



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2190 OF 2018

Narendra s/o Babulal Karnawat
Age: 52 yrs, Occu. Business
R/o. Sukhshnanti, Aadarsh Colony
T.V. Centre, Sawedi, Ahmednagar
Tal & Dist. Ahmednagar.

...PETITIONER
[Org. Opponent No. 1]

VERSUS

1. Kanhurpathar Co-op. Credit Society Ltd.,
Kanhurpathar, Taluka Parner, Dist. Ahmednagar
Through its recovery officer/Manager

2. Kishor Dharamchand Singvi
Age: Major, Occu. Business
R/o. Mayur, Sambhaji Colony
Near Railway Station Road
Ahmednagar, Tq. & Dist. Ahmednagar

3. Rajendra Lalchandra Kothari
Age: Major, Occu. Business
R/o. Shivkrupa, Raut Mla, Market Yard
Ahmednagar, Tq. & Dist. Ahmednagar. **...RESPONDENTS**
[Res. No. 1- Orig. Petitioner]

Mr. Vivek V. Tarde, Advocate for petitioner
Mr. Surendra V. Suryawanshi, Advocate for respondent No. 1

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CORAM : MANJUSHA DESHPANDE, J.

RESERVED ON : 13th JANUARY, 2025
PRONOUNCED ON: 21st JANUARY, 2025

JUDGMENT :

. Rule. Rule made returnable forthwith. Heard finally
with the consent of parties.

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2. The judgment and order dated 05.05.2017 passed by Maharashtra State Co-operative Appellate Court, Mumbai, Bench at Aurangabad, in Appeal No. 32/2016 is challenged in the present writ petition.

3. It is the contention of the petitioner that respondent No. 1 is credit co-operative society, which is duly registered as per provisions of Maharashtra Co-operative Societies Act, 1960. The society is in the business of banking and makes available finance to creditors and its members. Though, the petitioner at no point of time had availed any loan facility, in order to harass him, respondent No. 1 has filed false and baseless claim in the nature of Dispute No. 783/2007 before the Co-operative Court, Ahmednagar. In the said dispute, amount of Rs. 5,00,419/- was sought to be recovered from the petitioner and respondent No. 2 and 3, jointly and severally. It was claimed that the petitioner had availed loan from respondent No. 1 and after one year of the loan becoming overdue, disputant society issued notice on 02.03.2007 demanding the outstanding amount from the petitioner. The petitioner i.e. original opponent No. 1 was served with summons of dispute after which the opponent caused appearance in the dispute and filed written statement at Exhibit-

12. The opponent denied the dispute and the claims made therein. It was contended that the dispute is not legal, maintainable and also not within limitation. It was alleged that the disputant society obtained signatures on blank documents and forms and thereafter conveniently used said documents to claim that opponent had availed loan, which is outstanding.

4. On the basis of rival pleadings, issues were framed vide Exhibit-13 on 18.11.2009. Accordingly, the disputant adduced evidence by filing affidavit of evidence on 01.12.2009. The opponent i.e. present petitioner filed application seeking amendment in the written statement on 04.02.2010, on which order below Exhibit-29 was passed, thereby allowing the application subject to payment of cost of Rs. 500/- vide order dated 17.09.2010 by the Co-operative Court, Ahmednagar. It was contended in the application that they have filed the written statement, however, certain pleadings are necessary to be added in the written statement. It was also contended that the pleadings and documents in the dispute filed by disputant did not match, therefore, on these counts the amendment to the written statement was sought. In the proposed amendment, leave to add para 6A to the written statement was sought. In

para 6A, petitioner has disputed about membership of the said society. It was claimed that there is no relationship of society and member between disputant and the opponent. They have never become member of that society and the disputant needs to be put to the strict proof thereof. It was claimed that pleadings and documents placed on record along with dispute being conflicting should not be read in evidence and not allowed to be exhibited in the claim. It was also claimed that other documents regarding resolution, proceeding book and other documents annexed to the claim were denied. Pursuant to the order Exhibit-29 dated 17.09.2010, additional issues came to be framed by the Co-operative Court vide order dated 03.12.2010, which reads thus:

1A] Whether O are members of disputant society?

1B] Whether this Court has Ju to entertain the matter

U/s. 91 of M.S.C. Act

5. It is contended by the petitioner that respondent No. 1 had already filed affidavit of evidence and even cross examination of the witnesses of disputant had commenced on 01.01.2010 itself. The cross examination continued and concluded on 12.08.2014. Thereafter, petitioner i.e. opponent

No. 1 has filed his affidavit in support of evidence on 23.09.2014. His cross examination was concluded on 13.01.2015 and thereafter Judge, Co-operative Court, Ahmednagar has decided the dispute vide judgment and order dated 31.10.2015. While deciding the dispute the issue No. 1A and 1B i.e. Whether opponents are members of disputant society? and whether this Court has jurisdiction to entertain the matter u/sec. 91 of the M.C.S. Act?, have been answered in negative. Both the issues were subsequently framed by Judge of Co-operative Court, Ahmednagar after the amendment made in the written statement. The issue i.e. Whether the disputant prove that the opponent No. 1 obtained loan of Rs. 5,00,000/- from the disputant and opponents No. 2 and 3 stood as guarantors for the same?, was answered in negative. It was also held that the signatures of opponents were obtained by disputant on blank papers. Hence, the dispute filed by disputant society was dismissed by Co-operative Court, Ahmednagar vide judgment and order dated 31.10.2015.

6. Being aggrieved by the judgment and order dismissing the dispute, disputant society filed Appeal No. 32/2016 before Maharashtra State Co-operative Appellate Court

Bombay, Bench at Aurangabad, under Section 97 of Maharashtra Co-operative Societies Act, 1961. It was challenged on the ground that when learned Judge has come to the conclusion that opponents were not members of the disputant society, the Co-operative Court was not justified in entertaining the dispute and recording finding on merits of the matter. The findings recorded on the issue no. 2 to 7 were unwarranted since the Court had itself held that it does not have jurisdiction to decide the dispute. It was also challenged on the ground that since while answering issue No. 1 it was held that disputant society being registered co-operative society had filed dispute for recovery of loan borrowed by its member i.e. Opponent No. 1 to which members of the society i.e. Opponents No. 2 and 3 stood guarantor. In view of said positive finding being recorded, the finding of issue No. 1A and 1B were unwarranted. Apart from that there were other grounds raised by the society in the memo of appeal dated 16.01.2016.

7. Appeal No. 32/2016 was heard by Maharashtra State Co-operative Appellate Court, Bombay, Bench at Aurangabad and has been decided by its judgment and order dated 05.05.2017. Judge of the Appellate Court after taking into consideration the

grounds raised by appellant therein has observed that, on perusal of record, it is evident that at Exhibit-54 the society has produced original applications of membership, however, these documents are not exhibited and not referred during cross examination of the opponents witness. The disputant has also not produced copy of resolution accepting opponents membership, counterfoils of payment receipt and share certificate. The compliance under Rule 19 is not on record to infer membership of opponents. Therefore, the Trial Court has answered issue pertaining to membership in negative.

8. Likewise, witness of the society has specifically admitted that the documents were not executed in his presence. Therefore, the issue in respect of disbursement of loan was also answered in negative. The disputant urged before the Court that now they want to produce documents to prove the loan disbursement and membership of the opponents. The request of the disputant was opposed by opponents. It was contended that it was unintentional negligence on the part of society in not presenting its case before Trial Court. Therefore, Judge, Appellate Court has thought it fit to grant permission to lead additional evidence to the disputant by passing order of remand

in view of the fact that this being a money claim and public money is involved, in order to do substantial justice, it was thought appropriate to remand the matter back for leading additional evidence by imposing cost of Rs. 6,000/-. In order to meet the ends of justice and compensate the respondent for inconvenience caused to him cost of Rs. 6,000/- was imposed and the judgment and award dated 13.01.2015 passed in Dispute No. 783/2007 by the Judge, Co-operative Court, Ahmednagar was set aside and the matter was remanded back, by partly allowing the Appeal. The appellants were directed to appear before the Trial Court on 01.07.2017. The parties were permitted to lead additional evidence and liberty to amend their pleadings subject to law of amendment was granted. Being aggrieved by said order of remand and setting aside of order passed by Co-operative Court, Ahmednagar, petitioner has approached this Court.

9. It is the contention of the petitioner that since the finding on the issue regarding jurisdiction and failure to prove membership has been given on the basis of evidence led by the parties, the order passed by Appellate Court is totally unwarranted. Though sufficient opportunity was given to the

disputant society to lead evidence, the disputant has not taken efforts to lead evidence. It would not be appropriate again to remand the matter back to lead evidence when everything is already placed on record by the present petitioner. Though, respondent No. 1 had been given opportunity to lead evidence, he has willingly and voluntarily submitted purshis at Exhibit-37 stating that they do not want to lead further evidence in support of their case. In view of undisputed position, the order passed by Co-operative Court, Ahmednagar did not deserve to be interfered with. Though, petitioner was subjected to cross examination by society and nothing could be elicited from the cross examination of the petitioner. Only after taking into consideration the documents placed on record and the evidence, Co-operative Court, Ahmednagar has rightly dismissed the dispute filed by respondent No. 1. Therefore, the order passed by Co-operative Appellate Court remanding the matter back to the Co-operative Court, Ahmednagar deserves to be quashed and set aside.

10. Learned advocate Shri. Suryawanshi, appearing for respondent No. 1 has opposed the writ petition. It is contended by him that it needs to be appreciated that after the affidavit of evidence has been filed by officer of disputant on 01.12.2009,

the application has been filed by petitioner seeking amendment in the written statement. Upon the application being allowed, additional issues were framed on 03.12.2010. Since additional issues were framed after filing of affidavit in support of evidence, he did not have opportunity to prove the additional issues framed by the Co-operative Court, Ahmednagar. Even the affidavit in support of evidence was filed by respondent No. 1 on 23.09.2014. It was after the purshis filed by respondent No. 1 herein on 10.03.2011 stating that they do not want to make any amendment or change in the claim affidavit, long after that the petitioner has filed affidavit of evidence on 23.09.2014. Therefore, the disputant society could not lead evidence to prove the additional issues which were framed after the amendment was allowed.

11. I have heard the learned advocate for the petitioner and learned advocate for respondent No. 1 and perused the documents annexed with the writ petition. Admittedly, there was negligence on the part of disputant society, however, fact remains that in their initial written statement, petitioner has not raised any objection regarding maintainability of the dispute on the ground that they were not members of the society.

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12. Though, in the written statement which was initially filed on 25.06.2008 they have denied to have availed loan facility and also it was contended that there is no cause of action for filing the dispute since the petitioner has not availed any loan and there is no outstanding, which can be recovered. Though all the claims in the dispute were denied by the petitioner, however, in para 10 of the written statement, petitioner has contended that he is in the business of tractor and tractor spare parts, which is associated with the agriculture. As a result of financial difficulties faced by agriculturists, the market has slowed down. As result of which there are huge amounts outstanding from the agriculturists which he has not yet received. He is facing financial crunch, therefore, he is unable to pay the amount claimed by the disputant. Therefore he has sought exemption from paying the amount and prayed that he should be granted permission to pay the amount in installment in future 10 years to come. This admission in the written statement of the present petitioner itself indicates that original respondent No. 1 i.e. petitioner had had availed loan which was outstanding. Though, there is negligence on the part of disputant society to produce on record certain documents, however, this being money claim as observed by the Co-operate Appellate Court the disputant society deserve to be

granted opportunity to lead evidence in respect of maintainability of the dispute filed by the disputant society. Similarly, considering that the Co-operative Court has already given negative finding on the maintainability of dispute it was unwarranted for the Court to give finding on the merits of the matter. Hence, in order to do complete justice, the Co-operative Appellate Court has rightly quashed and set aside the order passed by the Co-operative Court, Ahmednagar in order to enable the disputant society to adduce evidence about loan disbursement and membership of the petitioner. The co-operative Appellate Court has also compensated the petitioner by awarding cost of Rs. 6,000/-.

13. Though, the Co-operative Appellate Court has remanded the matter back, however, no prejudice would be caused to the petitioner since Member, Co-operative Appellate Court has also granted liberty to the petitioner by observing that, parties to lead additional evidence. Though, respondent No. 1 has been granted liberty to lead evidence, the same liberty is granted to the petitioner to rebut the same or even adduce fresh evidence in support of his case. Even the parties are at liberty to amend the pleadings subject to law of amendment. Hence,

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considering that all the issues are kept open, there is no prejudice caused to the petitioner. Hence, in view of the same, in my opinion, there is no error committed by the Co-operative Appellate Court while passing the impugned order. Hence, order dated 05.05.2017 passed by Member, Co-operative Appellate Court, Mumbai, Bench at Aurangabad, being just, legal and proper and in the interest of justice does not deserve any interference. Writ petition is therefore dismissed. Rule stands discharged.

(MANJUSHA DESHPANDE, J.)