



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

1 WRIT PETITION NO. 3352 OF 2025

**SHRI RENUKADEVI SHARAD SAHAKARI SAKHAR KARKHANA LTD
THROUGH ITS CHIEF EXECUTIVE OFFICER AND ANR
VERSUS
CHANDRAKANT SOJAJI GHODKE**

Mr.S.S. Thombre, Advocate for the petitioners.

Mr.Deelip Patil Bankar. Sr. Advocate i/b. Mr. A.D. Patil, Advocate for the respondent.

**CORAM : KISHORE C. SANT, J.
RESERVED ON : 24.03.2025
PRONOUNCED ON : 27.03.2025**

ORDER : -

01. At the outset, learned Advocate for the petitioners seeks leave to correct prayer clause. Leave granted. The amendment be carried out forthwith.

02. By consent of the parties, this petition is taken up for final disposal at the stage of admission.

03. The petitioners challenge an order dated 31.01.2025 passed by the learned Member, Maharashtra State Cooperative Appellate Court, Mumbai, Bench Aurangabad, in Appeal No. 54 of 2023, only to the extent of directing the petitioners to deposit decretal amount of Rs. 40,20,313/-

with the Trial Court by the appellants (petitioners herein). The learned Appellate Court, by way of the impugned order disposed off the appeal filed by the petitioners modifying the award passed by the learned Judge, Cooperative Court, Aurangabad dated 28.07.2023 in Dispute No. 3 of 2019. The dispute came to be remanded back to the Trial Court for decision on the issue of jurisdiction. The findings of the Trial Court on all other issues are upheld. A direction is issued to decide the issue of jurisdiction by the end of March, 2025 and to send back the matter to the Appellate Court for final pronouncement of the judgment in the appeal. The parties were directed to appear before the Cooperative Court on 01.03.2024.

04. The petitioners are thus aggrieved only by the clause directing the petitioners to deposit the amount. The facts in short are that the respondent filed a dispute in the Cooperative Court at Aurangabad. It is the case of the disputant that he happens to be a member of the petitioner No.1 – sugar factory. For some time, he was also a Chairman of the sugar factory. When the sugar factory was in financial crisis, the disputant paid amount towards salary of the employees, labours etc. He also paid electricity charges, transport charges, since at the relevant time the financial condition of the sugar

factory was weak. One complaint was also filed against the sugar factory under section 138 of the Negotiable Instruments Act. In the said complaint, the offence was compounded, wherein he paid Rs. 9 lakhs to Pratik Industries, Jejuri and thus total amount of Rs. 40,20,313/- was paid from time to time till 07.07.2018. The sugar factory, however, did not pay the amount and therefore the respondent filed the dispute.

05. In the dispute, the learned Trial Court held all the things in favour of the respondent and directed the petitioners to pay the said amount @ 6% p.a. Said order came to be challenged before the Cooperative Appellate Court at Aurangabad on various grounds. Said appeal was filed on 30.09.2023. The appeal was at the stage of hearing and at that stage, the petitioners filed a pursis on 06.01.2025. It is stated in the pursis that though a ground of jurisdiction was not raised in the Trial Court and also in the Appellate Court, but since the question goes to the root of the matter, question of jurisdiction be considered in the appeal. The respondent filed say stating that the said issue of jurisdiction was not raised at all by the petitioners and prayed that the said application (pursis) be rejected with heavy costs.

06. The learned Appellate Court decided the appeal as indicated

above. The findings of fact are confirmed and only on the issue of jurisdiction, the matter was remanded. To test the bona fides, the petitioners were directed to deposit the amount. Thus, the present writ petition before this Court.

07. Learned Advocate Mr. Thombre vehemently argued that when the Appellate Court itself directed to decide the question of jurisdiction, there is no propriety in directing the petitioner to deposit the amount. Said direction is redundant when the question of jurisdiction itself is involved in the matter. In-fact, the judgment and award itself needs to be set aside. The petitioners have no objection to remand order. However, grievance is only about deposit of money. He submits that though a specific ground of jurisdiction was not taken either in the Trial Court or even in the Appellate Court, but the same was necessary and therefore the pursis was filed. He, thus, prays for allowing the writ petition by setting aside the order of deposit of the amount. He submits that in the light of the said position, the dispute itself is not maintainable. The respondent ought to have approached the Civil Court for recovery of the amount. He further submits that the Membership is not disputed. However, the question was about whether the said question was touching the business of the society. In his submissions, the answer is 'No'. He,

thus, prays for quashing of the direction to deposit the amount.

08. Learned Sr. Advocate Mr. Deelip Patil Bankar vehemently opposes the petition. He submits that so far as factual position is concerned, both the Courts are concurrent. Learned Appellate Court has specifically recorded finding that the Trial Court has decided the issues correctly. The pursis was filed with mala fide intention only to prolong the litigation of the appeal. The Appellate Court, with purpose by expressly recording reasons, has directed to deposit the amount. In fact, the learned Appellate Court itself should have considered even the question of jurisdiction as there is no question of fact to be decided while deciding question of jurisdiction. The liability is already adjudicated. It is trite that when money decree is passed, there has to be deposit of amount in view of Order 41 Rule 1 (3) of the Civil Procedure Code, while filing an appeal. Since the petitioner has not challenged the petition on merit, it shows that petitioners have accepted the findings of fact. In the appeal, said application was filed, however, still the petitioners were not directed to deposit the amount. From the written statement, he points out that the petitioner has specifically stated as regards para No. 11 of the dispute, which shows that he has accepted the jurisdiction of the Cooperative Court. Having done so, it was not open for the petitioner to

file such pursis. The learned Appellate Court has considered in detail on the aspect of condition to deposit the amount and it is only thereafter such order is passed. The petitioners have not shown any reason as to why the ground of jurisdiction is raised only at the fag end. In this background, to test the bona fides of the petitioner, the learned Appellate Court has passed order. He invited attention to Explanation to Section 91 of the Maharashtra Cooperative Societies Act. He further submits that after having accepted the jurisdiction, the petitioner was estopped from raising ground of jurisdiction. The petitioners are taking advantage of their own wrong. He further submits that though cross-objection is filed in the appeal, to claim interest @ 12% p.a., still the learned Appellate Court at one place has also recorded that there is no cross-objection. He, thus, prays for rejection of the writ petition.

09. The petitioners have not challenged the judgment of the learned Appellate Court so far as other aspects are concerned. It is submission that if the question of jurisdiction is decided in favour of the petitioners, then there is no question of challenging the other part of the judgment. In view of the submissions, this Court finds that rightly the petitioners have not challenged the judgment on merit. So far as the course adopted by the learned Appellate Court is concerned, this Court

finds that the Appellate Court instead of giving final judgment, has passed order, which is reproduced as under :-

- "1) The appeal no.54/2023 is hereby disposed off.
- 2) The Judgment and Award dated 28.07.2023 passed in the dispute no.3/2019 by the Judge, Cooperative Court Aurangabad is modified and replaced hereafter.
 - A) The dispute no.3/2019 before cooperative court Aurangabad is hereby remanded back to the trial court to decide issue of jurisdiction subject to deposit of decretal amount of Rs.40,20,313/- without interest with the trial court by the present appellants/original opponents on or before 28.03.2025.
 - B) The parties are specifically directed to argue the amount without leading evidence on the point of issue of jurisdiction.
 - C) The trial court is directed to decide the issue of jurisdiction in any case by the end of March, 2025 and send the matter back to the cooperative Appellate Court.
 - D) The findings of the trial court on remaining issues are upheld.
 - E) After receiving the matter from the trial court, the Co-operative Appellate court will decide only issue of jurisdiction and pronounce the judgment finally.
 - F) The parties are directed to appear before the Co-operative Court, Aurangabad on 01.03.2025 subject to deposit of amount and argue the matter on the point of jurisdiction as per the procedure."

10. By clause 1 of the order, the learned Appellate Court has said that the appeal is disposed off; whereas as per clause 2(E), the learned Appellate Court has kept it open to pronounce the judgment finally on getting findings of the Court on the point of jurisdiction. This Court, thus, finds that the proper course for the learned Appellate Court was to call for finding of the Trial Court on the point of jurisdiction by keeping the appeal pending. In the opinion of this Court, the proper course is to decide the appeal on all the points including the point of jurisdiction. In the present case the point of jurisdiction is to be decided only on the legal position. No any evidence is required to be led. This is more so when the learned Appellate Court has confirmed all the findings of the Trial Court. For considering the question of jurisdiction the Court was only to consider section 91, more particularly explanation (2) of the said section. So far as finding of facts is concerned, this Court finds it proper to modify the order of the learned Appellate Court.

11. Point No. 2(A) of the operative order needs to be set aside. This Court does not find any illegality or impropriety in asking the petitioners to deposit the amount with the Court to test the bona fides. It appears that the stay application itself is also not decided by the learned Cooperative Appellate Court. Hence, following order :-

ORDER

- (i) The matter is remanded back to the learned Cooperative Appellate Court for deciding the appeal even on the point of jurisdiction within four weeks from today.
- (ii) The stay application be decided within one week from today, by keeping in mind the present legal position as regards stay to the money decree and pass order.
- (iii) Parties to address only on the point of jurisdiction and stay application as indicated above before the learned Cooperative Appellate Court.
- (iv) With the above directions, the writ petition stands disposed off.

[KISHORE C. SANT, J.]