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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 645 OF 2023**

M/s. Jayswal Krushi Kendra through its ... Petitioner
Proprietor

vs.

The Maharashtra State Co-operative ... Respondent
Marketing Federation Ltd

Mr. Dilip Satale i/b. Swati Khot, for Petitioner.

Mr. Umesh R. Mankapure for Respondent.

CORAM : GAURI GODSE, J.

DATED : 26th FEBRUARY, 2024

P.C. :-

1. This petition takes an exception to the concurrent judgments and orders passed by the Cooperative Court as well as the Cooperative Appellate Court allowing the dispute filed by respondent No.1. By the judgment and order passed by the Cooperative Court, the dispute filed by the respondent no.1 is allowed and the petitioner is directed to pay an amount of Rs. 1,00,53,612/- along with interest @ 18% per annum. The said judgment and award is confirmed by the Cooperative Appellate Court by dismissing the appeal filed by the petitioner. The Appellate

Court has clarified that the petitioner would be entitled to set off for the amounts paid/recovered after 30th September 2003 against the transaction and accounts.

2. Learned counsel for the petitioner submitted that respondent No.1 failed to prove their case by producing sufficient documents. He submitted that the original documents were not produced before the Court. He relied upon the cross-examination of the witness of respondent no.1 and submitted that the witness specifically admitted that the demands were sometimes made in writing and sometimes orally on the phone. He therefore relied upon the cross-examination in support of his submissions that respondent no.1 failed to prove their claim by producing documents in support of their claim that goods were supplied. He therefore submitted that the bank guarantee submitted by the petitioner was illegally encashed by respondent no.1. He thus, submitted that once the witness of respondent no.1 had admitted that the petitioner had never signed the challans and that the witness had no personal knowledge about it, the Cooperative court could not have granted award directing the petitioner to make payment by accepting the case of respondent no.1. He therefore, submitted that the Cooperative Court has passed the award against the petitioner in absence of any supporting documents.

3. Learned counsel for respondent no.1, disputes that the original documents were not produced before the Cooperative Court. He submits that in paragraph 8 of the judgment passed by the Cooperative Court, a list of documents produced by respondent no.1 is referred. He submitted that the petitioner had also produced various documents which are referred to in paragraph 9 of the judgment. He submitted that all the documents were exhibited and after taking into consideration and examining the documents the Cooperative Court has passed the award directing the petitioner to make the payment. He submitted that perusal of the written statement filed by the petitioner would indicate that the case of the petitioner was not regarding non-supply of goods. However, he had raised a defence that he had already paid the amount against the supplied goods. He therefore submitted that the petitioner failed to produce any documentary proof that the amounts were paid in response to the demand raised and invoices raised by respondent no.1.

4. Learned counsel for respondent no.1 relied upon the demand notice served upon the petitioner on 4th December 2003 calling upon the petitioner to make payment. He submits that in response to the said notice the petitioner submitted a reply and raised a dispute

regarding payment of Rs, 10,70,000/-. He submits that even in the said reply the petitioner had never raised any objection that the demand was made as against goods that were never supplied. He thus, submitted that the Cooperative Court has examined the documentary as well as oral evidence produced on record and directed the petitioner to make payment. He submitted that the findings recorded by the Cooperative Court are confirmed by the Appellate Court by again re-examining all the documentary as well as oral evidence on record. He thus, submitted that no ground is made out for interference by this Court in the impugned judgments and orders.

5. I have considered the submissions made by both the parties. Perused the record. Perusal of the judgment passed by the Cooperative Court indicates that various documents were produced by both parties in support of their respective contentions. The Cooperative Court has held that it was the case of the petitioner that whenever the fertilizers and chemicals were received, all the payments were made. In support of his submissions, he has relied upon the documents produced at Exhibit-1 to 38. The Cooperative Court has referred to the said documents and held that the petitioner did not dispute the validity of the accounts and the extract

filed by the federation. However, the petitioner had disputed his membership with the federation for disputing the delivery of bills relied upon by respondent no.1. The petitioner had raised objection about his signature on the membership application with the federation. An application filed by the petitioner was allowed on 30th August 2008 to permit him to get expert evidence. However, by application dated 23rd January 2009, he requested time to comply with the directions. The petitioner was granted three months time. However, he did not comply with the same and hence, the dispute proceeded further and based on the documents on record the Co-operative Court held that the petitioner was liable to make payment towards the recoverable amount for the supply of fertilizers and chemicals.

6. The Appellate Cooperative Court has also in detail examined the documentary as well as oral evidence. The Appellate Court referred to the defence of the petitioner and examined the documentary evidence produced by respondent no.1 in support of the goods that were delivered. The Cooperative Appellate Court further also examined the submissions made on behalf of the petitioner regarding the discrepancy alleged in the books of account and the absence of an entry of Rs 10,00,000/- towards encashment of the bank guarantee. The Cooperative Appellate Court thus, by

examining all the documents and evidence confirmed the findings recorded by the Cooperative Court.

7. A perusal of the written statement filed by the petitioner indicates that he has denied the contentions raised in the dispute and further contended that he had already paid the amount towards the goods that were actually supplied. A perusal of the written statement does not indicate that the petitioner had raised any grievance on the claim of respondent no.1 towards the goods supplied. The defence of the petitioner does not indicate that the petitioner disputed receiving the goods supplied. The defence of the petitioner also appears to be of making payments of all the dues. Hence, in the absence of any proof of payments, the dispute was allowed based on the calculations of respondent no.1 with regard to the claim based on the invoices and challan relied upon by respondent no.1.

8. With regard to the contentions raised by the petitioner for the amount already paid, the Cooperative Appellate Court has in detail examined the said contentions and in the operative part has clarified that the petitioner would be entitled to the set off for the amount already paid or recovered after 30th September 2003. Thus, I do not find any substance in the grievance made on behalf of the petitioner

that the claim of respondent no.1 is not based on supporting documents. The said contentions are examined by both the Courts in detail and findings of fact recorded by the Cooperative Court are confirmed by the Cooperative Appellate Court. I do not find any reason to interfere in the findings of the facts recorded by both the Courts.

9. With reference to the submissions made on behalf of the petitioner that the amounts which are already paid by the petitioner were not taken into consideration by respondent no.1 is concerned, the Appellate Court has examined the said objections and thus, rightly observed in the operative part of the order that the petitioner is entitled to the set off for the amount already paid after 30th September 2003. Hence, the petitioner would be entitled to seek set off as permissible in law.

10. Learned counsel for the petitioner relied upon the decision of the Hon'ble Supreme Court in the case of *Eshwar Dass Jain(Dead) through Lrs Vs Sohan Lal (Dead) by Lrs* ¹. He relied upon paragraphs 25 and 26 of the said decision to support his contention that respondent No.1 was not entitled to rely upon the extract of books of account as the same were not admissible. So far as the

¹ (2001)1 SCC 434

present case is concerned the reasons recorded by the Cooperative Court as well as the Appellate Court indicate that respondent no.1 had produced various documents in the form of receipts, bills, demand letters, and notices as well as letters of the petitioner admitting the liability. Thus, the claim of respondent no.1 is not based on only books of account. Apart from producing various documentary evidence, oral witnesses are also examined by respondent no.1 in support of their claims. Hence, under the facts and circumstances of the case, the decision of the Hon'ble Supreme Court relied upon by the learned counsel for the petitioner is of no assistance to the submissions made on behalf of the petitioner.

11. Hence, I do not see any reason to interfere in the impugned order. The petition is devoid of any merits and does not warrant any interference under Article 227 of the Constitution of India. For the reasons recorded above writ petition is dismissed.

(GAURI GODSE, J.)