



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

Writ Petition No.7200 of 2018

Vyawsay Shikshan Va Prashikshan Karmachari Sahakari Pat Sanstha Ltd.Thr.
Administrator J. S. Angalwar
Vs
Pralhad Tulshiram Watane

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

Court's or Judge's Order

Shri Abhay Sambre, Advocate for the Petitioner/s
Shri R.G. Kavimandan, Advocate for the Respondent-sole

CORAM : ANIL S. KILOR, J.
DATED : 23.10.2023

1. Heard.
2. The judgment and order dated 15.09.2017 passed by Maharashtra State Co-operative Appellate Court, Mumbai, Bench at Nagpur, allowing the appeal filed by the respondent-sole and setting aside the judgment and Award dated 15.04.2017 passed by the Co-operative Court, Amravati in Dispute No.499 of 2011, directing the respondent/opponent to pay Rs.5,45,286/- with interest @ 15 % per annum from 01/04/2006 till realization of entire amount to the disputant society.
3. The petitioner/disputant is the society, registered under the provisions of the Maharashtra Co-operative Societies Act, 1960 (for short "the Act of 1960"). As the elections were not held within stipulated period, Shri J.S. Angalwar, Recovery Officer was appointed as an Administrator vide order dated 03.01.2011 and thereupon, on the basis of Audit Report from 01.04.2004 to 31.03.2006, he found the present respondent as defaulter.

4. It was further noticed that the respondent was working from 01.04.2004 to 17.06.2004 as Secretary of the disputant Society and the respondent had disbursed the loan by exceeding the limit of the disputant society without permission of the Board of Directors and as such, it is the case of the disputant society that Rs.6,33,194/- with interest @ 18 % is liable to be recovered against the respondent/opponent.

5. The respondent resisted the dispute on the ground that whatever amount is stated in the dispute has already been paid by him and there cannot be any recovery of amount towards alleged outstanding against the respondent.

6. The disputant examined two witnesses, including an Auditor. In the Auditor's evidence, it has come on record that, he prepared four copies of the Audit Report. The original copy of the Audit Report was submitted with the society and one true copy was submitted on the record of the Court. The Audit Report (Exh.60), Account Extract (Exhs.45 to 47) and other documents brought on record by the disputant as evidence led the Co-operative Court to pass the judgment and order dated 15.04.2017, directing the respondent to pay Rs.5,45,286/- with interest @ 15 % per annum from 01/04/2006 till realization of entire amount to the disputant society.

7. The respondent, feeling aggrieved by the said judgment and order, carried the same in the appeal before the Maharashtra State Co-operative Appellate Court, Mumbai, Bench at Nagpur, who reversed the judgment and order dated 15.04.2017 passed the

Co-operative Court vide judgment and order dated 15.09.2017, the same is under challenge in this writ petition.

8. I have heard the learned counsel for the respective parties.

9. The learned counsel for the petitioner points out that the case of the respondent was not of denial, but it is the case of the respondent that the amount stated in the dispute was already paid by him and there was no amount outstanding which is to be recovered against him.

10. It is therefore, submitted that, it amounts to admission that the amount shown in the dispute was payable by the respondent. It is submitted that as far as the case of the respondent that the said amount was paid by him, he failed to prove the same by entering into the witness box or by producing any documentary evidence in that regard. It is therefore, submitted that in absence of any evidence, reversal of the judgment of the Co-ordinate Court, is erroneous.

11. He further points out that without raising any challenge while exhibiting the document produced by the disputant and without raising any serious challenge to the cross-examination of the Auditor, the learned Appellate Court discarded the documentary evidence and thereby, reversed the judgment and order of the learned Co-operative Court. He therefore, submits that the impugned judgment and order is liable to be quashed and set aside.

12. On the other hand, the learned counsel for the respondent supported the impugned judgment and order passed by the

learned trial Court and submits that as the original copy of the Audit Report was not filed on record, the learned Appellate Court has rightly discarded the Audit Report. He further submits that the learned Appellate Court has rightly held that though the documents are exhibited, it cannot be said that the contents of the documents were proved. He therefore, prays for dismissal of the present writ petition.

13. In light of the above contentions, I have perused the record and the impugned judgment and order.

14. From the impugned judgment and order, it is evident that the learned lower Appellate Court has not taken into consideration the pleadings made by the respondent in his written statement, particularly, as regards the fact that the respondent has already paid the amount and there cannot be any recovery as shown in the dispute.

15. The learned lower Appellate Court further failed to consider the fact that, though it is the case of the respondent that the amount stated in the dispute has already been paid by him but he has not entered into the witness box or he has not produced any evidence in that regard.

16. The learned lower Appellate Court on the contrary, discarded the evidence brought by the disputant society on the frivolous grounds. The learned lower Appellate Court without looking into the evidence, particularly, the cross-examination of the witnesses of the disputant where-from, it is evident that the respondent has not raised any serious challenge to the case of the

disputant. It is further evident that no challenge was raised to the exhibition of documents or to its contents.

17. In the circumstances, the findings recorded by the learned Appellate Court for discarding the documentary evidence, is contrary to the law.

18. In that view of the matter, I am of the opinion that re-appreciation of the evidence available on record is needed and for that purpose, the matter needs to be remanded back to the learned lower Appellate Court. Accordingly, I pass the following order:

- (i) The writ petition is partly **allowed**.
- (ii) The judgment and order dated 15.09.2017 passed by Member, Maharashtra State Co-operative Appellate Court, Mumbai, Bench at Nagpur, is hereby quashed and set aside.
- (iii) The Appeal is restored back to its original number.
- (iv) The Maharashtra State Co-operative Appellate Court, Mumbai, Bench at Nagpur, is directed to decide the appeal afresh, after hearing both the parties.
- (v) Parties to appear before the Member, Maharashtra State Co-operative Appellate Court, Mumbai, Bench at Nagpur on **09.11.2023 at 11.00 a.m.**
- (vi) The Member, Maharashtra State Co-operative Appellate Court, Mumbai, Bench at Nagpur shall

decide the appeal within three months from the date of the appearance of the parties.

(vii) The Registry is directed to send back the Record and Proceedings of the matter on or before 09.11.2023.

19. The learned counsel for the respondent submits that the pleading as regards the payment of amount stated in the dispute cannot be considered as an admission. In the circumstances, it is kept open to be decided by the Member, Maharashtra State Co-operative Appellate Court, Mumbai, Bench at Nagpur.

Accordingly, the writ petition is disposed of in the above terms. No order as to costs.

[ANIL S. KILOR, J.]