



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

ARBITRATION APPEAL NO. 23 OF 2025

YASH MULTI STATE RURAL COOPERATIVE
CREDIT SOCIETY LTD.,
BRANCH NAVI PETH, AHMEDNAGAR,
THROUGH AUTHORIZED SIGNATORY
PRAVIN BALASAHEB CHAUDHARI

**.. Appellant
(Orig. Respondent)**

Versus

1. BHARAT ARJUNDAS NARANG,
Age:49 Yrs., Occ.: Business
2. SANJAY ARJUNDAS NARANG,
Age: 55 Yrs., Occ.: Business
- Respondents No.1 and 2 R/o. 1542,
Gondhavani Cross Road, Ward No.1,
Shrirampur, Tal. Shrirampur,
Dist.: Ahmednagar
3. SMT. SANTOSHKUMARI ARJUNDAS NARANG (DECEASED)
Through legal heirs Resp. No.1, 2 and 4
4. SMT. JYOTI ALIAS JYOTIBALA RAJENDRAKUMAR AHUJA,
Age: 57 Yrs., Occ.: Household,
R/o.: 2058D, Kasai Galli,
Vaijapur, Tal.: Vaijapur,
Dist.: Sambhajinagar
5. NIJAR NANJI ELECHIYA,
Age: 54 Yrs., Occu.: Business
6. BADRUDDIN ALIAS RAJU NANJI ELECHIYA,
Age: 49 Yrs., Occ.: Business,

Respondents No.5 and 6 R/o. Plot No.288,
Punjabi Colony, Zulelal Path, Ward No.1,
Shrirampur, Dist. Ahmednagar

**.. Respondents
(Ori. Applicants)**

...
Advocate for Appellant : Mr. Abhijit Chandrakant Darandale
Advocate for Respondents No.1, 2, 4 to 6 : Mr. S. D. Kotkar

...
WITH
CIVIL APPLICATION NO. 7665 OF 2025
IN
ARBA/23/2025
...

CORAM : ARUN R. PEDNEKER, J.
DATE : 30.03.2026

ORDER:

1. Heard.

2. By the present Arbitration Appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (*for brevity “**the Act**”*), the Appellant challenges the impugned order dated 07.11.2024, passed by the learned Principal District Judge, Ahmednagar in Arbitration Application No.03 of 2024 filed under Section 34 of the Act. The learned Principal District Judge, Ahmednagar was pleased to set aside the arbitral Award dated 19.10.2023, passed by the learned Arbitrator in Reference No.04 of 2023.

3. Facts in brief are that the Appellant – Yash Multi State Rural Co-operative Credit Society Ltd. (*for brevity “**Society**”*) issued cash credit loan facility to the extent of Rs.1,20,00,000/- to the Respondents / Borrowers. It is stated that the Borrowers and Guarantors executed necessary documents. It is the case of the

Appellant / Society that the Respondents / Borrowers and guarantors were admitted as nominal members of the Appellant / Society and the loan amount of Rs.1,20,00,000/- was sanctioned and disbursed to the Respondents. The Respondents / Borrowers failed to repay the loan amount and the recovery notice dated 26.09.2022 was issued to them of Rs.1,65,51,739/-. It is stated that the respondents failed to pay the outstanding amount and, thus, the Appellant / Society was constrained to file a Reference before the statutory Arbitrator under Section 84 of the Multi-State Cooperative Societies Act, 2002 for recovery of the amount of Rs.1,65,51,739/- together with interest at the rate of 20% per annum from 01.09.2022 till realisation. The Respondents filed their Reply denying the claim of the Appellant. The affidavit in evidence was filed. Thereafter, the Respondents remained absent on consecutive dates and no evidence order was passed against them. On 19.10.2023, the Arbitrator allowed the claim of the Appellant and held the Respondents / Borrowers / Guarantors liable to pay Rs.1,65,51,739/- along with interest at the rate of 18% per annum and in addition penal interest at the rate of 2% per annum from 01.09.2022 till realisation of the entire amount. The Respondents / Borrowers / Guarantors challenged the Award before the learned Principal District Judge, Ahmednagar under Section 34 of the Act. By the impugned order the learned Principal

District Judge, Ahmednagar allowed the Arbitration Application and set aside the Award dated 19.10.2023 passed by the Arbitrator.

4. The learned counsel for the Appellant submits that the Award is not set aside on merits, however, the learned Principal District Judge, Ahmednagar has set aside the Award in favour of the Appellant / Society, relying upon the Judgment of the High Court in the case of **Prakash Vrundavan Thakkar Vs. Nagpur Nagrik Sahakari Bank Ltd., 2014 (3) Mh.L.J. 349**. The learned Principal District Judge, Ahmednagar held that unless it is shown that the dispute is between the members, past members or the person claiming through such members and the Multi-State Co-operative Society, its board or any officer, agent or employee, no such dispute can be referred to the Arbitrator.

5. It is observed in the impugned Order by the District Court that, in the case in hand, there was no form (k) placed on record before the Arbitrator and the documents filed including an application at Exhibit-18 , promissory note and loan agreement. There is no document disclosing the membership of the Respondents. Though the evidence of the applicant remained unchallenged. Perusing the same by signing the loan agreement, letter of guarantee, promissory note and other necessary

documents and also a mortgage deed and other documents. But, there is no evidence regarding the membership of the present Respondents, which is the prime requirement. No membership forms are filed on record as cited in the above referred Judgment. The court held that it was necessary for the Appellant / Society to come with the claim that the respondents applied for membership, their membership were accepted and, then, being member, the loan was disbursed. Section 84 of the Multi-State Cooperative Societies Act is highlighted to draw inference. But, merely because the dispute is referred, it cannot be inferred that the Respondents are the members of the Society. Therefore, unless and until the Respondents / Borrowers status of members of society is proved, no dispute can be referred to Arbitrator.

6. The court has further observed that the Arbitrator while deciding the dispute did not decide the point of membership and directly went to the documents of loan agreement, mortgage deed etc. despite there being written statement denying the execution of documents and the loan obtained. Therefore, the award passed is erroneous on facts and law. Unless the basic and foundational facts are proved, no legal appreciation can be made on the same. Thus, the court primarily relying upon the abovereferred Judgment held that the Appellant / Society failed to establish that

the Respondents were members of the Society and set aside the arbitral award.

7. The learned counsel for the Appellant / Society in the above factual scenario submits that Section 26 of the Multi-State Cooperative Societies Act provides for nominal members and for the purpose of granting loans nominal membership is given to the borrower. For nominal membership there is no separate membership certificate issued.

He submits that the loans of a Multi-State Cooperative Societies are given to members which includes nominal members. He submits that the loan document produced on record itself showed that the Respondents / Borrowers had applied as member of the society. The Appellant submits that the common notice dated 26.09.2022 issued to the borrowers and guarantors also at Paragraph No.2 mentions that the borrowers and guarantors are the members of the Credit Society and this fact is not disputed by the Respondents. The applicant had specifically stated in the application referring the matter to the Arbitrator that the respondents are members of the Society and the said fact is not disputed by the respondents and, thus, no issue was formulated, whether the respondents are the members of the society. He points out Clause No.9 of the Arbitration Application as under:

“9] JURISDICTION:-

All the opponents are the members of the claimant society. The opponent No.1 to 4 has borrowed loan from the claimant society, and opponent No.5 and 6 stud guarantor to the said loan. The said loan was not repaid by the opponents, therefore, society has filed present reference before the authority. The said dispute comes under section 84 of the Multi-State Co-operative Societies Act, 2002 and this Hon’ble Arbitral Tribunal has jurisdiction to settle / decided this claim application.”

He submits that the Respondents have denied all other assertions but as regards the membership they have not denied the same and correspondingly no issue as regards the membership arises for consideration and once the Arbitrator has decided based on the material, more particularly, when there is no denial of membership and the loan application form itself shows that the Respondents are the members, there was no occasion for the Arbitrator to enter into the issue of membership. He submits that the Award passed by the Arbitrator cannot be set aside on some non-application of law or incorrect application of law or facts. The dispute raised by the Respondents that the Arbitrator has not formed any issue in this regard. As such, he submits that the reliance placed in the aboveresferred case is misplaced.

8. Per contra, the learned counsel for the Respondents / Borrowers / Guarantors has not disputed above noted Clause No.9 in the Arbitration Application, however, has taken me through the

written submissions (Say), particularly, paragraph no.14, as under:

“अर्जदाराने सदरचा अर्ज हा खोट्या तयार केलेल्या कागदपत्राचे आधारे दाखल केला असून सदर अर्जास योग्य व संयुक्तिक कारण घडलेले नसलेने तसेच लवाद अर्जातील अर्जदार सोसायटी व सामनेवाले यांचे दरम्यान कोणताही कायदेशीर व व्हॅलिड असा करारनामा झालेला नसल्याने तसेच सदरचा अर्ज हा मल्टीस्टेट को-ऑपरेटिव सोसायटीज अॅक्ट 2002 मधील सेक्शन 84 च्या व्याख्येत येत नसल्याने या मेहरबान लवाद अधिकारी यांनी प्रस्तुतचा लवाद अर्ज चालविण्याचा हक्क, अधिकार नसलेने लवाद अर्ज खर्चासह रद्द होणेस पात्र आहे.”

Relying upon the above paragraph he submits that the objection was raised as regards the jurisdiction of the Arbitrator to entertain the application under Section 84 of the Multi-State Cooperative Societies Act.

9. Considered submissions.

10. The Hon'ble Supreme Court in the case of **Arun Kumar and other Vs. Union of India and others, 2006 SCC OnLine SC 966** has held that the A "jurisdictional fact" is a fact which must exist before a court, tribunal or an authority assumes jurisdiction over a particular matter. A jurisdictional fact is one on existence or non-existence of which depends jurisdiction of a court, a tribunal or an authority. It is the fact upon which an administrative agency's power to act depends. If the jurisdictional fact does not exist, the court, authority or officer cannot act. The Hon'ble Supreme Court

also quoted the decision from Halsbury's Laws of England, as under:

"Where the jurisdiction of a tribunal is dependent on the existence of a particular state of affairs, that state of affairs may be described as preliminary to, or collateral to the merits of, the issue. If, at the inception of an inquiry by an inferior tribunal, a challenge is made to its jurisdiction, the tribunal has to make up its mind whether to act or not and can give a ruling on the preliminary or collateral issue; but that ruling is not conclusive."

The Hon'ble Supreme Court has further observed that the existence of jurisdictional fact is thus sine qua non or condition precedent for the exercise of power by a court of limited jurisdiction.

The Hon'ble Supreme Court further observed at paragraph no.84 asunder:

"84. .. it is clear that existence of "Jurisdictional fact" is sine qua non for the exercise of power. If the jurisdictional fact exists, the authority can proceed with the case and take an appropriate decision in accordance with law. Once the authority has jurisdiction in the matter on existence of "jurisdictional fact", it can decide the "fact in issue" or "adjudicatory fact". A wrong decision on "fact in issue" or on "adjudicatory fact" would not make the decision of the authority without jurisdiction or vulnerable provided essential or fundamental fact as to existence of jurisdiction is present."

11. The Hon'ble Supreme Court in the case of Ramesh Chandra Sankla and Ors. vs. Vikram Cement and Ors. MANU/SC/7810/2008 : (2008) 14 SCC 58, as under:

“55. A ‘jurisdictional fact’ is one on existence of which depends jurisdiction of a Court, Tribunal or an Authority. If the jurisdictional fact does not exist, the Court or Tribunal cannot act. If an inferior Court or Tribunal wrongly assumes the existence of such fact, a writ of certiorari lies. The underlying principle is that by erroneously assuming existence of jurisdictional fact, a subordinate Court or an inferior Tribunal cannot confer upon itself jurisdiction which it otherwise does not possess.”

12. Perusal of the application made for reference before the Arbitrator and the Reply, more particularly, paragraph no.14 as noted above, it can be seen that the Appellant has particularly mentioned in the Arbitration Application that the Respondents are the members of the society. The loan application made by the respondents also indicates that the borrowers are the members of the society. Notice dated 26.09.2022, issued by the Appellant to the Respondents also mentions that the Respondents are the members of the Credit Society.

13. In this factual scenario, it is to be seen that there is no dispute raised as regards the ‘membership’ by the respondents although there is a general statement made in the Written Statement that the Arbitrator has no jurisdiction to proceed under Section 84 of the Multi-State Cooperative Societies Act. It is nowhere stated in the defence statement that the respondents are not the members of the society. Ordinarily the Society grants loans

only to members of the Society. Accordingly, no issue is framed as regards whether the borrowers are the members of the Society and further no evidence is lead to that effect. In this factual situation the Arbitrator had not committed any error.

14. I may refer to the Judgment of this court in the case of **Mirza Sharique Baig and others vS. Mohd. Nasim, MANU/MH/2527/2022 : 2022 (5) BomCR 55**, wherein this court has observed that an admission by a tenant about existence of a statutory ground for eviction, expressly or impliedly, will be sufficient and there need not be any evidence before the Court on the merits of the grounds before the compromise order is passed and, as such, in such a situation, a compromise decree cannot be called a nullity to enable the executing court to go behind it.

15. As regards the abovereferred Judgment of **Prakash Thakkar** (*supra*) relied upon by the borrowers, it is to be seen that the issue as regards, whether the guarantors were the members of the Society was specifically raised and was dealt with by the court. In the above case, this court came to the conclusion that the guarantors were not members.

This court in the case of **Prakash Thakkar** (*supra*) held that in absence of any evidence that the Respondents are the members of the society at the time of referring the dispute under

Section 84(1)(B) of the Multi-State Cooperative Societies Act the Arbitrator did not have any jurisdiction to deal with the matter.

However, in the instant case, I find that the Respondents have not disputed that they are the members of the society. The Respondents have not raised any dispute as regards the membership of the cooperative society. The loan application form itself indicates that the borrowers are the member of the society, as such, in absence of any dispute being raised as regards membership the Arbitrator has not formulated any issue as regards the membership of the Society. The dispute between the society and the members existed as there was no dispute raised as regards the membership of the borrowers and guarantors. **Prakash Vrundavan Thakkar Vs. Nagpur Nagrik Sahakari Bank Ltd.** (supra) has no application in the instant case, where the society was called upon to prove that the respondent guarantor is a member of the society in that case.

16. The learned counsel for the Appellant / Society submitted that the issue of jurisdiction can be raised at any stage and there can be no dispute as regards the legal proposition canvassed. However, the foundational facts for raising such a dispute that the Respondent are not members of the society has not been pleaded. There is a specific assertion by the Appellant /

Society that the Respondents are the members of the Society and to dislodge the jurisdiction of the Arbitrator, it was necessary for the Respondents to plead that they are not the members of the society. If the issue was raised it could have framed by the Arbitrator and decided. The appellant could have lead evidence in this regard and the matter could have been decided. In ordinary context, when loans are only given to members and the arbitration application along with loan document shows that the borrowers are the members of the Society and this fact being not controverted by the Respondents, the Arbitrator was entitled to proceed on the basis that the Respondents are the members of the Society and deal with the matter on it's own merits, which the Arbitrator has done.

17. The power of the court while entertaining an application under Section 34 / 37 of the Act is circumscribed by the limitation under Section 34 / 37 of the Act. The Hon'ble Supreme Court in the case of **PSA Sical Terminals Private Limited Vs. Board of Trustees of V.O. Chidambaranar Port Trust Tuticorn and Anr.** reported in (2023) 15 SCC 781 has held has observed that it is a settled legal position, that in an application under Section 34, the court is not expected to act as an appellate court and reappreciate the evidence. The scope of interference would be limited to grounds

provided under Section 34 of the Arbitration Act. The interference would be so warranted when the award is in violation of "public policy of India", which has been held to mean "the fundamental policy of Indian law". A judicial intervention on account of interfering on the merits of the award would not be permissible. However, the principles of natural justice as contained in Section 18 and 34(2)(a)(iii) of the Arbitration Act would continue to be the grounds of challenge of an award. The ground for interference on the basis that the award is in conflict with justice or morality is now to be understood as a conflict with the "most basic notions of morality or justice". It is only such arbitral awards that shock the conscience of the court, that can be set aside on the said ground. An award would be set aside on the ground of patent illegality appearing on the face of the award and as such, which goes to the roots of the matter. However, an illegality with regard to a mere erroneous application of law would not be a ground for interference. Equally, reappreciation of evidence would not be permissible on the ground of patent illegality appearing on the face of the award.

18. Similarly, in the case of **Government of Jammu and Kashmir Vs. Hindustan Construction Company Ltd. and others**, **MANU/JK/0116/2017 : AIR 2017 J&k 82**, has observed as under:

“12. The Supreme Court in Mc Dermott International Inc. v. Burn Standard Co. Ltd. MANU/SC/8177/2006: (2006) 11 SCC 181: (2006 AIR SCW 3276 while taking note of the decision rendered by it in Renusagar Power Co. Ltd. v. General Electric Co., MANU/SC/0195/1994 : 1994 Supp (1) SCC 644: (AIR 1994 SC 860) held that an arbitral award can be set aside if it is contrary to fundamental policy of Indian law; the interests of India; or justice or morality. However, subsequently, in the case of ONGC Ltd. v. Saw Pipes Ltd., MANU/SC/0314/2003: (2003) 5 SCC 705: (AIR 2003 SC 2629), the Supreme Court added another ground for exercise of Courts' jurisdiction for setting aside the award i.e. if it is patently arbitrary. In Centrotrade Minerals & Metals Inc. v. Hindustan Copper Ltd., MANU/SC/8146/2006: (2006) 11 SCC 245: (AIR 2007 SC (Supp) 1770) it was held by the Supreme Court that if an award suffers from patent illegality which goes to the root of the matter, the Court can interfere with the award passed by the arbitrator. Thereafter in a recent decision in the case of Associate Builders v. Delhi Development Authority, MANU/SC/1076/2014: (2015) 3 SCC 49: (AIR 2015 SC 620) the Supreme Court after taking note of various previous judgments rendered by it with regard to scope of interference with the arbitral award held that none of the grounds contained in Section 34(2)(a) of the Act deals with the merits of the decision rendered by an arbitrator. It is only when the award is in conflict with the public policy of India as prescribed in Section 34(2)(b)(ii) of the Act that the merits of an arbitral award are to be looked into under certain specified circumstances. It was further held that the Court would interfere with an award passed by an arbitrator if it is in violation of statute, interest of India, justice or morality, patent illegality, contravention of the Act or terms of the contract. It was also held that the Court hearing an appeal does not act as a Court of appeal and consequently errors of fact cannot be corrected. A possible view by the arbitrator on facts has necessarily to pass muster as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon when he delivers his arbitral award. Thus, an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on this score.”

19. Considering the limited power of the District Court to interfere in the Arbitral Award, the District Court ought not to have interfered with the Award, more so, when there is no 'patent illegality' in the Award of the Arbitrator. Thus, the order dated 07.11.2024, passed by the learned Principal District Judge, Ahmednagar in Arbitration Application No.03 of 2024 under Section 34 of the Arbitration and Conciliation Act, 1996 is set aside and the Award dated 19.10.2023, passed by the learned Arbitrator in Reference No.04 of 2023 is restored.

20. The Arbitration Appeal stands allowed.

21. In view of the disposal of the Arbitration Appeal, pending civil application/s, if any, is / are also disposed of.

[ARUN R. PEDNEKER, J.]

22. Today, the matter is posted for orders, Mr. S. D. Kotkar, learned counsel appearing for Respondents No.1, 2, 4 to 6 submits that the Arbitration Appeal is filed on 23.04.2025 and the impugned order is dated 07.11.2024, as such, the Arbitration Appeal is beyond limitation and the same is filed without application for condonation of delay.

23. Perusal of office record shows that the impugned order is dated 07.11.2024 and the Arbitration Appeal is presented on 01.02.2025 and the same was returned for correction and, thereafter, verified on 23.04.2025. Considering the same, the Arbitration Appeal is within limitation. The objection of limitation raised by the respondent is also rejected.

[ARUN R. PEDNEKER, J.]

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