



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

**Civil Revision Application [CRA] No.84 of 2023**

***Ambadas Bhikaji Thorat***

***vs.***

***Sant Tukaram Nagari Sahakari Patsanstha Ltd. and another***

-----  
Office notes, Office Memoranda of  
Coram, appearances, Court's orders  
or directions and Registrar's orders.  
-----

Court's or Judge's Orders

*Mr. G.G. Mishra, Advocate for the Applicant.*

*Mr. A.M. Tirukh, Advocate for Non-Applicant No.1.*

**CORAM : M.W. CHANDWANI, J.**

**DATE : 13<sup>th</sup> FEBRUARY, 2024.**

The applicant challenges the order dated 24/06/2022 passed by the Civil Judge Junior Division, Jalgaon (Jamod), District Buldhana in RCS No.35/2021 rejecting the application under Order VII Rule 11 of the Code of Civil Procedure, 1908 (C.P.C. for short) filed by the applicant for rejection of the plaint.

02] Non-applicant No.1, a Co-operative Credit Society, registered under the provisions of the Maharashtra Cooperative Societies Act, 1960 (hereinafter referred to as "the Act of 1960" for short), instituted a suit for recovery of Rs.1,33,400/- against the applicant and non-applicant No.2 in the capacity of sureties/guarantors of deceased member/borrower of non-applicant No.1-Society.

03] The contention of non-applicant No.1-Society in the said complaint is that the Society advanced personal loan to its deceased member viz. Ganesh Ambadas Thorat. The applicant and non-applicant No.2, who were also the members of the Society, stood as sureties/guarantors. Since, the loan was not paid by the deceased member, the suit for recovery against the sureties/guarantors of deceased member came to be filed.

04] The applicant filed an application before the trial Court under Order VII Rule 11(d) of C.P.C. for rejection of the plaint on the ground that the suit is barred by Sections 91 read with Section 163 of the Act of 1960. The learned trial Court after hearing the matter, rejected the application of the applicant holding that there is no bar under Section 163 of the Act of 1960. Feeling aggrieved with the said order, the present revision application came to be filed.

05] Heard the learned Counsel for the applicant as well as the learned Counsel for non-applicant No.1. Perused the impugned order as well as the complaint.

06] Indisputably, rather the plaint depicts that non-applicant No.1-Society is a credit cooperative society and engaged in advancing loans. Non-applicant No.1-Society has filed suit for recovery of loan amount from the sureties of the deceased member. Needless to mention, recovery of loan amount given to the deceased member comes within the purview of the dispute touching to the business of non-applicant No.1-Society. This takes me to Section 91 of the Act of 1960, which is reproduced here.

**“91. Disputes-**

*(1) Notwithstanding anything contained in any other law for the time being in force, any dispute touching the constitution, elections of the committee or its officers other than elections of committees of the specified societies including its officer, conduct of general meetings, management or business of society shall be referred by any of the parties to the dispute, or by a federal society to which the society is affiliated or by a creditor of the society, to the Cooperative Court if both the parties thereto are one or other of the following :*

*(a) a society, its committee, any past committee, any past or present officer, any past or present agent, any past or present servant or nominee, heir or legal representative of any deceased officer, deceased agent or deceased servant of the society, or Liquidator of the society; or the Official Assignee of a de-registered society;*

*(b) a member, past member or a person claiming through a member, past member or a deceased member of society, or a society which is a member of the society or a person who claims to be a member of the society;*

*(c) a person other than a member of the society, with whom the society has any transactions in respect of which any restrictions or regulations have been imposed, made or prescribed under section 43, 44 or 45, and any person claiming through such person;*

*(d) a surety of a member, past member or deceased member, or surety of a person other than a member with whom the society has any transactions in respect of which restrictions have been prescribed under section 45, whether such surety or person is or is not a member of the society;*

*(e) Any other society or the Liquidator of such a society or de-registered society or the Official Assignee of such a de-registered society.*

*Provided that, an industrial dispute as defined in clause (k) of section 2 of the Industrial Disputes Act, 1947, or rejection of nomination paper at the election to a committee of any society other than a notified society under section 73-IC or a society specified by or under section 73-G, or refusal of admission to membership by a society to any person qualified there for or any proceeding for the recovery of the amount as arrears of land revenue on a certificate granted by the Registrar under sub-section (1) or (2) of section 101 or sub-section (1) of Section*

*137 or the recovery proceeding of the Registrar or any officer subordinate to him or an officer of society notified by the State Government, who is empowered by the Registrar under sub-section (1) of section 156 shall not be deemed to be a dispute for the purposes of this section.*

*(2) Sub section (2) deleted*

*(3) Save as otherwise provided under sub-section (2) of section 93, no Court shall have jurisdiction to entertain any suit or other proceedings in respect of any dispute referred to in sub-section (1).*

*Explanation 1- A dispute between the Liquidator of a society 6 or Official Assignee of a de-registered society and 7 the members (including past members, or nominees, heirs or legal representative or deceased members) of the same society shall not be referred to the Cooperative Court under provisions of sub-section (1).*

*Explanation 2 - for the purposes of this sub-section a dispute shall include-*

*(i) a claim by or against a society for any debt or demand due to it from a member or due from it to a member, past member or the nominee, heir or legal representative of a deceased member, or servant or employee whether such a debt or demand be admitted or not;*

*(ii) a claim by a surety for any sum or demand due to him from the principal borrower in respect of a loan by a society and recovered from the surety owing to the default of the principal borrower, whether such a sum or demand be admitted or not;*

*(iii) a claim by a society for any loss caused to it by a member, past member or deceased member, by any officer, past officer; or deceased officer, by any agent, past agent or deceased agent, or by any servant, past servant or deceased servant, or by its committee, past*

*or present, whether such loss be admitted or not;*  
*(iv) a refusal or failure by a member, past member or a nominee, heir or legal representative of a deceased member, to deliver, possession to a society of land or any other asset resumed by it for breach of condition as the assignment.”*

07] Thus, any dispute touching to the business of the Society between the persons mentioned in Section 9(1)(a) to (e) of the Act of 1960 shall be referred to the Co-operative Court. The plaint reveals that the suit for recovery of loan amount has been filed against the applicant and non-applicant No.2, who were the sureties/guarantors of the deceased borrower/member. Thus, the suit is in respect of the dispute touching to the business of non-applicant No.1-Society between the Society and the surety of the deceased borrower, which is covered under clauses (a) and (d) of Section 91(1) of the Act of 1960, respectively. Therefore, the dispute against the sureties/guarantors of a deceased member of the Society with regard to touching to the business of non-applicant No.1-Society, is covered under Section 91 of the Act of 1960.

08] Section 163 of the Act of 1960 creates a bar on the Civil Court to entertain any dispute, which is referred to the Cooperative Court for the decision. Section 163 is reproduced as under :

***“163. Bar of jurisdiction of Courts -***

*(1) Save as expressly provided in this Act, no Civil or Revenue Court shall have any jurisdiction in respect of -*

*(a) the registration of a society or its by-laws, or the amendments of its by-laws, or the dissolution of the committee of a society, or the management of the society on dissolution thereof; or*

*(b) any dispute required to be referred to the Co-operative Court, for decision;*

*(c) Any matter concerned with the winding up and dissolution of a society.*

*(2) While a society is being wound up, no suit or other legal proceeding relating to the business of such society shall be proceeded with or instituted against the society or any member thereof, or any matter touching the affairs of the society, except by leave of the Registrar, and subject to such terms as he may impose.*

*(3) All orders, decisions or awards passed in accordance with this Act or the rules shall, subject to the provisions for appeal or revision in this Act be final; and no such order, decision or award shall be liable to be challenged, set aside, modified, revised or declared void in any Court upon the merits or upon any other ground whatsoever.”*

09] In view of the fact that the suit is in respect of dispute touching to the business of non-applicant No.1-Society between the society and the surety of a deceased members of non-applicant-Society, the dispute is required to be referred to the Co-operative Court for decision. In the wake of Section 163 of the Act of 1960, there is express bar for the Civil Court to take cognizance of the said dispute. The suit being barred by law and, therefore, the plaint to be rejected under Clause (d) of Order VII Rule 11 of C.P.C. The trial Court did not consider this aspect and misread Section 163 of the Act of 1960. Rather, it appears from the impugned order that Section 163 of the Act of 1960 was not properly understood by the learned trial Court, which resulted in rejection of the application of the applicant. The order of the learned trial Court does not stand and deserves to be set aside. Hence, the following order :

**ORDER**

- i. Impugned order dated 24/06/2022 passed below Exh.17 in R.C.S. No.35/2021 is hereby set aside.
- ii. Application [Exh.17] filed by the applicant under Order 7 Rule 11 of C.P.C. is hereby allowed.
- iii. The plaint of the non-applicant No.1 is rejected under Order 7 Rule 11(d) of C.P.C.
- iv. The application is disposed of in the aforesaid terms.

**JUDGE**

*\*sandesh*