



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

940 WRIT PETITION NO. 10635 OF 2024

POPATLAL RAMCHANDRA KARNAVAT

VERSUS

BHAICHAND HIRACHAND RAISONI MULTISTATE COOPERATIVE CREDIT
SOCIETY AND OTHERS

Mr. A. P. Bhandari, Advocate for the petitioner

CORAM : R. M. JOSHI, J.

DATE : 7th APRIL, 2025

PER COURT :-

1. *Suo moto* this motion is moved for speaking to minutes of order dated 18th March, 2025.
2. Inadvertently, in line No.3 of paragraph no.11 of the said order the word 'in' has been typed instead of the word 'being'. This being inadvertent error, the necessary corrections be made and corrected copy be uploaded accordingly.

(R. M. JOSHI, J.)

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This order has been corrected pursuant to speaking to minutes of order dated 7th April, 2025.

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Mr. A. P. Bhandari, Advocate for the petitioner

**CORAM : R. M. JOSHI, J.
DATE : 18th MARCH, 2025**

PER COURT :-

1. This petition takes exception to the order dated 17th October, 2023 passed by the Principal District Judge, Jalgaon in Civil M. A. No. 2 of 2022 for transfer of Civil M.A. No. 2 of 2022 to the Commercial Court with further direction of registering the said application as a commercial suit.
2. None present for the respondents though served. This indicate that respondents have no inclination to oppose the petition.
3. Record indicates that an application was filed under Section 34 of the Act for setting aside arbitral award in Case No. 224/2018, dated 11th February, 2021 for recovery. The respondents herein filed application vide Exhibit 17 for transfer of the proceedings to the

Commercial Court in view of Section 10(3) of the Act. This application was opposed by the petitioner. Learned Principal District Judge, Jalgaon by passing impugned order allowed application Exhibit 17 and directed the application to be registered as a commercial suit and to be decided by the Commercial Court.

4. At the outset learned counsel for the petitioner raises objection with regard to the finding recorded by the Principal District Judge about applicability of Section 2(c)(i) of the Commercial Courts Act on the ground that the subject matter of the present arbitration is a commercial dispute. It is his contention that the provisions of Commercial Dispute Act are required to be interpreted strictly and according to him the transaction between the bankers or even for that sake between a financial institution with third party would become a commercial dispute. He argues that the financial assistance lend to the member of the society will not be covered by definition of commercial dispute. To support his submission he placed reliance on the judgment of Hon'ble Supreme Court in case of ***Ambalal Sarabhai Enterprises Limited Versus K. S. Infraspace LLP and another, (2020) 15 SCC 585.***

5. There cannot be any dispute made with regard to proposition sought to be canvassed that the expression commercial dispute has defined in Section 2(1)(c) of the Act has to be construed strictly. There is

no dispute that the respondent No.1 is the financial institution though it is Multi-state Commercial Cooperative Society registered under the Multi-state Cooperative Societies Act. The said financial institution is having ordinary business of accepting deposits and lending money to its member. There is no specific exclusion of the Commercial Co-operative Society from the said definition of Commercial dispute under Section 2(c) of the Act. Once it is held that respondents financial institution is having business of accepting deposits and lending money to the members or otherwise, it become an ordinary transaction not a financier. This Court therefore finds no perversity in the finding recorded by the Principal District Judge with regard to the dispute between the parties to be a commercial dispute of the specified value as contemplated by sub Section 2(i) of the Act.

6. Learned counsel for the petitioner further submits that in any case if the Court was of the view that it has no jurisdiction to entertain the application filed under Section 34 of the Arbitration and Conciliation Act, the course open for the said Court was not to transfer the said proceeding for it to be registered as a commercial suit.

7. As far as Section 10(3) of the Act is concerned, this provision merely prescribes the jurisdiction in respect of international commercial arbitration and other than such arbitration. It does not provide for power

to transfer proceedings from one Court to another. When subject matter of an arbitration is a commercial dispute of a specified value other than international arbitration, such application under the provisions of the Arbitration and Conciliation Act would ordinarily lie before the Principal Civil Court of original jurisdiction in a district and shall be filed and heard and disposed of by the Commercial Court exercising territorial jurisdiction over such arbitration.

8. Section 15 of the Act, provides for transfer of the pending cases from Civil Court to Commercial Court. However, perusal of Sub Section (1) & (2) makes it absolutely clear that all suits and applications pending in Civil Court or High Court shall be transferred to the Commercial Court or Commercial Division as the case may be. Sub Section (3) & (1), provide for the application of special procedure for the remaining part of the litigation. According to clause (5) such suit or application, i.e. pending suit or application, if not transferred can be transferred by Commercial Appellate Division of High Court on an application of parties to the suit. These provisions therefore do not permit transfer of the suit or application which is not pending at the time of the coming into force of the Act. The reason for making such provision, would be obvious i.e. to enable transfer of proceeding from the Court, which was competent and having jurisdiction, till the Act, 2015

came into effect. However, suit or application filed after Act of 2015, no Court other than Commercial Court would get jurisdiction to entertain such suit or application. In such case, only option left to such Court is to return the plaint for its presentation to the Commercial Court under Order 7 r/w Rule 10A of the Code of Civil Procedure. Similarly, compliance of Rule 10A of CPC would also be mandatory.

9. As far as present case is concerned, the said application has been instituted after coming into force of Commercial Courts Act, 2015. The application under Section 34 of the Arbitration and Conciliation Act (for short 'Arbitration Act'), determines rights of parties as the award passed by Tribunal is taken exception therein. There is dispute about application of provision of Code of Civil Procedure to the proceedings under both Acts. Moreover having regard to the nature of proceeding under Section 34 of the Arbitration Act, the same would determine rights of parties and hence substantial proceeding Section 149 of CPC provides for application of procedure applicable to the suits to be applied to any proceeding in any Court of civil jurisdiction, as far as it can be made applicable. Thus, if the Court is of the view that it is commercial dispute and it has no jurisdiction, the application needs to be returned to the applicant for its presentation before the Commercial Court and not to transfer the same by invoking provisions of Section 24 of CPC or sub

Section 5 of Section 15. In any event learned Principal District Judge could not have exercised the powers under Section 15(5) of the Act, which exclusively vests with the Commercial Appellate Division of High Court. Further there is no justification to direct the application filed under Section 34 of the Arbitration Act to be registered as suit as directed by learned Principal District Judge. The proceeding on presentation before the Commercial Court would be an application under Section 34 of the Arbitration Act.

10. In view of the above discussion, the order passed by the learned Principal District Judge below Exhibit 17 cannot sustain. Hence, the same is set aside. The proceeding is relegated back to the Principal District Judge, Jalgaon for complying with the provision of Order 7 Rule 10 and 10A of CPC.

11. In view of this, petition is partly allowed. The finding recorded by the Principal District Judge with regard to the subject matter of the application being commercial dispute is maintained. However, the application is relegated back to the Principal District Judge for passing appropriate order in view of the above observations.

(R. M. JOSHI, J.)

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