



(1)

wp13219.19

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

**WRIT PETITION NO.13219 OF 2019
WITH
CA/13905/2023 & CA/14914/2023 & CA/1020/2024**

1. Manish Ishwarlal Jain ...PETITIONERS
Age-Major, Occu-Business,
R/o. Rajmal Lakhichand Jewelers,
Sarafa Bazar, Jalgaon
Tq. & Dist. Jalgaon
2. Surendra Nathmalji Lunkad,
Age-72 years, Occu-Business,
R/o. Lunkad Towers, Zilla Peth,
Jalgaon, Tq. & Dist. Jalgaon
3. Subhash Sagarmalji Sankhala
Age-Major, Occu-Business,
R/o. 33/5, Sankhala Building,
Zilla Peth, Jalgaon
Tq. & Dist. Jalgaon
4. Ajeet Bansilalji Kacheriya,
Age-Major, Occu-Business,
R/o. 56, Aadarsh Nagar, Zilla Peth,
Jalgaon, Tq. & Dist. Jalgaon
5. Suresh Bansilalji Jain,
Age-Major, Occu-Business,
R/o. 16, Polan Peth, Jalgaon,
Tq. & Dist. Jalgaon
6. Tulshiram Khandu Bari,
Age-Major, Occu-Business,
R/o.71, Dixit Wadi, Zilla Peth,
Jalgaon, Tq. & Dist. Jalgaon

7. Sau. Sapna Ashwin Shah,
Age-Major, Occu-Business,
R/o. Sharma Complex, Ganpati Nagar,
Jalgaon, Tq. & Dist. Jalgaon
8. Sau. Aapna Ajay Raka,
Age-Major, Occu-Business,
R/o. Anusmruti Jainagar, Zilla Peth,
Jalgaon, Tq. & Dist. Jalgaon
9. Mahendra Durlabhji Shaha,
Age-Major, Occu-Business,
R/o. 115, Zilla Peth, Jalgaon

VERSUS

1. Jalgaon Zilla Madhyavarti Sahakari **...RESPONDENTS**
Bank Limited, Jalgaon, 27
Ring Road, Jalgaon
Dist. Jalgaon through its Manager
2. Mahaveer Urban Cooperative
Credit Society Ltd Jalgaon
Navi Peth, Vardhaman Chambers
Jalgaon, Dist. Jalgaon, Through its Administrator
3. Suresh Anandraj Tatiya
Age-Major, Occu-Business,
R/o. 94, Navi Peth, Jalgaon,
Dist. Jalgaon

Mr. V. D. Hon, Senior Advocate i/b Mr. A. D. Shinde, Advocate
for the petitioners

Mr. V. D. Salunke, Advocate for the respondent No.1

Mr. C. V. Borse, Advocate h/f Mr. V. B. Patil, Advocate for
respondent No.3

AND

WRIT PETITION NO.5117 OF 2020

Suresh Anandraj Tatiya, **...PETITIONERS**
Age-Major, Occu-Business
R/o. 94, Navi Peth, Jalgaon
Dist. Jalgaon

VERSUS

1. Jalgaon Jilha Madhyavarti **...RESPONDENTS**
Sahakari Bank Ltd. Jalgaon
Dist. Jalgaon
2. Mahavir Urban Cooperative Credit
Society Ltd. Jalgaon, Navi Peth,
Vardhaman Chamber,
Dist. Jalgaon
3. Manish Ishwarlal Jain,
Age-Major, Occu-Business,
R/o. Rajmal Lakhichand Jewellers,
Saraf Bazar, Jalgaon, Tq. & Dist. Jalgaon
4. Surendra Nathmalji Lunkad,
Age-72 years, Occu-Business,
R/o. Lunkad Towers, Zilla Peth,
Jalgaon, Tq. & Dist. Jalgaon
5. Subhash Sagarmalji Sankhala
Age-Major, Occu-Business,
R/o. 33/5, Sankhala Building,
Zilla Peth, Jalgaon
Tq. & Dist. Jalgaon
6. Mahendra Durlabhji Shaha,
Age-Major, Occu-Business,
R/o. 115, Zilla Peth, Jalgaon

7. Ajeet Bansilalji Kacheriya,
Age-Major, Occu-Business,
R/o. 56, Aadarsh Nagar, Zilla Peth,
Jalgaon, Tq. & Dist. Jalgaon
8. Suresh Bansilalji Jain,
Age-Major, Occu-Business,
R/o. 16, Polan Peth, Jalgaon,
Tq. & Dist. Jalgaon
9. Tulshiram Khandu Bari,
Age-Major, Occu-Business,
R/o.71, Dixit Wadi, Zilla Peth,
Jalgaon, Tq. & Dist. Jalgaon
10. Sau. Sapna Ashwin Shah,
Age-Major, Occu-Business,
R/o. Sharma Complex, Ganpati Nagar,
Jalgaon, Tq. & Dist. Jalgaon
11. Sau. Aapna Ajay Raka,
Age-Major, Occu-Business,
R/o. Anusmruti Jainagar, Zilla Peth,
Jalgaon, Tq. & Dist. Jalgaon

Mr. A. P. Bhandari, Advocate for the petitioners
Mr. V. D. Salunke, Advocate for the respondent No.1

CORAM : KISHORE C. SANT, J.
RESERVED ON : 27th FEBRUARY, 2025
PRONOUNCED ON : 12th MARCH, 2025

JUDGMENT :

1. Rule. Rule made returnable forthwith by consent of the parties.

2. The petitioners before this court are the persons who executed security bonds for the loan advanced to respondent No.2 Society by respondent No.1 bank. Respondent No.1 is the District Central Cooperative Bank. Respondent No.2 is the Society under the Cooperative Societies Act. Respondent No.3 is also one of the guarantors who has filed writ petition No.5117/2020. The present petitioners are respondent No.3 to 11 in the writ petition No.5117/2020 filed by the respondent No.3. Since both the petitions are filed challenging the same judgment and order passed by the learned Cooperative appellate court. [Respondent No.1 hereinafter referred to as 'Bank' and Respondent No.2 hereinafter referred to as the 'Society' for the purpose of convenience.]

3. The petitioners are aggrieved by the judgment and

order dated 24-09-2021 passed in Appeal No. 42/2019 and Appeal No. 53/2019. The appeal No. 42/2019 was filed by the petitioners in WP/13219/2019 whereas the appeal No. 53/2019 was filed by petitioner in WP/5117/2020.

4. The facts giving rise to the present petitions are as below:

5. That the petitioners executed the Guarantee bonds (Hamipatra) for loan sanctioned to respondent No.2- Cooperative Credit Society. The loan was obtained as term loan. Respondent No.1 sanctioned the loan and took Guarantee bonds from the petitioners. Said bonds were executed on different dates. As the society did not repay the loan, the bank filed original application before the Debt Recovery Tribunal only against the society on 20-12-2004. After prosecuting for some time, the bank withdrew the proceedings of original application on 26-02-2008 finding that original application is not maintainable in respect of the Cooperative Bank before the DRT.

6. After withdrawing the original application the bank filed dispute before the Cooperative Court, Jalgaon bearing dispute No. 249/2010 for recovery of loan amount of Rs.17,58,03,383/-. This dispute was filed only against the society. It is thereafter, the bank filed an amendment application Exh.9 and sought permission to add petitioners as party opponents. The relief also came to be claimed against the petitioners on the strength of Guarantee bonds. Though the application was opposed on various grounds, mainly, that the amendment is time barred, the learned Cooperative Court, Jalgaon allowed the amendment application by order dated 31-10-2013.

7. The petitioners challenged the order of amendment by filing revision. The Cooperative Appellate Court dismissed the revision observing that the court at that stage need not go into the merits of the matter. The petitioners thereafter filed writ petition No.7304/2014 before this court. This court confirmed

the orders by keeping the point of limitation open by its order dated 01-09-2014. The petitioners filed an application Exh.15 in the Cooperative Court praying for framing point of limitation as preliminary issue and to decide the same before proceeding on merits. This application was on the ground that even if the Guarantee bonds are taken as it is, the period of limitation claiming recovery on the basis of said Guarantee bonds would be only three years whereas petitioners are added as party for the first time in 2012. The said point was framed as preliminary point. The bank challenged this order by filing revision No.19/2017. On dismissal by the appellate court, a writ petition was filed bearing No. 11081/2017. This court disposed off the writ petition directing the lower court to decide all the issues together. The trial court, therefore, proceeded to decide all the issues together.

8. After holding trial, the learned Cooperative Court allowed the dispute holding the petitioners and respondent No.2 jointly and severally liable to pay the amount. The petitioners,

therefore filed the appeals in the appellate court. The appellate court dismissed the appeals and thus the petitioners are before this court.

9. Mr. Hon, learned senior advocate i/b Mr. A. B. Shinde vehemently argued that both the courts below have clearly erred in holding the claim against the petitioners within limitation. The learned courts failed to appreciate the provisions of section 92 (2) of the Maharashtra Cooperative Societies Act, 1960 [Hereinafter referred to as the 'Societies Act']. The dispute was not maintainable against the petitioners under section 91 as the petitioners are not the members of the bank. Though the Guarantee bonds were executed for term loan, said loan was converted into cash credit facility without consent of the petitioners. This change amounts to variance in the terms of contract and thus the petitioners were not liable to any action for recovery. When all the issues were raised it was necessary for the Cooperative Appellate Court to remand the matter back to the Cooperative Court for decision afresh on all the issues. The

learned appellate court failed to do so. It was necessary to frame all the material points in view of provision of order 41 Rule 31 of the CPC. When the bank itself had approached the DRT it had chosen not to add the petitioners as party. Even after withdrawal when the dispute was filed, these petitioners were not shown as opponents in the dispute which clearly shows that even the bank was aware that dispute was not maintainable against the present petitioners. He took this court through the provisions of section 91 (b) and (d), Section 92(2), Article 36 and 37 of the Limitation Act. This court while disposing of the petitions had specifically directed the trial court to consider all the issues. However, in spite of specific directions both the courts have failed to even discuss these points. He submits that findings on all the issues was necessary. He relied upon the following judgments :

i] Manjula and others Vs Shyamsundar and Others¹;

ii] Malluru Mallappa (D) Thr. Lrs. Vs Kuruvathappa and others² ;

¹ 2022(3)SCC 90

² 2020(4) SCC 313

iii] Barnes School and others Vs Arzoo Allan Baker reported³;

iv] Malegaon Taluka Big Bagayatdar Cooperative Credit Association Vs The Bharat Cooperative Joint Farming Society Ltd and others⁴ ;

10. Mr. Bhandari, learned advocate for the petitioner in WP/5117/2020 adopted the arguments of Mr. Hon, learned senior counsel. He drew attention of this court to the provision of the Limitation Act. There is nothing in the order passed in the earlier writ petition to show that amendment relates back to the dates of institution of the dispute. He submits that thus the dispute should be taken to have been instituted against the petitioner, on the date, on which he was added as opponent. Since the proceedings before the DRT was not before the court of competent jurisdiction, the time spent before the DRT need not be excluded in view of section 14 of the Limitation Act. He submits that the court is not defined in the Cooperative Societies Act and therefore it will have to be taken as court as defined in General Clauses Act. He submits that in any case certified copy

³ 2012(3) All MR

⁴ 1999(4) Bom CR 438

of the judgment and order passed by the DRT received on 17-01-2008 and still dispute was filed in 2010 that period also needs to be excluded. It is only the period for which the proceeding was actually pending before the court that can be excluded. He also argued on section 91 and 92 of the Act and submits that it is the limitation under the Limitation Act that would be applicable in the present case as liability of the petitioner is on the basis of guarantee bonds.

11. In response, the learned advocate Mr. Salunke submits, on the point of limitation, that the proceeding and dispute was under the special Act and before the special court. It is, therefore, provisions of the Special Act that would prevail upon the General Act. The petitioners were office bearers of the society and in that capacity they were added as opponents. Reading section 91 as it is, he submits the dispute was very much maintainable against the petitioners. The Guarantee bonds (Hamipatra) are duly proved and there is no dispute and no arguments are advanced on that. Even the limitation act is

not applicable when there is specific limitation provided under section 92 of the Act. The liability of this petitioners is equal to that of the society. In view of section 73 of the Act the petitioners happen to be nominal members of the society. The petitioners cannot avoid the liability as they had executed the bonds while sanctioning the loan these petitioners were accepted as nominal members of the bank. . He specifically contends that all the points were framed by the appellate court. The proceeding is thus clearly maintainable in view of section 91. He submits that it was never a case before the trial court, only point of limitation was kept open. The petitioners, therefore, cannot argue other points. Guarantee bonds are exhibited and proved.

12. Mr. Salunke, learned advocate relies upon the following judgments:

- i] State of Maharashtra Vs Laljit Rajshi Shah⁵
- ii] Thakur Sukhpal Singh Vs Thakur Kalyan Singh⁶

⁵ 2000 AIR (SC) 937

⁶ 1963 AIR (SC) 146

iii] Khandesh Urban Coop. Credit S Vs Ashok Rameshwar Agrawal⁷

vi] Mah. State Warehousing Corporation and others Vs Pusad Urban Cooperative Bank Ltd. and others⁸

13. After hearing the parties this court has to consider the material as to whether dispute was maintainable against the petitioners and secondly whether relief against them is hit by the limitation. The dispute was filed under Section 91 of the Cooperative Societies Act which reads as under:-

91. Notwithstanding [anything contained] [These words were substituted for the words 'anything containing' by Maharashtra 33 of 1963, Section 20(a).] in any other law for the time being in force, any dispute touching the constitution, [elections of the committee or its officers [* *] [These words were substituted for the words 'elections of the office bearers' by Maharashtra 20 of 1986. Section 48(a).] conduct of general meetings, management or business of a 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 co-operative Court] [These words were substituted for the words 'to the Registrar' by Maharashtra 18 of 1982, Section 3(a).] if both the parties thereto are one or other of the following:-*

⁷ 2002 (4) ALL MR 91

⁸ 2022 (07) BOM CK 0020

(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 the Liquidator of the society [or the official Assignee of a deregistered society] [These words were inserted by Maharashtra 10 of 1988, Section 17(a)(i).].

(b) a member, past member of a person claiming through a member, past member of 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;] [These words were added by Maharashtra 27 of 1969, Section 16(a)(i).]

(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 sections 43, 44 or 45, and any person claiming through such person; [Clauses (c) and (d) were, substituted for the original by Maharashtra 27 of 1969, Section 16(a)(j).]

(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] [These words were inserted by Maharashtra 10 of 1988, Section 17(a)(ii).].

[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 [* *] [The proviso was added by Maharashtra 20 of 1986, Section 48(b).], or refusal of admission to membership by a society to any person qualified therefor [or any proceeding for the recovery of the amount as arrear 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,] [This portion was inserted by Maharashtra 10 of 1988, Section 17(a)(iii).] [or any orders, decisions, awards and actions of the Registrar against which an appeal under section 152 or 152A and revision under section 154 of the Act have been provided.] [These words figures and letter were inserted by Maharashtra 34 of 2001, (w.e.f. 7-9-2001) Section 8.] shall not be deemed to be a dispute for the purposes of this section.]*

14. In the case of Manjula and Malluru (supra) the Hon'ble Apex court considered the provision of order 41 Rule 31 of CPC which requires the appellate court to frame specific points on which the court has to decide the appeal. It is held that first appeal is a valuable right of the party. The appeal is continuation of original proceedings. The appellate court

decides all the question of fact and law and therefore, it is necessary to reflect conscious application of mind and therefore appellate court must record the findings, supported by the reasons on all the issues. It is thus held that the appellate court has to comply with the requirements of the Order 41 Rule 31 of CPC. Non-observance thereto lead to infirmity in judgment. In that case, the High Court did not comply with the said requirements and therefore the matter was remanded back to the High Court. In the present case this court finds that point of limitation was framed by the appellate court. There is sufficient discussion on all the points. No prejudice is shown to have been caused to the petitioners. Said judgment is therefore, would not be applicable in the present fact. In the case of Barnes School and others Vs Arzoo Allan Baker this court held that there is obligation on the appellate court to frame all the points in view of order 41 Rule 31.

15. So far as the judgment in the case of Khandesh Urban Coop. Credit S (supra) same is relied by both the parties.

Mr. Salunke, learned advocate relies on para No. 11 to submit that dispute before the court was in summary in nature. Para No. 25 to 28 of the judgment in the case of Maharashtra State Warehousing Corporation and others VS Pusad Urban Cooperative Bank Ltd⁹ relies by Mr. Salunke, while considering the provision of section 91 has clearly held that the guarantor from the members also falls under section 91 of the Cooperative Societies Act. In view of section 91(1)(d) thus both the courts have rightly held that the petitioners are necessary party.

16. In the case of State of Maharashtra Vs Laljit Rajshi Shah the Hon'ble Apex court has considered the question as to whether the Chairman of the Cooperative Society can be said to be a public servant under Section 21 of the Indian Penal Code. Considering that effect of section 61 of the Societies Act, it is held that merely because of section 21 of the IPC is referred in Section 161 of the Act would not make him a public servant under Section 21 of the IPC. Public servant is only for the purpose of Cooperative Societies Act. It is held that by that

persons cannot be prosecuted for the offence under IPC. The act is held to be completely self contents statutes with its own provisions. The Statutes have different object. For the offence under the Cooperative Societies Act only persons is to be considered a public servant referred to definition under section 21 of the IPC. There is no dispute about the same. Therefore, this court holds that the petitioners were rightly added as party and secondly the limitation applicable would be as under section 92 of the Cooperative Societies Act and not as provided under the Limitation Act.

17. In the case of Thakur Sukhpal Singh Vs Thakur Kalyan Singh (supra) the Hon'ble Apex Court considered the order 41 Rule 31 and other Rules. It is held that the provision of Rule 31 should be reasonably construed and should be held to be required various particular to be mentioned in the judgments. It is only when specific questions are raised in the appeal, ultimately, it is held what is material is that all the questions are considered by the appellate court. In the case of Khandesh

(Supra) it is held that not the entire CPC is applicable to the proceedings of the Cooperative Court. However, it is only general principles contents in CPC are broadly applicable to the cooperative court. The Cooperative Courts are expected to follow broadly principles laiddown in the CPC. It is held that the Cooperative Court may not be bound by every technical rule of procedure. Thus, it is clear that where the principle of natural justice and broad principles contents in the CPC are considered by the Cooperative Court i.e. sufficient. As it is the Cooperative Appellate Court has considered all the points, even otherwise.

18. In the case of Mah. State Warehousing Corporation and others Vs Pusad Urban Cooperative Bank Ltd and others the petitioner is held to be surety of the members creating liability in favour of the respondent bank in that case. In this case fact of executing surety bonds is not guarantee bonds is not at all disputed. On the contrary the parties have no dispute about the factual aspect. The petitions are argued only on the point of limitation and as to whether the limitation as regards the

present petitioners.

19. In the case of Malegaon Taluka Big Bagayatdar Cooperative Credit Association (supra) the facts were that a society filed a suit against another society for recovery of the amount. The opponent society was not member of the disputant society. In that view it was held that the sub-section (1)(a) of Section 92 would not apply and case would be covered by subsection (2) of section 92 where the limitation is three years as provided in the Limitation Act. In that view it was held that dispute was barred by the limitation as it was filed beyond three years from the expiry of accounting year 1968-1969 and the dispute was filed in 1975. In that view of the matter it was held to be bared by limitation. Present is the case this court holds that it was governed by section 92 (1) as the petitioners happens to be nominal members of the society, in any case they are governed by section 91 against whom dispute was maintainable.

20. Clauses (a) & (b) of Section 91 would show that

even the members of the society or surety are amenable to the jurisdiction of the Cooperative court in a dispute. The petitioners clearly fall in Section 91(1)(a) being nominal members of the society. In view of section 91(1)(d) the petitioners are sureties and thus they are amenable to the jurisdiction under Section 91. For the purpose of limitation both the parties have referred section 92. Section 92 (1) gives special limitation. Provision of limitation Act are applicable only in the cases falling in clause (2) of section 92. Provides limitation of 6 years from the date on which act or omission with reference to the dispute arose same limitation is also applicable in respect of the matters falling under clause (c) of section 1 of Section 92. Though it is argued by the learned senior counsel that there is no sufficient discussion by both the courts below, this court on going through, the judgment as shown by the learned Advocate Mr. Salunke finds that specific issue was framed by the learned Cooperative Court. Issue No. 3 is specifically framed in respect of the limitation. It was held that the petitioners failed to show that dispute is barred by limitation. Issue as to whether they are

liable to pay the amount is also answered in affirmative.

20. So far as the submission that this court had specifically directed the court to decide the issue of limitation in the WP/7304/2014. There is no dispute, however, it is clearly seen that court had directed to decide the issue of limitation. So far as other aspects as to whether the petitioners are necessary party or not this court has not kept it open.

22. This court thus finds that the petitioners were rightly added as party in view of section 91(1)(d). The limitation that would be applicable under section 92(1) as rightly held by the courts below. There is no manner of issue that both the courts have rightly appreciated this legal position.

23. On going through the judgment it is found that the courts have considered section 91 (b) of the Act. It is rightly pointed out that the appellate court has also considered and it is specifically observed that the contest is only on the legal point.

There is no challenge so far as factual aspects are concerned. Appellate court has considered the point of limitation by considering the provision of Section 92 of the Act. The court specifically dealt with the submission of the petitioners that there cannot be two starting point of limitation against the borrowers and one against the sureties. This court, thus, finds that there is no illegality or perversity in the orders passed by the learned appellate court. This court does not find any reason calling for interference at the hands of this court and in the impugned judgment and order.

24. The writ petitions stand dismissed and disposed off.

25. In view of the disposal of the writ petitions, pending civil applications stand disposed off.

[KISHORE C. SANT, J.]