



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

Writ Petition No.862 of 2024

Vilas s/o Punjabrao Dhote Vs. Renuka Nagari Sahakari Pat Sanstha Maryadit, Akola
and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. Sanket Bhalerao, Advocate for petitioner.
Mr. U.J. Deshpande, Advocate for the respondent no.1.
Mr. Akash S.Tiwari, Advocate for respondent no.2.
None for respondent no.3.

CORAM : SIDDHESHWAR S. THOMBRE, J.
DATE : 06/10/2025.

1. Heard Mr. Sanket Bhalerao, learned counsel for the petitioner, Mr. U.J. Deshpande, learned counsel for respondent no.1 and Mr. Akash Tiwari, learned counsel for respondent no.2.

2 By way of present petition, the petitioner has challenged the order passed by the Co-operative Court, Amravati, in Civil Appeal No.11/2020, thereby modifying the judgment and award passed by the Cooperative Court, Akola, dated 13.12.2019 in Dispute No.09/2014.

3. The learned counsel for the petitioner submits that respondent no.1-Society herein filed a Dispute under Section 91 of the Maharashtra Co-operative Societies Act, 1960 against the petitioner and respondent nos.2 and 3 with the prayer to declare that the petitioner and respondent nos.2 and 3 are jointly and

severally liable to pay Rs.4,50,837/- towards loan amount disbursed to the petitioner.

4. Respondent no.1-Society in a Dispute filed before the Cooperative Court stated that the petitioner is a member of the society and respondent nos.2 and 3 are guarantors of the petitioner, who applied for grant of loan. In the meeting of the Managing Committee of respondent no.1 sanctioned loan and disbursed an amount of Rs.1,50,000/- on 03.10.2006. The petitioner, respondent nos.2 and 3 accepted all terms and conditions of respondent no.1-Society and executed the loan agreement in favour of the respondent no.1-Society. The petitioner, respondent nos.2 and 3 also executed the Pro-note dated 03.10.2006, loan application, Karja Rokha, letter of lien and set-off, letter of continuity, Karar Patra, terms of loan agreement, guarantee bond and other concerning documents in favour of the respondent no.1-Society. Respondent nos.2 and 3 are the members of the society and also guarantors of the petitioner. Respondent nos.2 and 3 executed guarantee bond in favour of respondent no.1-Society. The respondent no.1-Society maintained an extract of the account of the petitioner in its books and as on 31.12.2013, the petitioner was liable to pay an amount of Rs.4,50,837/- with an interest up to that date. The respondent no.1-Society demanded the amount by sending notices, however,

the petitioner and respondent nos.1 and 2 failed to repay the amount. Therefore, the dispute was filed for recovery of loan amount with interest against the petitioner, respondent nos.1 and 2 and they are jointly and severally liable to pay the amount and interest.

5. After receipt of summons, the petitioner and the respondent no.2 submitted their written statement and specifically stated in paragraph 2 that, *“it is not disputed that the opponent No.1 applied for the loan of Rs.1,50,000/- and the loan was sanctioned and disbursed to the Opponent No.1. It is not disputed that the opponent No.2 stood as a guarantor for the loan sanctioned to the opponent No.1”*.

6. They further contended that they are not members of the disputant society and the dispute is not touching to the business affairs of the society and it does not come under the parameters of Section 91 of the Maharashtra Cooperative Societies Act and Rules made thereunder and further averred that the dispute as filed is not tenable as per the provisions of Section 91 of the Maharashtra Cooperatives Act and Rule 77(F) of the Maharashtra Cooperative Societies Act.

7. Thereafter the petitioner, respondent nos.1 and 2 led their evidence and the dispute proceeded *ex parte* against respondent no.3.

8. The learned Judge, Cooperative Court, Akola, after considering oral and the documentary evidence led by the petitioner, respondent no.2 and present respondent no.1 disputant, held that the disputant proved that the petitioner is the member of the society and partly allowed the dispute directing the petitioner, respondent nos.2 and 3 to pay jointly and severally Rs 4,47,507/- with interest @ 16% p.a. on Rs. 1,50,000/- from 31.12.2013 till its realization vide its order dated 13.12.2019.

9. Being aggrieved and dissatisfied with the same judgment and order, the petitioner has filed Appeal No.11/2020.

10. I have gone through the grounds of appeal raised by the petitioner before the learned Cooperative Appellate Court. It was stated that the learned Cooperative Court has not given an opportunity to cross-examine the disputant. The other grounds of appeal that Mr.Pandurang Borale is not authorised to file the dispute and give evidence and he failed to file any documents on record to show that he is authorised to depose in the matter. The learned Cooperative Court failed to consider this material aspect and other regular grounds mentioned in the appeal.

11. The learned Cooperative Appellate Court, after considering the grounds raised in the appeal and the record available, the appeal was allowed and the order in Dispute No.09/2014 was set aside and Dispute C.C.No.09/2014 was

partly decreed with proportionate costs in terms of the petitioner and respondent nos.2 and 3 shall jointly and severally pay to the disputant principal loan amount of Rs.1,50,000/- along with default interest @ 16% p.a. with penal interest @2% p.a from 01.11.2007 till filing of the dispute i.e. 27.1.2014 amounting to Rs.1,68,750/-with pendente-lite and future interest @ 15% p.a. and penal interest @2 p.a. on Rs.1,50,000/- from the date of filing this dispute i.e. 27.1.2014 till its realization to the Disputant within a period of two months from today, failing which the Disputant shall be at liberty to recover the same as per law.

12. The learned Appellate Court modified the award to the extent as mentioned above. The original respondent no.1 i.e. petitioner challenged the award passed by the Cooperative Appellate Court by filing the present writ petition.

13. The learned counsel for the petitioner submitted that the petitioner is not member of the Society and also further argued that the dispute filed by respondent no.1 was not within limitation and reiterated the other grounds which were agitated before the Cooperative Court as well as Cooperative Appellate Court.

14. I have gone through the documents placed on record by the petitioner, judgment and award passed by the learned Cooperative Court and the learned Cooperative Appellate Court,

it reveals that there is no dispute about the loan advanced by respondent no.1 to the petitioner and respondent nos.2 and 3 are the guarantors for the said loan and in paragraph 2 of the written statement, the petitioner and respondent no.2 specifically accepted their liability and, therefore, both the learned Cooperative Court as well the Appellate Cooperative Court have rightly considered the entire evidence led by both parties. The petitioner has accepted the disbursement of the loan amount and it was proved by respondent no.1 by leading the cogent evidence on record i.e. documents i.e. Pro-note dated 03.10.2006, loan application, Karja Rokha, letter of lien and set-off, letter of continuity, Karar Patra, terms of loan agreement, guarantee bond and other concerning documents as well as amount of share certificate. It is further proved by respondent no.1 that petitioner is member of the society and being a member, loan was disbursed and he failed to repay the loan amount.

15. As far as the contention of the petitioner that the dispute was not within limitation, it is clear that the dispute was filed and specifically in written statement no such ground was raised by the petitioner before the Cooperative Court. Therefore, by raising the said issue for the first time before this Court by filing writ petition under Article 227 of the Constitution, without pleading the same before the Cooperative Court, cannot be

considered and same is rejected. After considering the entire evidence on record when both the Courts below are against the petitioner and more particularly, once the petitioner has accepted the liability of loan, I do not find any reason to interfere with the orders passed by the both the Courts below. Hence, I pass the following order:-

ORDER

- (i) Writ Petition is dismissed.
- (ii) There shall be no order as to costs.

(Siddheshwar S. Thombre, J)

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