

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL Appellate JURISDICTION

WRIT PETITION NO.1996 OF 2021.

Prakash Kallappa Awade

...Petitioner.

Versus

The Liquidator, the Ichalkaranji Urban Cooperative
Bank Ltd. and Ors.

...Respondents.

Mr. Nitin P. Deshpande for the petitioner.
Mr. S. A. Rajeshirke for the respondents.

Coram : Sharmila U. Deshmukh, J.

Date : 14th June, 2024.

P. C. :

1. Heard Mr. Nitin P. Deshpande for the petitioner and Mr. S. A. Rajeshirke, AGP for the respondents.

2. By this petition, the challenge is to the order dated 26th February 2021 passed by the Co-operative Appellate Court in Revision Application 6/2020 by which the order of the Trial Court allowing the application of the present petitioner and deleting the name of the petitioner from the array of the opponents came to be reversed by

the Appellate Court.

3. The facts of the case are that a dispute came to be filed under Section 91 of the Maharashtra Cooperative Societies Act, 1960 (MCS Act) by respondent No.1 Cooperative Bank seeking recovery of money amounting to Rs.2,12,87,764.25. In the dispute, it was pleaded that defendant Nos.3 to 16 therein are the Directors of defendant No.1 Spinning Mill at the time when the suit transactions were effected. The cause of action for the dispute is stated to have arisen on 2nd May, 2000, when the defendant executed loan documents and when defendant No. 1 i. e. Spinning Mill discounted the hundies drawn on and accepted by defendant Nos. 20 to 22 and thereafter on 24th June 2000 when hundies were presented and stood dishonoured. The dispute was filed in the year 2002. Subsequently, an application came to be filed on 3rd September 2019 by the petitioner who was defendant No.5 therein seeking deletion of his name from the array of defendants. The Application pleads that he was appointed as a Director of defendant 1 on 4th July 1999 and had resigned on 5th January 2000 and his resignation was accepted on 28th March 2000. It is further pleaded that an Administrator came to be appointed under Section 78 of the Maharashtra Cooperative Societies Act, 1960 by the Director of Handloom, Power and Textile in which it is recorded that

defendant No.5 has resigned on 5th January 2000

4. Based on these averments, application was filed seeking deletion of the present petitioner. The Application came to be resisted by the Respondent bank. By order dated 22nd January 2020 the Trial Court allowed the application by relying upon the provisions of Section 92(3) (C) of the MCS Act and that the Court had the power to pass an order of deletion of any party at any stage of any proceedings. The Trial Court accepted the case of the Petitioner that he had resigned on 5th January 2000 by considering the order of the Director of Handloom, Power and Textile passed on 19th October 2000.

5. As against this, the respondent bank preferred a revision before the Appellate Tribunal. The Appellate Tribunal considered the provisions of the Act and also the documents which were produced by the petitioner to establish his case of resignation. The Appellate Court held that the petitioner has not produced resignation letter or resolution accepting resignation. The Appellate Court further held that order produced of 19th October 2000 of the Director of Handloom, Power and Textile was not a certified copy but a true copy of the certified copy and there is no document on record that

resignation was tendered and was accepted. The Appellate Court held that the facts mentioned in the order of Director of Handloom, Power and Textile has to be proved independently. The burden is upon the petitioner under Section 106 of the Evidence Act and allowed the Revision Application resulting into dismissal of the application seeking deletion.

6. Learned counsel appearing for the petitioner has taken this Court through the order of the Director of Handloom, Power and Textile. He submits that the order of the Director of Handloom, Power and Textile is a public document and the same records that petitioner has resigned on 5th January 2000. According to him, once a public document has been produced, the fact of resignation stood concluded and therefore the Trial Court rightly allowed the application. He submits that the Appellate Court failed to consider that the order was passed by the Director of Handloom, Power and Textile which recorded the order of resignation and therefore it was not necessary to produce any other independent record. He submits that witness for the bank in the cross examination has specifically stated that it was not verified as to whether the present petitioner was a Director at the time of filing of the suit. He would further point out the admission in the cross examination that the witness has no instructions as to

whether the respondent bank had verified the fact whether the petitioner is Director of respondent No.1 bank. He submits that the evidence was recorded prior to passing of the order and therefore ought to have been considered by the Appellate Court.

7. *Per contra*, learned counsel for respondent No.1 would submit that dispute was filed in the year 2002 and the application came to be filed in the year 2019. He submits that the provisions of Order 1 Rule 13 of CPC would come into play as the objection was not taken at the earliest possible opportunity and the objection would be deemed to have been waived. He would further submit that the Appellate Court has rightly considered that there is neither resignation letter produced nor resolution accepting the resignation has been produced. He submits that no reliance can be placed on the true copy of the order dated 19th October 2000 and it was necessary to produce a certified copy. He would further submit that all the Directors had filed application claiming to have resigned and therefore it was necessary for the petitioner to lead evidence before it can be accepted that he had resigned before the cause of action arose. He submits that the petitioner has taken the plea of the entire record being misplaced. However this submission about non availability of the record is rightly not accepted as petitioner did not bring on record

any document to show that he had made efforts to trace the document as far as his resignation and resolution is concerned.

8. He would further submit that the stage of the proceedings is that evidence of the plaintiff has been closed and the matter is posted for final arguments with one application pending for bringing on record legal heirs of one of the deceased defendant. He submits that furthermore the present petitioner has made an application to the Bank for releasing one of his properties upon furnishing some other security which has been accepted by the bank and shows the petitioner's involvement. Learned counsel for petitioner would submit that it was not that the provisions of Order 1 Rule 13 of CPC cannot be considered as the provisions of Section 95 (C) (3) of the MCS Act would apply which provides that at any stage of the proceedings the name of the party improperly joined can be struck off.

9. Considered the submissions and perused the record.

10. What is required to be considered is whether merely based on order of 19th October, 2000, it can be accepted that the petitioner had resigned on a particular date and that the resignation was accepted and at the time when the cause of action arose the petitioner was no

longer the Director. It needs to be noted that dispute is regarding recovery of huge amount of Rs.2 crores from the Spinning Mill and a specific averment is made in the plaint that the petitioner and the others are the Directors and discharging duties at the time when the suit transactions were effected. I find considerable force in the submissions of learned counsel for the respondent that though the dispute has been filed in the year 2002, after a period of almost 17 years for the reasons best known, application has been filed seeking deletion of the name of the petitioner from the array of defendants and that too at the stage when the dispute was part heard as the evidence of the plaintiff was almost underway.

11. It also needs to be considered that when a party comes before the Court seeking deletion of his name, the application is required to be supported with documents which would be unquestionable. In the present case, the petitioner claims that he has resigned on a particular date and that resignation was accepted by the resolution of the bank. That being so, it was expected of the petitioner to place necessary material on record which would have concluded the issue that petitioner was no longer Director of the bank on the said date. What has been produced on record is only the copy of the order of 19th October 2000 passed by the Director of Handloom and Textile which is

also an order which has been passed under Section 78 of MCS Act providing for appointment of administrator.

12. Perusal of the order does not indicate that there was any inquiry pursuant to which the order records the resignation of the petitioner on 5th January, 2000. The Appellate Court was therefore right in not giving due weightage to the said order and requiring other documents such as copy of resignation and resolution to show that the petitioner had resigned.

13. The Appellate Court has rightly considered that although submission has been made that the entire record is misplaced or destructed there is no communication produced by the petitioner with respondent No.1 bank calling upon them to produce the said document. The Appellate Court has on the basis of material held that petitioner has not produced copy of letter asking for resolution accepting resignation and reply of opponent No.1 about non availability of document. Although it is sought to be contended by learned counsel for the petitioner that such a document was in fact produced on record and which is at page 177 of the petition the communication appears to be of 4th January 2020 that is after the filing of the application seeking deletion and in any event there is a

finding which has been given by the Appellate Court that no such document has been produced and therefore said statement cannot be considered at this stage.

14. Apart from the above, considering that the stage of the proceeding is that evidence of the plaintiff has been closed and it would be for the defendants to lead evidence if so advised and if not the matter will be posted for final arguments, arguments can be advanced before the Cooperative Court as regards the resignation of the petitioners prior to arising of the cause of action.

15. In the light of the discussion above, there is no merit in the petition. Petition stands dismissed.

16. Needless to clarify that the observations made herein are only for the purpose of testing validity of the order passed by the Appellate Court. The Trial Court is directed to decide the dispute on its own merits and uninfluenced by the observations made herein.

[Sharmila U. Deshmukh, J.]