



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO. 6972 OF 2024**

VAISHNAV NAGARI SAHAKARI PATSANSTHA MARYADIT
THROUGH ITS MANAGER

VERSUS

MANISHA BHAUSAHEB DEORE AND OTHERS

AND

WRIT PETITION NO. 7004 OF 2024

VAISHNAV NAGARI SAHAKARI PATSANSTHA MARYADIT
JALGAON THROUGH ITS MANAGER

VERSUS

BHAUSAHEB DADAJI DEORE AND OTHERS

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Mr. Vijay Bhalerao Patil, Advocate for the Petitioner.

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CORAM : S. G. CHAPALGAONKAR, J.

DATED : 09th JULY, 2024.

P.C.:-

1. The petitioner is a Society registered under Maharashtra Co-operative Societies Act, 1960 (for short 'MCS Act, 1960'). It filed dispute under Section 91 before the Co-operative Court against respondents for recovery of loan amount. The respondents appeared in the dispute and refuted the contents of the plaint. The issues were framed and evidence was recorded. The witnesses examined on behalf of the petitioner-Society tendered various documents in evidence to show that the respondents obtained loan on execution of loan agreement and allied documents for that purpose. The respondents cross-examined petitioner's witnesses and put up specific defence refuting signatures on the loan documents. After recording oral evidence, respondents filed application for referring signatures and handwriting to experts.

2. The learned Judge, Co-operative Court allowed the application and directed to refer the documents i.e. Exhibit-72 to 83

for comparison and identification of the signatures of the respondents to Government Handwriting Experts, Forensic Lab., Aurangabad. The said order was assailed by the petitioner in Revision No.3/2024 and 4/2024 before Co-operative Appellate Court. The Revision Applications came to be dismissed vide order dated 29.04.2024 confirming the order passed by the Co-operative Court.

3. Mr. Patil, learned Advocate appearing for the petitioner takes exception to the concurrent orders passed by the Co-operative Court and the Co-operative Appellate Court. He would submit that as per the issues framed by the Co-operative Court, the burden is put on the shoulder of the petitioner to prove its case. Accordingly, evidence is tendered. The respondents were given opportunity to cross-examine the witnesses and at the fag end present application was filed seeking reference to Handwriting Expert, which is nothing but an attempt to delay the trial. He would submit that Court possess ample powers under Section 73 of the Evidence Act to compare handwriting on the documents and it would be futile to refer the documents to the experts. He would further submit that respondents are attempting to collect evidence, which is not permissible under law. In support of his contentions, he relies upon the judgment of the Supreme Court in case of ***Lalit Popli Vs. Canara Bank***¹.

4. Having considered submissions advanced and after going through the record tendered into service, it can be observed that the petitioner-Society has raised claim for recovery of the amount from the respondents on the basis of the loan agreement and other documents. The opponent has specifically denied execution of such documents. Even considering the cross-examination of the

¹ 2003 AIR (SC) 1795.

witnesses, the specific case is put up that signatures appearing on the documents at Exhibit-72 to 83 are not of the respondents. In pursuance of such defence, the application for referring the documents to Handwriting Experts is made. The Co-operative Court after considering the rival submissions, concluded that when there is allegation of forged signatures, Court cannot exercise jurisdiction under Section 73 of the Evidence Act and in such cases, opinion of the experts can be called for. The Appellate Court also confirmed the opinion of the Trial Court. It is not disputed that the Courts possess ample powers to refer the documents to Handwriting Expert, when dispute requires expert opinion. The Courts below have exercised jurisdiction vested with them in judicious manner. No jurisdictional error is brought to the notice of this Court. Hence, no case is made out to cause interference under Writ jurisdiction of this Court under Article 227 of the Constitution of India. Hence, Writ Petitions stand dismissed.

(S. G. CHAPALGAONKAR)
JUDGE