

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.7697 OF 2018

Ralegaon Gram Vividh Karyakari Sahakari Sanstha Ltd. .Vs. Shri Madhukar S/o
Ramaji Labhe

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri A.A. Joshi, Adv. h/f Shri V.N. Gaoli, Adv. for the petitioner.
Shri M.V. Amale, Advocate for the respondent.

CORAM : ANIL S. KILOR, J.

DATED : 04/07/2023

1. Heard.
2. This writ petition takes exception to the judgment and order dated 13.04.2018 allowing the appeal and thereby setting aside the judgment and order dated 08.01.2018 passed by the learned Judge, Co-operative Court, Amravati in Dispute No.360 of 2001.
3. The petitioner filed a dispute under Section 91 of the Maharashtra Co-operative Societies Act, 1960 before the Co-operative Court, Amravati for recovery of Rs.9,44,402/- along with interest @ 6%.
4. It is the case of the petitioner/society that the respondent has not kept the proper account of the cloth stores and he had not credited the amount of the cloth stores and because of the same, the society suffered a loss of Rs.9,44,402/-.

5. The said dispute was partly allowed and thereby the respondent was directed to pay Rs.9,44,402/- along with interest @ 6% per annum vide impugned judgment and award dated 08.01.2018.

6. The respondent feeling aggrieved by the same preferred an appeal before the Maharashtra State Co-operative Appellate Court which came to be allowed vide judgment and order dated 13.04.2018, which is the subject matter of the present writ petition.

7. The learned Co-operative Appellate Court while allowing the appeal and setting aside the order of the Co-operative Court has observed that, though the appointment of the respondent was as a salesman, but the Managing Committee in its meeting dated 29.06.1986, passed the resolution Nos.5,6,7 constituting purchase committee and control committee, to control and to supervise the affairs of the cloth stores. The learned Appellate Court further observed that, the society failed to establish the fact that, the respondent alone is liable for less stock of the cloth in the store and he has misappropriated the amount, claimed in the dispute.

8. Considering the allegations made in the dispute, as regards the misappropriation, the burden lies on the petitioner/society to prove that, the respondent has misappropriated the amount and is solely responsible for the

alleged losses caused to the petitioner/society. The petitioner/society has failed to establish it in the present matter.

9. The whole claim of the petitioner is based on the audit report wherein it has held that the respondent is responsible for misappropriation. However, there is no independent inquiry conducted by the petitioner/society to fix the liability on the respondent.

10. Moreover, the appointment of the respondent shows that, he was appointed on temporary basis and there is no evidence produced by the society to show that the alleged work of maintenance of cloth stores was assigned to the respondent. Moreover, in view of the fact that, a committee was constituted by the Managing Committee, namely purchase committee and control committee, shifting the complete burden of certain irregularity and illegality on the respondent without establishing his role in the alleged misappropriation, is not sustainable in the eyes of law.

11. In the circumstances, I do not find any perversity in the judgment and order passed by the Maharashtra State Co-operative Appellate Court dated 13.04.2018 and accordingly, the writ petition is **dismissed**.

JUDGE