

Prajakta Vartak

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12840 OF 2016
WITH
CIVIL APPLICATION NO.23 OF 2022

Shri Vignahar Sahakari Sakhar)
Karkhana Ltd.)
having office at Nivruttnagar,)
Taluka Junnar, District – Pune)
through its Managing Director) **..Petitioner**

Vs.

Bhima Sahakari Sakhar Karkhana Ltd.)
having its office at Shirolu Budruk,)
Taluka Junnar, Dist. Pune)
through its Managing Director) **..Respondent**

Mr. Vijay Patil i/b. Mr. Nitin Dhumal for Petitioner.
Mr. Sandeep Salunkhe for Respondent in WP and for Applicant in CAW.

CORAM : G.S. KULKARNI, J.
DATE : FEBRUARY 02, 2023

ORAL JUDGMENT:

1. This petition under Articles 226 and 227 of the Constitution, challenges the judgment and order dated 17 February, 2014 passed by the Maharashtra State Co-operative Appellate Court, Mumbai, Bench at Pune, whereby an appeal filed by the respondent (Appeal No. 148 of 2007) has

been allowed in the following terms:-

“ **ORDER**

01. The appeal bearing No. 148/2008 is hereby allowed.
02. The observations and order of Ld. Trial Judge to issue No.2 & 5 in dispute bearing No. 318/1992 are hereby set aside.
03. The Judgment passed by the Ld. Trial Judge is modified as under:
 - I) The respondent/opponent is hereby ordered to pay the appellant an amount of Rs. 51,38,967.17 with interest @ 12% p.a. (a) on an amount of Rs. 24,22,660.40 (sugarcane price) from 30/07/1991 till realization. (b) On an amount of Rs. 23,90,749.52 (Transportation charges) from 11/10/1990 till realization. (c) On an amount of Rs.3,25,557.25 (Cutting charges as per recommendation of Rupawate Committee) from 30/07/1991 till realization.
 - II) The respondent/opponent are also directed to pay the cost of dispute to the appellant/disputant as under:
 - A) Court Fees Rs. 1000/-
 - B) Court Stamps Rs. 45/-
04. The Ld. Trial Judge is hereby directed to draw the award accordingly.
05. No order as to costs.
06. R & P of Trial Court be sent back to the Trial Court.”

2. The facts relevant for adjudication of this petition are required to be noted:-

The respondent had approached the Co-operative Court in Dispute No. 318 of 1992 praying for recovery of the amount of Rs. 39,39,953.02 against the petitioner with future interest at the rate of 18% p.a. as on 05

January, 1992.

3. It is not in dispute that both the parties are registered co-operative sugar factories. It appears that there was abundant sugarcane crop in the year 1989-90 within the area of operation of the respondent's sugarcane factory, which was available for crushing. The petitioner on the offer had in its area had faced shortage of sugarcane to utilize its maximum crushing capacity. An agreement dated 07 November, 1989 came to be entered between the parties for supply of excess sugarcane by the respondent society to the petitioner. It appears that the respondent had supplied 97,440 tons of sugarcane to the petitioner. It was also agreed between the parties that the charges for cutting and transportation of sugarcane at an additional or enhanced rate for the same was required to be borne by the petitioner. These amounts in fact are to be paid to sugarcane farmers and the transporters of sugarcane which may be by tractors or bullock carts. Thus, the claims involved amounts to be paid to farmers and transporters. As the petitioner failed to pay the said amounts honouring the terms and conditions of the agreement dated 07 November, 1989, the dispute in question came to be filed by the respondent raising such monetary claim and payment of interest thereon.

4. The petitioner appeared in the said dispute and filed its written statement. In paragraph 2 of the written statement, an objection was raised by the petitioner that the dispute is not properly presented by the respondent as it was not signed by the authorized person on behalf of the respondent.

5. The Co-operative Court, after granting the parties an opportunity to lead evidence, proceeded to adjudicate the dispute on the following issues:-

	<u>ISSUES</u>	<u>FINDINGS</u>
1)	Is this court has jurisdiction to try present dispute ?	In the Affirmative
2)	Does the Opponent prove that, this dispute is not maintainable in this court ?	In the Affirmative
3)	Does disputant prove that, the Opponent is liable to pay a sum of Rs.3939953.2 to the disputant @ 18% p.a. ?	As per final order
4)	What order ?	As per final order
5)	Whether the dispute is filed by authorized person of the disputant karkhana?	In the Negative
6)	Does the disputant prove that the opponent is liable to pay an amount of Rs. 9449310.42 to the disputant with interest thereon @ 18% p.a. from the date of filing of the dispute till realization ?	As per final order

7)	What order ?	As per final order
8)	What Award ?	As per final order

(Emphasis added)

6. Issue No. 5 concerned the objection as raised by the petitioner that the dispute was filed by the respondent without due authorization and hence the same was not maintainable. Such issue was answered in favour of the petitioner inter-alia observing that Shri A. V. Jagtap who had filed the dispute in the capacity of Managing Director of the respondent and who signed the vakalatnama on behalf of the respondent, had no authority to file the dispute in question. Although such conclusion was drawn, the Co-operative Court had also observed that there were two resolutions of the respondent placed on record on behalf of the respondent, which would show that there was appropriate authorization in favour of Shri A. V. Jagtap, the then Managing Director to file a dispute, being resolutions dated 01 October, 1992 and 01 November, 2003. As resolution dated 01 November, 2003 was placed on record during the pendency of the dispute, the Co-operative Court taking a highly technical view of the matter, answered the said issue in favour of the petitioner, so as to non-suit the respondent on the ground that the dispute was filed without

appropriate authorization and was liable to be dismissed. On such ground.

In such context, the findings as rendered by the Co-operative Court are

required to be noted which read thus:-

“ ISSUES NO. 2 & 5

It is first & foremost objection of the opponent that, the dispute is filed without due authorization & hence the dispute is not maintainable.

Shri A. V. Jagtap files the dispute on 5.11.1992, the then managing director of the disputant factory. He also signs the Vakalatnama on behalf of the disputant factory.

The disputant has produced two resolutions to show due authorization, which are at Exh. 84 & 85 & alongwith Exh. 89. The copy of extract of resolution no. 10(14) passed in the Board of Directors' Meeting dt. 1.11.2003 is filed at Exh. 85 & along with Exh.89.

The resolution does not bear dispute number, however, it can be gathered from wording that the resolution is in respect of present dispute. The resolution authorizes Shri R.D. Shitole or Shri S.B. Bankar or Shri S.A. Kharade to represent the factory in the present dispute. The resolution does not ratify action of filing of the dispute by Mr. Jagtap on behalf of the factory.

The first witness has filed his affidavit in June 2005 & his cross-examination has been completed on 14.10.2005. Though referred in affidavit, the resolution dated 1.10.92 was not produced. The resolution has been produced on 10.11.2005, which is at Exh.84. The resolution is not duly proved. However, though read as it is, it does not show that in that meeting, the Board of Directors has resolved to file present dispute & authorized Mr. Jagtap to file present dispute & to represent the disputant factory & to engage services of advocate on record.

The resolution authorizes Mr. Jagtap to represent factory in the cases filed by disputant factory to recover advances given to labourers and contractors & in the suits pending against factory; which are filed by other factories.

None of the resolution on record does show the decision of Board of Directors to file present dispute through Mr. Jagtap or ratifying earlier action of filing of the dispute by Mr. Jagtap. The end result is that the dispute is filed without authority.

As authorized person does not file the dispute, it is not maintainable. Thus, the issue No.2 is answered in the affirmative & the issue no.5 in the negative.”

(emphasis supplied)

7. In so far as the monetary claims as made by the respondent were concerned, the same were however, taken up for adjudication, whereby in answering issue Nos.4, 7 and 8, it was held by the Co-operative Court that the dispute as filed by the respondent was required to be partly allowed.

The observations in that regard are required to be noted which read thus:-

“ISSUES Nos. 4, 7 & 8:

The disputant's initial claim was of Rs.39,39,953.02, which has been increased by way of amendment, to the tune of Rs.94,43,310.42. The record does not show that, the disputant has paid necessary court fees on enhanced claim. The disputant had to pay requisite court fees on enhanced claim as per rule prevalent at the time of filing of the dispute.

In view of discussion in issues no. 3 & 6, the dispute has to be decreed partly, with costs. The opponent factory would be liable to pay to the disputant factory an amount of Rs.5,138,967.17 with interest @ 12% p.a. [a] on an amount of Rs.24,22,660.40 (Sugarcane price) from 30/7/91 till realization. [b] On an amount of Rs.23,90,749.52 (Transportation charges) from 11/10/90 till realization. [c] On an amount of Rs.3,25,557.25 (Cutting charges as per recommendation of Rupawate Committee) from 30/7/91 till realization.”

8. However, in the ultimate conclusion, the Co-operative Court dismissed the dispute on the technical ground for the reasons as recorded in answering the issue nos.2 and 5 as noted above. By the following

concluding observations, the dispute as filed by the respondent was dismissed:-

“ However, the dispute is liable to be dismissed on the technical ground, for the reasons stated in the issues no.2 & 5. In such peculiar circumstances the parties to bear their own costs.

Discussing as above following order is passed :-

ORDER

- I] The dispute is dismissed.
- II] The parties to bear their own costs.”

(emphasis supplied)

9. The respondent being aggrieved by the judgment and order passed by the Co-operative Court approached the Maharashtra State Co-op. Appellate Court, Mumbai (for short, the “appellate Court”) in Appeal No. 148 of 2007 on which the impugned judgment and order dated 17 February, 2014 has been passed, thereby allowing the appeal of the respondent. The Appellate Court set aside the findings of the Co-operative Court on issue nos.2 and 5 observing that the dispute was not filed with proper authorization and held that, in fact, it was filed with proper authorization. The Appellate Court modified the judgment and order passed by the learned trial Judge in regard to the amounts being entitled to the respondent.

10. The appellate Court observed that admittedly, the dispute was filed by the respondent on 05 November, 1992 being presented by the then

Managing Director of the respondent Shri A.V. Jagtap. It was observed that it was Shri A. V. Jagtap had also signed the 'verification clause', and that the contents of the dispute were true and correct to the best of his knowledge. It was observed by the appellate Court that along with the dispute, resolution of the respondent dated 01 October, 1992 was placed on record of the dispute, which showed that Shri Jagtap was authorized by the respondent, to represent the respondent before the Court. The appellate Court thereafter proceeded to observe that during the pendency of the dispute, there was another resolution dated 01 November, 2003 which was passed by the Managing Committee of the respondent authorizing Mr. R. D. Shitole, S.B. Bankar and Mr. Kharade to represent the respondent in the said dispute, which was placed on record of the dispute being marked as Exhibits 84 and 85. Insofar as this resolution was concerned, the Cooperative Court, as noted above, had observed that although the resolution does not bear the dispute number, however, it could be gathered from the wording of the said resolution, that the same was in respect of the dispute in question.

11. The appellate Court on such backdrop observed that the issue which had fallen for consideration was whether non filing of resolution at

the time of filing of dispute would amount to any illegality or irregularity and whether such a question would go to the root/maintainability of the dispute. The appellate Court answered the said question in the negative by observing that filing of resolution along with the dispute was a ministerial act. It was observed that there was no provision under the Maharashtra Co-operative Societies Act, 1960 (for short, the “MCS Act”) which would provide that filing of resolution was mandatory and accordingly, in this context, the appellate Court also considered the provisions of Order 29 Rule 1 of the Code of Civil Procedure, being a provision in regard to “subscription and verification of pleading” stipulating that in the suits filed by or against a corporation, any pleading could be signed and could be verified on behalf of the Corporation by the Secretary or by any director or other principal officer of the corporation who would be able to depose to the facts of the case. The appellate court thus, observed that admittedly the dispute was filed by the then Managing Director of the respondent Shri A. V. Jagtap who was fully aware and conversant of the facts of the dispute, hence, by applying the provisions of Order 29 Rule 1 of the Code of Civil Procedure, no defect could be found in filing of the dispute by the respondent. It was also observed that although there was no requirement of a resolution to be produced at the

time of filing of the dispute, however, there were two resolutions of the respondent conferring authorization. In such context, the appellate Court observed that the learned trial judge had in fact, refused to accept the resolutions on technical grounds, and such view taken by the trial Judge was a hyper technical view. It was also observed that even assuming that the resolutions were not produced on record at the time of filing of the dispute, any such defect was a curable defect, as the resolutions were on record at the time of hearing of the dispute. It was thus observed that the subsequent resolution dated 01 November, 2003 thus, was relevant, by which the respondent-society had in fact, authorized three members of its management to represent the case and which was sufficient for the dispute to have been properly filed and pursued. The appellate Court also examined the evidence as led by the parties in regard to the peculiar objection as taken on behalf of the petitioner on the legality of the resolution dated 01 November, 2003 as raised on behalf of the petitioner, when the petitioner contended that the process by which such resolution was passed in the meeting itself was defective and therefore, such resolution was required to be discarded. The appellate Court considering such evidence, declined to accept the case of the petitioner of any procedural illegality on the part of the respondent in passing the said

resolution. These are all findings of facts as recorded by the appellate court.

12. Shri Patil, learned counsel for the petitioner in assailing the impugned order passed by the appellate Court has limited submissions. His first submission is that the findings as recorded by the appellate Court in not accepting the case of the petitioner that there was no authorization with Shri A.V. Jagtap to file the dispute in question, are not acceptable and be held to be illegal. Such contention of Shri Patil is based on two counts, firstly, that the resolution dated 01 October, 1992 was defective and it was not specific in regard to Shri Jagtap being authorized to file the dispute in question. His second contention is that even the subsequent resolution dated 01 November, 2003 did not meet the requirement of law as it was placed on record of the trial court almost after two years i.e. in the year 2005 during the pendency of the dispute. This ought not to have been accepted by the appellate Court as any permissible/valid act on the part of the respondent. Shri Patil has contended that there was in fact evidence as led by the parties that the resolution dated 01 November, 2003 was not valid. In support of such contention, Shri Patil has drawn the Court's attention to the deposition of one of the witnesses Shri Shivaji Bankar who

according to Shri Patil in his cross-examination admitted that some of the directors had not signed the Minutes of the Meeting. Shri Patil's contention is that, for these reasons, the appellate Court is not correct in accepting the resolution dated 01 November, 2003 to be any valid authorization in favour of the persons who were authorized by such resolution.

13. Shri Patil's next contention is quite peculiar as also strange, which was also not raised before the Courts below, which is referring to Rule 75 of the MCS Rules, 1961 and Form 'P' thereunder which provides that, in regard to "a reference", when a society is a disputant, a copy of the resolution of its committee or Board of Directors shall accompany the application. It is Shri Patil's contention that considering Rule 75 and Form 'P', the observations as made by the appellate Court in the impugned order accepting the case of the respondent that the dispute was filed by the duly authorized representative of the society, ought not to be accepted.

14. Shri Patil has made another argument on merits, which is in regard to the amount as awarded by the impugned order passed by the appellate court. However, such argument being a non-issue is fairly conceded by Shri Patil, when he states that an independent appeal was filed by the

petitioner challenging the findings of the Co-operative Court on merits of the respondent's claim, whereby such claim was accepted by the Co-operative Court, and that the said appeal came to be dismissed, which was thereafter not pursued by the petitioner. It is however, his submission that the appellate court ought to have permitted the petitioner to raise objections on to the monetary award, although the petitioner's independent and substantive appeal assailing the finding of the Co-operative Court on merits came to be dismissed by considering such case of the petitioner as a cross objection. He submits that the objections of the petitioner on the merits of the claim as awarded by the Co-operative Court could be in the nature of cross objections, which ought to have been permitted by the appellate Court, and for such reasons, the award as made in paragraph 3 of the operative part of the impugned order passed by the appellate court deserves to be set aside on this count. In supporting such contention that it was permissible for the petitioner to raise such objection, Shri. Patil has placed reliance on the decisions of the Supreme Court in **Banarsi & Others vs. Ram Phal**¹, **Saurav Jain and Another versus A.B.P. Design and Another**², **M/s. Nibro Limited v. National Insurance Co. Ltd.**³ as also the judgment of this Court in the case of **Dattatraya**

¹ (2003)9 SCC 606

² 2021 SCC OnLine SC 552

³ AIR 1991 DELHI 25

Ramchandra Bandre Vs. Sumant Sharadchandra Ranade & Ors.⁴.

15. On the other hand, Shri Salunkhe, learned counsel for the respondent has supported the findings as recorded by the appellate Court. He would submit that the appellate Court has rightly held that the dispute was filed by the respondent on proper authority and as supported by the resolutions of the respondent as noted above. He submits that the appellate Court is correct in its observations that in the facts and circumstances of the case, the view taken by the Co-operative Court was an absolute technical view. Insofar as the award of the amounts by the Appellate Court are concerned, Shri Salunkhe has drawn the Court's attention to the findings as recorded by the trial Court to contend that the said amounts were held to be due and payable to the petitioner after examining and appreciating the evidence on record. The Court's attention is also drawn to paragraph 29 of the impugned order wherein the appellate Court has observed that the findings of the trial Judge on the other issues were not challenged by the petitioner by filing any cross objections and hence findings in that regard, have attained finality. Shri Salunkhe would accordingly submit that none of the contentions as urged by the petitioner would deserve any acceptance and the petition would deserve to be

⁴ Writ Petition No. 10950 of 2016

dismissed.

16. Having heard learned counsel for the parties and having perused the orders passed by the trial Court as also the appellate Court, in my opinion, none of the contentions as urged by Shri Patil deserve acceptance. It appears to be quite clear from the record that the dispute as filed by the respondent was duly verified as also appropriate vakalatnama was filed by the then Managing Director of the respondent Shri Jagtap. It was supported by a resolution of the respondent dated 01 October, 1992. Although such resolution did not specifically refer to the dispute to be filed by the respondent against the petitioner, however, perusal of the resolution a copy of which is also placed on record by Shri Patil, clearly shows that it conferred authority on Shri Jagtap to pursue legal proceedings in regard to variety of matters. Paragraph one of the resolution in fact contemplates an authority to pursue proceedings in different Courts as observed by the appellate Court. This apart, the nature of the objection as raised by the petitioner in the written statement also has some relevance, in the context of such issue of authorization, which had fallen for consideration of the trial Court as also the Appellate Court. In the written statement, the only objection of the petitioner was that the dispute was not properly presented and it was not signed by the properly

authorized person on behalf of the respondent and it is on such ground, the dispute was not maintainable. The contents of paragraph 2 of the written statement are required to be noted which read thus:-

“2. The dispute is not properly presented and it is not signed by the properly authorized person on behalf of the disputant Karkhana. On this ground also, the dispute is not maintainable and liable to be dismissed.”

17. It is on such objection as raised by the petitioner that the dispute was not maintainable, the parties had proceeded for trial before the Co-operative Court. The written objection therefore was not actually as to what was sought to be urged before the trial Court that there was no resolution of the respondent-society authorizing Shri A.V. Jagtap. The objection was that Shri A. V. Jagtap was not the authorized person to present the dispute. However, it appears that during the course of trial, the complexion of such objection of the petitioner changed to an assertion that the resolution dated 01 October, 1992 did not authorize Shri A.V. Jagtap to file the dispute. In my opinion, considering the facts on record and the findings as recorded by the appellate Court, no fault can be found in the observations as made by the appellate Court in setting aside the hyper technical observations of the learned trial Judge, who without application of mind had accepted the case of the petitioner that Shri A. V.

Jagtap was not authorized to file the proceedings of the dispute and pursue the same. This apart, as rightly observed by the appellate Court even assuming that there was to be a defect in Shri A. V. Jagtap not being authorized to file the dispute, this was certainly a curable defect and being so, as a matter of abundant caution, it came to be cured by the respondent when the respondent placed on record the subsequent resolution dated 01 November, 2003 authorizing the persons named in the said resolution to pursue the proceedings.

18. In my considered opinion, the observations as made by the appellate Court in setting aside the technical approach as adopted by the learned trial Judge in no manner can be said to be perverse. In fact, such observations fully recognize the correct position in law and apart from that, cater to recognizing the interest of justice, which would always prevail over technicalities of law. It is well settled principle of law that rules of procedure are the handmaids of justice. These well established principles were required to be borne in mind by the learned trial Judge in adjudication of the dispute.

19. Insofar as Shri Patil's contention on the evidence as recorded in the context of the second resolution dated 01 November, 2003, that in the

cross-examination of Shri Shivaji Bankar, he had stated that the minutes of the meeting recording the passing of such resolution being not signed by all the directors, who attended the meeting, also cannot be accepted. This for the reason that as rightly observed by the appellate Court, on a perusal of the cross-examination, the said witnesses has clearly stated that the entire minutes were not produced on record and only extract of resolution no. 10 of 2014 was produced on record. Hence such incomplete document did not show the signatures of any of the Directors. To my mind, such submission of Shri. Patil is nothing short of an unwarranted hair splitting. Also such contention would not assist the petitioner in any manner to assail the resolution which authorizes two directors and an officer of the respondent society to prosecute the dispute. In any event, the attempt of Shri Patil in making such submission in fact is in the realm of calling upon the writ Court to re-appreciate evidence, which is certainly not an acceptable course available to the petitioner in the present proceedings. This Court certainly cannot re-appreciate evidence to look into the cross-examination so as to come to a different conclusion and disturb the findings as recorded by the appellate Court. In any case, there is no perversity in such findings as recorded by the appellate Court. Thus, no case has been made out by the petitioner to displace the well

considered findings of the appellate Court, that the dispute was appropriately filed by the respondent with proper authority, conferred on the persons so authorized by the respondent to pursue the dispute under both the resolutions. The observations of the appellate Court on this issue are on materials borne out by the record.

20. The next contention of Shri Patil referring to Rule 75 of the MCS Rules is totally untenable, on a mere reading of the provisions of section 91. Sub-section (1) of section 91 clearly provides that a dispute in the nature as in the present case shall be referred by any of the parties to the dispute, to the Co-operative Court. To appreciate the contention of Mr. Patil, it would be necessary to refer sub-section (1) of Section 91 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 :-

(Note: bracketed portion was inserted by Maharashtra Amendment Act 18 of 1982.)

(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 therefore [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 sub ordinate 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 152 A 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) of 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 purpose 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 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.”

21. As noted above in sub-section (1) of Section 91, reference to the word “Co-operative Court” was substituted as far as back in 1982 by Maharashtra Act No. 18 of 1982 previous to which, in place of “Co-operative Court” the word “Registrar” existed, which came to be substituted. The submission of Mr. Patil referring to Rule 79 cannot be accepted as it is not a case that the present dispute was filed prior to the amendment as incorporated by Maharashtra Act, 1982. The respondent had directly approached the Co-operative Court as clearly provided in

Section 91. Such was not an objection before the trial Court. The objection of Shri Patil in fact is quite peculiar nay perplexing. His contention is that although Section 91 stands as amended by the 1982 amendment Act, whereby a dispute can directly be filed before the Co-operative Court in the manner as prescribed by Section 91 (supra), however, Rule 75 of the MCS Act ought to be read de hors the amendment which provides that a reference of a dispute under Section 91 shall be made in writing to the Registrar in Form 'P' and wherever necessary, the Registrar may require the party referring the dispute to him, to produce a certified copy of the relevant records on which the dispute is based and such other statements or records as may be required by him, before proceeding with the consideration of such reference. It is in such context, a requirement of 'Form P' under which 'Note no.3' is found providing that when a society is a disputant, a copy of the resolution of its committee or Board of Directors, shall accompany the application, is provided for. In my opinion, the reliance of Shri Patil on Rule 75 is misplaced and untenable considering that the dispute itself is filed in the year 1992 and strictly in the manner as recognized in substantial provision of Section 91. It is a settled principle of law that rule made under the act can never override the substantive provisions and must yield to the substantive

provisions. In any case, rule 75 was applicable only when a reference was made to the Registrar. It is not the petitioner's contention that the present case is filed by any reference to the Registrar. If that be the case, as to how Shri Patil could raise such contention referring to Rule 75 and Form 'P' provided therein is simply beyond comprehension.

22. Now coming to the case of the petitioner that in the absence of cross objection, the petitioner should have been permitted to assail the decree of the Co-operative Court to the extent it recognizes the entitlement of the respondent to the amount as claimed. Such contention in the absence of a cross appeal or cross objection was totally untenable. **In Banarsi and Ors. Vs. Ram Phal** (supra) on which reliance is placed by Mr.Patil, the Supreme Court has in fact held that in the absence of a cross appeal preferred or a cross objection taken by the plaintiff / respondent in the said case, the first appellate Court did not have jurisdiction to modify the decree. Shri Patil's reliance on the decision of the Supreme Court in **Saurav Jain and Another Vs. A.B.P. Design and Another** (supra) is also not well founded for the reason that there is nothing on record to point out that any cross-objections were filed by the petitioner. Moreover, the observations of the Supreme Court in paragraph 27 of the decision come to an aid of a person who had raised any cross-objection. In the present

case admittedly as also conceded by Shri Patil, no cross-objections were filed by the petitioner in the appeal as filed by the respondent. The Supreme Court has clearly observed in paragraph 27 of the decision that in spite of the original appeal having been withdrawn or dismissed for default, the cross-objection taken by the respondent to any finding, shall still be available to be adjudicated upon its own merits. In the present case, admittedly no cross objection was raised. Observations in paragraph 27 are required to be noted which read thus:-

“27. The effect of the amendment was considered in *Banarsi & Ors. v. Ram Phal*, where this Court held that after the 1976 amendment, the respondent could file cross-objections against the ‘findings’ of the lower court, while previously cross-objections could only be filed when the decree of the lower court was partly against the respondent. Justice R.C Lahoti (as the learned Chief Justice then was), speaking for the two judge bench observed:

“10-. [...] There may be three situations:

- (i) The impugned decree is partly in favour of the appellant and partly in favour of the respondent.
- (ii) The decree is entirely in favour of the respondent though an issue has been decided against the respondent.
- (iii) The decree is entirely in favour of the respondent and all the issues have also been answered in favour of the respondent but there is a finding in the judgment which goes against the respondent.

11. In the type of case (i) it was necessary for the respondent to file an appeal or take cross-objection against that part of the decree which is against him if he seeks to get rid of the same though that part of the decree which is in his favour he is entitled to support without taking any cross-objection. The law remains so post-amendment too. In the type of cases (ii) and (iii) pre- amendment CPC did not entitle nor permit the respondent to take any cross-objection as he was not the

person aggrieved by the decree. Under the amended CPC, read in the light of the explanation, though it is still not necessary for the respondent to take any cross-objection laying challenge to any finding adverse to him as the decree is entirely in his favour and he may support the decree without cross-objection; the amendment made in the text of sub-rule (1), read with the explanation newly inserted, gives him a right to take cross-objection to a finding recorded against him either while answering an issue or while dealing with an issue. The advantage of preferring such cross-objection is spelled out by sub-rule (4). In spite of the original appeal having been withdrawn or dismissed for default the cross-objection taken to any finding by the respondent shall still be available to be adjudicated upon on merits which remedy was not available to the respondent under the unamended CPC. In the pre-amendment era, the withdrawal or dismissal for default of the original appeal disabled the respondent to question the correctness or otherwise of any finding recorded against the respondent.”

(emphasis supplied)

23. The decision in Dattatraya Ramchandra Bandre Vs. Sumant Sharadchandra Ranade & Ors. (supra) would also not assist the petitioner. Shri Patil has placed reliance on paragraph 20 of the said decision. In fact, in such paragraph, the Court has clearly observed that a respondent may defend itself without filing any cross-objection to the extent to which decree is in his favour, however, if he proposes to attack any part of the decree, he must take cross-objection. Thus for want of any cross-objection as raised by the petitioner, this decision would not support the petitioner’s case. In fact, Shri Patil’s reliance on these decisions appears to be an argument in desperation.

24. For the above reasons, the petition is thoroughly misconceived. It is required to be dismissed.

25. At this stage, learned Counsel for the petitioner seeks stay on the order. Perusal of the record indicates that there was no stay to the impugned order. In view of dismissal of the petition, there is no question of any protection being granted to the petitioner more particularly considering that the dispute filed by the respondent itself is of the year 1992, i.e., almost about 30 years old.

26. Civil application would not survive. It is accordingly disposed of.

[G.S. KULKARNI, J.]