Single Judge of this Court in ***Shivram Dhonduji Raut vs. Bahu Uddesiya Sahakari Sanstha Virsi & Ors.***, (2004) 3 Bom CR 383. He would also rely on the judgment of Constitution Bench in ***Managing Director, ECIL, Hyderabad & Ors. Vs. B. Karunakar & Ors.***, (1993) 4 SCC 727. He would submit that the order passed by the Co-operative Appellate Court be therefore not disturbed, except to the extent of denial of interest during the period of pendency of dispute before the Co-operative Court.

15. Rival contentions of the parties now fall for my consideration.

16. The Petitioner-Bank has raised the issue of jurisdiction of Co-operative Court to entertain Dispute No.184 of 2008. The Respondent-employee filed Dispute No.184 of 2008 by invoking jurisdiction of Co-operative Court under section 91 of the Act of 1960 which reads thus:

“91. Disputes

(1) Notwithstanding anything contained in any other law for the time being in force, any dispute touching the constitution, elections of the committee or its officers, conduct of general meetings, management or business of a society shall be referred by any of the parties to the dispute, or by a federal society to which the society is affiliated or by a creditor of the society, to the co-operative Court if both the parties thereto are one or other of the following:-

(a) a society, its committee, any past committee, any past or present officer, any past or present agent, any past or present servant or nominee, heir or legal representative of any deceased officer, deceased agent or deceased servant of the society, or the Liquidator of the society or the official Assignee of a deregistered society.

(b) a member, past member of a person claiming through a member, past member of a deceased member of society, or a society which is a member of the society or a person who claims to be a member of the society:

(c) a person other than a member of the society, with whom the society, has any transactions in respect of which any restrictions or regulations have been imposed, made or prescribed under sections 43, 44 or 45, and any person claiming through such person;

(d) a surety of a member, past member or deceased member, or surety of a person other than a member with whom the society has any transactions in respect of which restrictions have been prescribed under section 45, whether such surety or person is or is not a member of the society;

(e) any other society, or the Liquidator of such a society "or deregistered society or the official Assignee of such a de-registered society.

Provided that, an industrial dispute as defined in clause (k) of section 2 of the Industrial Disputes Act, 1947, or rejection of nomination paper at the election to a committee of any society, or refusal of admission to membership by a society to any person qualified therefor or any proceeding for the recovery of the amount as

arrear of land revenue on a certificate granted by the Registrar under sub-section (1) or (2) of section 101 or sub-section (1) of section 137 or the recovery proceeding of the Registrar or any officer subordinate to him or an officer of society notified by the State Government, who is empowered by the Registrar under sub-section (1) of section 156, or any orders, decisions, awards and actions of the Registrar against which an appeal under section 152 or 152A and revision under section 154 of the Act have been provided shall not be deemed to be a dispute for the purposes of this section.

(3) Save as otherwise provided under sub-section (2) to section 93, no Court shall have jurisdiction to entertain any suit or other proceedings in respect of any dispute referred to in sub-section (1).

Explanation 1.- A dispute between the Liquidator of a society or an official Assignee of a deregistered society and the members including past members, or nominees, heirs or legal representative or deceased members of the same society shall not be referred to the co-operative Court under the provisions of sub-section (1).

Explanation 2.- For the purposes of this sub-section, a dispute shall include-

(i) a claim by or against a society for any debt or demand due to it from a member or due from it to a member, past member or the nominee, heir or legal representative of a deceased member, or servant for employee whether such a debt or demand be admitted or not;

(ii) a claim by a surety for any sum or demand due to him from the principal borrower in respect of a loan by a society and recovered from the surety owing to the default of the principal borrower, whether such a sum or demand be admitted or not;

(iii) a claim by a society for any loss caused to it by a member, past member or deceased member, by any officer, past officer or deceased officer, by any agent, past agent or deceased agent, or by any servant, past servant, past servant or deceased servant, or by its committee, past or present, whether such loss be admitted or not;

(iv) a refusal or failure by a member, past member or a nominee, heir or legal representative of a deceased member, to deliver possession to a society of land or any other asset resumed by it for breach of condition as the assignment."

17. Thus a dispute touching the constitution, elections of the Committee or its officers, conduct of general meetings, management or

business of the Society can be referred by any of the parties to the Co-operative Court.

18. In the present case, the Respondent-employee challenged suspension order, charge-sheet, enquiry report and termination order before the Co-operative Court in Dispute No.184 of 2008. He also sought compensation/damages of Rs.1,23,78,268/- for wrongful and illegal termination. The prayers made in Dispute No.184 of 2008 are as under:

"A. The Hon'ble Court be pleased to declare the suspension of the disputant from the services of the Opponent No.1 by order dated 15/11/2002 as illegal, null & void.

B. The Hon'ble Court be pleased to declare the issuance of charge sheet dated 05/01/2004 by the opponent No.2 for and behalf of Opponent No.1 and inquiry conducted against the disputant on the basis of the said charge sheet as illegal, null and void.

C. Hon'ble Court be pleased to declare Inquiry proceedings conducted by the Inquiry Officer on the basis of charge sheet dated 05/01/2004 and the Inquiry Report dated 15/05/2006 as illegal, Null and void and without any jurisdiction.

D. The Hon'ble Court be pleased to declare the termination of the disputant by Opponent No.1 on 11/07/2006 on the basis of the inquiry report dated 15/05/2006 as wrongful, illegal, null & void and that he continued to be in the services of the Opponent No.1.

E. Alternatively the Opponent No.1 may kindly be ordered to pay Rs.1,23,78,268/- (Rupees One crore Twenty Three Lakhs Seventy Eight Thousand Two Hundred Sixty Eight Only) as per Annexure I of dispute to the Disputant towards damages and/or compensation for wrongful & illegal termination of the disputant from the services of Opponent No.1 and award to that effect be drawn.

F. The cost of the present dispute be awarded to the disputant from opponents.

G. Any other just & equitable orders be passed."

19. Thus there can be no iota of doubt that the dispute filed by the Respondent-employee before the Co-operative Court is in the nature of a

service dispute. The issue of Co-operative Court's jurisdiction to entertain a service dispute attracted the attention of the Apex Court in ***Maharashtra State Co-operative Housing Finance Corporation Limited*** (supra). In that case, the Respondent therein was functioning as Branch Manager and disciplinary proceedings were initiated against him for certain acts of misconduct. After he was found guilty of the misconduct, penalty of dismissal from service was imposed which was challenged before the Co-operative Court. The Appellant-Corporation therein had filed an application for rejection of the dispute on the ground of lack of jurisdiction of Co-operative Court. But that application was dismissed by the Co-operative Court holding that it had jurisdiction to decide the dispute. The Co-operative Appellate Court has dismissed the Appeal confirming the decision of the Co-operative Court. The High court proceeded to dismiss the Writ Petition filed by the Appellate-Corporation and this is how the controversy reached before the Apex Court. The Apex Court formulated the issue for its determination in para 3 of the judgment as under:

"3. From the aforesaid, it becomes clear that the issue that needs to be decided is as to whether the Co-operative Court established under the Act has the requisite jurisdiction to decide "service dispute" between a cooperative society established under the Act and its employees."

20. After considering the provisions of section 91 of the Act of 1960 the Apex Court held in paragraphs 11 to 22 as under:

"11. In the aforesaid conspectus, we have to examine as to whether this power which is available with the civil court to grant damages is now given to the Cooperative Court under Section 91 of the Act. We may also mention at this stage that some of the States have statutes which contain

provisions regarding management and regulations of the cooperative society, where specific machinery under these State Cooperative Societies Acts is provided for resolution of employment disputes as well, between the cooperative societies and its employees, that too by excluding the applicability of the labour laws. No doubt, in such cases, the disputes between the cooperative societies and its employees, including the workmen, would be dealt with by such machinery and the general Act, like the Industrial Disputes Act, would not be applicable [see Ghaziabad Zila Sahkari Bank Ltd. v. Labour Commissioner, (2007) 11 SCC 756 : (2008) 1 SCC (L&S) 90] and Dharappa v. Bijapur Coop. Milk Producers Societies Union Ltd. (2007) 9 SCC 109 : (2007) 2 SCC (L&S) 703). Pertinently, in the instant case, Section 91 specifically excludes the disputes between the cooperative society as employer and its "workmen". Ultimately, the outcome depends upon the powers that are given to the Cooperative Court or the stipulated tribunal created under such Acts. It is in this hue we have to find out as to whether Section 91 of the Act at hand empowers Cooperative Courts to decide such disputes.

12. A reading of the provisions of Section 91 would show that there are two essential requirements for conferment of exclusive jurisdiction on the Cooperative Court which need to be satisfied:

(i) The first requirement is that disputes should be "disputes touching" the constitution of the society or elections of committee or its officers or conduct of general meetings or management of the society, or business of the society; and

(ii) The second requirement is that such a dispute is to be referred to the Cooperative Court by "enumerated persons" as specified under sub- section (1) of Section 91.

13. When we read the provision in the aforesaid manner, we arrive at a firm conclusion that service dispute between the employees of such cooperative society and the management of the society are not covered by the aforesaid provision. The context in which the word "officers" is used is altogether different, namely, election of the committee or its officers. Thus, the word "officers" has reference to elections. It is in the same hue expression "officer" occurs second time as well.

14. It was, however, argued by the learned counsel for the respondent that disputes touching the "management or business of a society" would include the dispute between the management of the society and its employees.

15. There are a plethora of judgments of this Court holding that the expression "business of the society" would not cover the service matters of employer and employee. In Deccan Merchants Coop. Bank Ltd. v. Dalichand Jugraj Jain, (1969) 1 SCR 887 : AIR 1969 SC 1320, this Court interpreted

somewhat similar clause and held that it covered five kinds of disputes. It becomes clear from the following discussion: (AIR p. 1326, para 17)

"17. ... Five kinds of disputes are mentioned in sub-section (1): first, disputes touching the constitution of a society; secondly, disputes touching election of the office-bearers of a society; thirdly, disputes touching the conduct of general meetings of a society; fourthly, disputes touching the management of a society; and fifthly, disputes touching the business of a society. It is clear that the word "business" in this context does not mean affairs of a society because election of office-bearers, conduct of general meetings and management of a society would be treated as affairs of a society. In this sub-section, the word "business" has been used in a narrower sense and it means the actual trading or commercial or other similar business activity of the society which the society is authorised to enter into under the Act and the Rules and its bye-laws."

Likewise, in *Coop. Central Bank Ltd. v. Industrial Tribunal*, (1969) 2 SCC 43, the Court held that the expression "touching the business of the society" would not cover the disputes pertaining to alteration of conditions of service of workman.

16. These judgments were taken note of in *Morinda Coop. Sugar Mills Ltd. v. Workers' Union*, (2006) 6 SCC 80, where scope of Section 55 of the Punjab Cooperative Societies Act, 1961 came up for consideration. That section provided for reference of dispute to arbitration "if any dispute touching the constitution, management or the business of a cooperative society arises". Following the aforesaid judgments, the Court gave limited meaning to the aforesaid expression and held that the suit filed by the Workers' Union of the Cooperative Society claiming dearness allowance on the wages plus fixed allowance in accordance with the Third Wage Board Report was maintainable in the civil court, and such a dispute was not covered by the provisions of Section 55 of the Punjab Cooperative Societies Act, 1961.

17. The reading of the aforesaid judgments make it crystal clear that dispute of this nature does not come within the scope of "business of the society".

18. We now advert to the question as to whether such a dispute can be treated as dispute relating to "management of the society". On this aspect as well, there is a direct judgment of this Court in *Gujarat State Coop. Land Development Bank Ltd. v. P.R. Mankad*, (1979) 3 SCC 123 : 1979 SCC (L&S) 225, wherein the expression "management of the society" was assigned the following meaning: (SCC pp. 133-34, paras 35-36)

"35. We will now focus attention on the expression "management of the society" used in Section 96(1) of the 1961 Act.

Grammatically, one meaning of the term "management" is: "the Board of Directors" or "the Apex body" or "Executive Committee at the helm which guides, regulates, supervises, directs and controls the affairs of the society". In this sense it may not include the individuals who under the overall control of that governing body or Committee, run the day-to-day business of the society, (see Words and Phrases, by West Publishing Co., Permanent Edn., Vol. 26, p. 357, citing Warner and Swasey Co. v. Rusterholz, 41 F Supp 498 (D Minn 1941) [F Supp 505]. Another meaning of the term "management", may be: "the act or acts of managing or governing by direction, guidance, superintendence, regulation and control, the affairs of a society".

36. A still wider meaning of the term which will encompass the entire staff of servants and workmen of the society, has been canvassed for by Mr. Dholakia. The use of the term "management" in such a wide sense in Section 96(1) appears to us, to be very doubtful."

It, thus, clearly follows that the dispute raised by the respondent is not covered within the meaning of Section 91 of the Act and, therefore, the Cooperative Court does not have the jurisdiction to entertain the claim filed by the respondent.

19. The learned counsel for the respondent referred to the judgment of this Court in R.C. Tiwari v. M.P. State Coop. Mktg. Federation Ltd., (1997) 5 SCC 125 : 1997 SCC (L&S) 1128. However, a close scrutiny of the said judgment would reveal that the power of the Registrar to deal with the dispute of dismissal from service of the employee was recognised having regard to Section 55 of the M.P. Cooperative Societies Act, 1960 which gave specific power to the Registrar to determine conditions of employment in societies, including deciding the disputes regarding terms of employment, working conditions and disciplinary actions taken by the society arising between the society and its employees. Therefore, that judgment would be of no help to the respondent.

20. It may be noted that the High Court, in the impugned judgment, Maharashtra State Co-op. Housing Finance Corporation Ltd. vs. Prabhakar Sitaram Bhadange, 2014 SCC OnLine Bom 4697, has itself proceeded on the basis that if the dispute relates to reinstatement, the Cooperative Court will not have any jurisdiction. The main reason for conferring jurisdiction upon the Cooperative Court in the instant case is that the Cooperative Court has replaced the civil court and, therefore, powers of the civil court are given to the Cooperative Court. However, the High Court erred in not further analysing the provisions of Section 91 of the Act which spells out the specific powers that are given to the Cooperative Court and those powers are of limited nature. Our aforesaid analysis leads to the conclusion that the disputes between the cooperative society and its employees are not covered by the said provision.

We may hasten to add that if the provision is couched in a language to include such disputes (and we find such provisions in the Cooperative Societies Acts of certain States) and it is found that the Cooperative Society Act provides for complete machinery of redressal of grievances of the employees, then even the jurisdiction of the Labour Court/Industrial Tribunal under the Industrial Disputes Act shall be barred having regard to the provisions of such a special statute vis-à-vis general statute like the Industrial Disputes Act (see *Ghaziabad Zila Sahkari Bank Ltd. v. Labour Commissioner*, (2007) 11 SCC 756; (2008) 1 SCC (L&S) 90.

21. In *Gujarat State Coop. Land Development Bank Ltd. v. P.R. Mankad*, (1979) 3 SCC 123 : 1979 SCC (L&S) 225, an employee working as Additional Supervisor was removed from service by giving one month's pay in lieu of notice under the Staff Regulations. He had issued a notice under the Bombay Industrial Relations Act, 1946, as he was an employee as defined under Section 2(13) of the said Act. One of the questions that was considered by this Court was whether a dispute raised by the said employee for setting aside his removal from service on the ground that it was an act of victimisation and for reinstatement in service with back wages was one "touching the management or business of the society", within the contemplation of the Cooperative Societies Act. This Court held that the expression "any dispute" referred to in Section 96 of the Gujarat Cooperative Societies Act, 1961 did not cover a dispute of the kind raised by the respondent employee against the Bank.

22. As a result, this appeal is allowed, the order in *Maharashtra State Co-op. Housing Finance Corporation Ltd. v. Prabhakar Sitaram Bhadange*, 2014 SCC OnLine Bom 4697 of the High Court is set aside and the Division Bench judgment, *Pralbhad Vithalrao Pawar v. Kannaded Sahakari Sakhar Karkhana Ltd.*, 1998 SCC OnLine Bom 301 : (1998) 3 Mah LJ 214, on which reliance is placed by the High Court in the impugned judgment, is overruled. As a consequence, it is held that the petition filed by the respondent before the Cooperative Court is not maintainable. It would, however, be open to the respondent to file a civil suit. Needless to mention, in such a civil suit filed by the respondent, he would be at liberty to file application under Section 14 of the Limitation Act, 1963 in order to save the limitation. No costs."

21. Thus in *Maharashtra State Co-operative Housing Finance Corporation Limited* (supra) the Apex Court, in no uncertain terms, has held that the Co-operative Court does not have jurisdiction to decide service disputes between employees and management of a Co-operative

Society. It has further held that the expression 'business of society' appearing in section 91 of the Act of 1960 would not cover service dispute between the employer and employee. It is also held that dismissal of an employee cannot be treated as a dispute relating to 'management of society'.

22. Even in ***U.P. Co-operative Cane Union Federation Ltd.*** (supra) relied upon by Mr. Panchpor, the Apex Court held in paragraph 16 that a dispute arising out of disciplinary proceedings resulting in dismissal of an employee of a Society cannot be said to be a dispute touching the business of Society. The Apex Court held in paragraph 16 as under:

“16. Therefore, on the strength of the aforementioned two decisions it has to be held that a dispute arising out of a disciplinary proceeding resulting in dismissal of an employee of the society cannot be said to be a dispute touching the business of the society.”

23. Mr. Panchpor has relied upon finding recorded by the Apex Court in ***U.P. Co-operative Cane Union Federation Ltd.*** (supra) in paragraph 9 of the judgment in support of his contention that the Respondent-employee will have to be treated as an “Officer”. In paragraph 9 of the judgment the Apex Court has held as under:

“9. We have extracted above the definition of the expression 'officer' in 1912 Act. Undoubtedly, it is an inclusive definition. If only the officers enumerated in the definition are comprehended within the expression 'officer', the first respondent is not an officer in the sense that he was neither a chairman, secretary, treasurer, nor a member of the committee. But the expression 'officer' also embraces such other person empowered under the rules or the bye-laws to give directions in regard to the business of the society. If ejusdem generis canon of construction were to be invoked in construing the expression 'officer', the expression 'other persons' must take colour from the words preceding it and accordingly other persons therein envisaged must have some

semblance of comparison in respect of power and authority to give directions with regard to the business of the society with the enumerated persons such as chairman, secretary, treasurer or member of the committee. If every employee of the society were to be an officer it would not be necessary for the legislature to provide that persons other than chairman, secretary, treasurer or member of the committee must be such who must have under the rules or the bye-laws the power to give directions in regard to the business of the society. First respondent was at the relevant time a supervisor in charge of manure godown drawing a salary of Rs. 150 p.m. Nothing has been pointed out to us by the appellants with reference either to the rules or bye-laws that first respondent as supervisor was empowered by any rules or the bye-laws to give directions in regard to the business of the society. First respondent thus not being either chairman, secretary, treasurer or member of the committee, or such other person shown to have been empowered under the rules or the bye-laws to give directions in regard to the business of the society, unquestionably he was not an officer of the society. We are conscious of the fact that the definition of the expression 'officer' is an inclusive definition. An inclusive definition widens the etymological meaning of the expression or term including therein that which would ordinarily not be comprehended therein. Firstly, keeping apart the expansive definition by including officers who would otherwise not be comprehended in the expression 'officer', it may be necessary to ascertain whether first respondent, giving the expression 'officer' its ordinary etymological meaning, would be comprehended therein. It may be noticed that the legislature never intended to include every employee or servant of the society within the expression 'officer'. There is some element of a right to command in the word 'officer' with someone whose duty it would be to obey. If there is an officer ordinarily there will be someone subordinate to him, the officer enjoying the power to command and give directions and subordinate to obey or carry out directions. It may be that even one who is to carry out directions may be an officer in relation to his subordinates. Thus, what is implicit in the expression 'officer' is made explicit by the latter part of definition which provides that such other person would also be an officer who is empowered under the rules and bye-laws to give directions with regard to the business of the society. If it is contended that a particular person is an officer because he is empowered to give directions with regard to the business of the society, it would be a question of fact in each case whether a particular person is an officer or a servant or an employee. Unless the appellants are in a position to point out that first respondent was an officer in the sense that he had power to command and insist on subordinates to obey his directions with regard to business of the society, it would be difficult to believe that a person designated as supervisor drawing a salary of Rs. 150 and incharge of manure godown would be an officer. In this connection it would be advantageous to refer to Section 43(g) of the 1912 Act which confers power on the Local Government to make rules providing for the

appointment, suspension and removal of the members of the committee and other officer; and for the procedure at meetings of the committee, and for the powers to be exercised and the duties to be performed by the committee and other officers. No rule enacted in exercise of this power was pointed out to us to assert that first respondent would be such officer as contemplated in Section 43(g)."

24. He has also place reliance on the judgment of learned Single Judge of this Court in ***Shivram Dhonduji Raut*** (supra) to contend that an officer of a society involved in its management or business would be entitled to invoke jurisdiction of the Co-operative Court under section 91 of the Act of 1960. However, since the Apex Court in ***Maharashtra State Co-operative Housing Finance Corporation Limited*** (supra) has held that the expression 'business of society' or 'management of society would not cover service dispute matters of an employer and employee. Therefore, even if an officer of the society may have done something, which may touch upon management or business of the society, once it is established that such an officer is seeking redressal with regard to his service dispute, such dispute would fall outside the realm of section 91 of the Act of 1960. The key therefore is about the nature dispute sought to be raised. Even if the employee commits any acts relating to management or business of the society, he cannot seek redressal of service dispute before the Co-operative Court under section 91 of the Act of 1960. Once it is demonstrated that what is sought to be espoused is a service dispute, the jurisdiction of Co-operative Court would be lost and it is not necessary to further make an enquiry as to whether the employee concerned has done anything which touches upon business or management of the society. In that view of the matter reliance of Mr. Panchpor on observations by the

Apex Court in paragraph 9 of the judgment in ***U.P. Co-operative Cane Union Federation Ltd.*** (supra) or on the judgment of the learned Single Judge of this Court in ***Shivram Dhonduji Raut*** (supra) is unfounded.

25. A contention is raised by Mr. Panchpor that since provisions of section 88 of the Act of 1960 are invoked against the Respondent-employee, his association with business or management of the Petitioner-Bank is presupposed. Section 88 of the Act of 1960 reads thus:

“88. Power of Registrar to assess damages against delinquent promoters, etc.

(1) Where, in the course of or as a result of an audit under section 81 or an inquiry under section 83 or an inspection under section 84 or the winding up of a society, the Registrar is satisfied on the basis of the report made by the auditor or the person authorised to make inquiry under section 83 or the person authorised to inspect the books under section 84 or the Liquidator under section 105 or otherwise that any person who has taken any part in the organisation or management of the society or any deceased, or past or present officer of the society has, within a period of five years prior to the date of commencement of such audit or date of order for inquiry, inspection or winding up, misapplied or retained, or become liable or accountable for, any money or property of the society, or has been guilty of misfeasance or breach of trust in relation to the society, the Registrar or a person authorised by him in that behalf may frame charges against such person or persons, and after giving a reasonable opportunity to the person concerned and in the case of a deceased person to his representative who inherits his estate, to answer the charge, make an order requiring him to repay or restore the money or property or any part thereof, with interest at such rate as the Registrar or the person authorised under this section may determine, or to contribute such sum to the assets of the society by way of compensation in regard to the misapplication, retention, misfeasance or breach of trust, as he may determine.

Provided that, proceedings under this sub-section, shall be completed by the authorised person within a period of two years from the date of issue of order by the Registrar.

Provided further that, the Registrar may, after recording the reasons therefor, extend the said period for a maximum period of six months:

Provided also that, the Government may, on the report of the Registrar or suo motu, for the reasons to be recorded in writing, extend the said period as may be required, from time to time, to complete the proceedings under this sub-section:

Provided also that, in case of the proceedings under this sub-section which have not been completed within the aforesaid period on the date of commencement of the Maharashtra Co-operative Societies (Amendment) Act, 2017, the Government may, on the report of the Registrar or suo motu, for the reasons to be recorded in writing, extend the period, from time to time, for completion of such proceedings as may be required.

(2) The Registrar or the person authorised under sub-section (1) in making any order under this section, may provide therein for the payment of the cost or any part thereof, as he thinks just, and he may direct that such costs or any part thereof shall be recovered from the person against whom the order has been issued.

(3) This section shall apply, notwithstanding that the act is one for which the person concerned may be criminally responsible.”

26. The purpose of initiation of proceedings under section 88 of the Act of 1960 is to recover damages against delinquent promoters or persons taking part in organization or management of the society. The Respondent-employee may have taken part in organization or management of the society in his capacity as an officer, however, that alone would not confer jurisdiction on a Co-operative Court under section 91 of the Act of 1960 in respect of a service dispute. As observed above, jurisdiction of a Co-operative Court under section 91 of the Act of 1960 would be lost the moment it is demonstrated that a service dispute is sought to be espoused. Therefore, actions of the employee in taking part in the organization or management of the society becomes irrelevant for the purpose of determining the issue of jurisdiction of Co-operative Court under section 91 of the Act of 1960.

27. Since the Respondent-employee has relied upon provisions of section 88 of the Act of 1960, it would be apposite to make a reference to order dated 11 September 2014 passed by the Minister, Co-operation in Appeal No.783 of 2013 filed by the Respondent-employee. That Appeal was filed by Respondent-employee challenging the order dated 26 August 2013 holding him responsible for causing loss of Rs.29,73,947/-. The Minister, Co-operation has set aside the order dated 26 August 2013 *qua* the Respondent-employee by his order dated 11 September 2014. In that order dated 11 September 2014, one of the findings recorded by the Minister, Co-operation is that the Respondent-employee was not in a position to 'take' any policy decision about the Petitioner-Bank, but his role was restricted only to 'implement' the policy decisions taken by the Board of Directors. This finding recorded by the Minister, Co-operation would tend to negate the submission of Respondent-employee that he was associated with business or management of the Society. It is however not necessary to delve deeper into this aspect as his alleged association with business or management of the Petitioner-Bank becomes irrelevant for the purpose of determining jurisdiction of Co-operative Court under section 91 of the Act of 1960. As per the dictum of the judgment of the Apex Court in ***Maharashtra State Co-operative Housing Finance Corporation Limited*** (supra) every service dispute sought to be raised by an employee or an officer of a Co-operative Society would fall outside the jurisdiction of the Co-operative Court under section 91 of the Act of 1960, regardless of the fact whether he was associated with business or management of the society.

28. I accordingly hold that the Co-operative Court did not have jurisdiction to entertain Dispute No.184 of 2008 filed by Respondent-employee before the Co-operative Court. Consequently, the judgment and order dated 15 September 2015 passed by the Co-operative Court No.1, Pune, is without jurisdiction and is liable to be set aside. Similarly, the judgment and order dated 21 June 2016 passed by the Maharashtra State Co-operative Appellate Court is also liable to be set aside. However this would not mean that the Respondent-employee would be rendered completely remediless. He shall be entitled to exercise remedy by instituting a civil suit in respect of his grievance relating to the termination order.

29. I accordingly proceed to pass the following order:

ORDER

- i) Judgment and order dated 15 September 2015 passed by the Co-operative Court No.1, Pune, in Dispute No.184 of 2008 is set aside.
- ii) Judgment and order dated 21 June 2016 passed by the Co-operative Appellate Court in Appeal Nos.169 of 2015 and 178 of 2015 is also set aside.
- iii) The Respondent-employee shall be at liberty to file Civil Suit challenging suspension order, enquiry proceedings and termination order. If such a suit is instituted, the time spent in prosecuting the Dispute No.184 of 2008 before the Co-

operative Court, Appeal Nos.169 of 2015 and 178 of 2015 before the Co-operative Appellate Court and present Petitions before this Court shall be excluded under provisions of section 14 of the Limitation Act.

- iv) With the above directions, the Writ Petition Nos.12485 of 2016, 12483 of 2016 are allowed and Writ Petition (Stamp) No.34427 of 2016 is dismissed.
- v) Rule is made absolute in Writ Petition Nos.12485 of 2016 and 12483 of 2016 and Rule is discharged in Writ Petition (Stamp) No.34427 of 2016.
- vi) No order as to costs.

(SANDEEP V. MARNE, J.)

30 After pronouncement of judgment in the Court, Mr. Thorat, the learned Counsel appearing for the Petitioner-Bank seeks leave to withdraw the decretal amount deposited in the executing Court. Mr. Panchpor, the learned Counsel appearing for the Respondent-employee opposed the request for withdrawal of the decretal amount. In view of the above, the Petitioner-Bank shall not withdraw the decretal amount deposited in the executing Court for a period of six weeks from today.

(SANDEEP V. MARNE, J.)