



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

ARBITRATION APPEAL NO. 116 OF 2025

APPELLANT

(Ori.N.A.No.1)

: Rajlaxmi Multistate Credit Cooperative Society Ltd. (Regd. No. MSCS/CR-554/2012), through its Authorized Signatory, Shri Kshitij Tayade, Head Office at Mainde Chowk, Yavatmal, Tah. and Dist. Yavatmal.

..VERSUS..

RESPONDENTS

(Ori.Applicant No.1)

1) Smt. Ashwini Anand Anchatwar, Aged about 40 years, Occu: Business, R/o Shriraj Nagar, Wadgaon Road, Yavatmal, Tah. & Dist. Yavatmal.

(Ori.Applicant No.2)

2) Anand Parameshwar Anchatwar, Aged about 48 years, Occu: Business, R/o Shriraj Nagar, Wadgaon Road, Yavatmal, Tah. & Dist. Yavatmal.

(Ori.N.A. No.3)

3) M. S. Gangalwar, Occu: Arbitrator, Rajlaxmi Multistate Credit Co-operative Society Ltd.

(Ori.N.A. No.4)

4) Avinash Madhukar Gandhewar, Aged about 35 years, Occu: Business, R/o 26, Ekvira Nagari, Yavatmal, Tah. and Dist. - Yavatmal.

- 5) Umesh Parasmal Kothari,
Aged about 60 years, Occu:
Business, R/o Shriji Complex, in
front of Gayatri Lawn, Yavatmal,
Tah. & Dist. Yavatmal.

Mr. Saurav P Rajurkar, counsel for appellant.
Mr. R. R. Deo, counsel for respondent Nos. 1 and 2.

CORAM : **PRAVIN S. PATIL, J.**
DATE OF RESERVE : **18/02/2026**
DATE OF DECISION : **17/03/2026**

JUDGMENT :

1. Heard. **Rule.** Rule made returnable forthwith. By consent of Mr.Saurav P. Rajurkar, counsel for appellant and Mr R.R. Deo, learned counsel for respondent Nos. 1 and 2, the application is taken up for final hearing at the stage of admission.

2. This appeal is filed under Section 37 of the Arbitration and Conciliation Act, 1996, by the Appellant/Multistate Credit Co-operative Society Limited to challenge the judgment and order passed by Principal District Judge, Yavatmal in Civil Misc. Appeal No. 221/2022, whereby the Arbitration Award passed in Arbitration Case No. ARB/RMCCSY/ylmb/911/2021 dated 25/06/2022 is quashed and set aside.

3. The submission of the appellant in the present

appeal is that the learned District Judge has transgressed the scope of Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred as 'the Act of 1996'), thereby violating the settled principles of law which stipulate that scope of intervention of the Court in arbitral matters is restricted only to the limited grounds provided under Section 34 of the Act of 1996.

4. It is further submitted that the case of respondent No.1 and 2 does not fall within any of the grounds provided under Section 34 of the Act of 1996 and, therefore, the indulgence shown by the learned District Judge in the matter is bad in law.

5. In the light of the submissions made by the appellant challenging the judgment of the District Judge, it would be necessary to state certain facts of the present matter to verify whether the case of the respondents falls within the grounds provided under Section 34 of the Act of 1996 or not.

6. In the present case, admittedly, the appellant/society on 27/03/2021 lodged a dispute under Section 84 of the Multi-State Cooperative Societies Act, 2002 (for short 'the Act of 2002'), read with Section 23 of the Act of 1996, for recovery of an amount of Rs.1,29,34,497/- (Rs. One Crore Twenty Nine Lakh Thirty Four Thousand Four Hundred and Ninety Seven only), along with interest and other charges against the Respondent Nos.1 and 2.

7. The submission of the appellant before the Arbitrator was that present respondent Nos. 1 and 2 are the borrowers, respondent No. 3 and respondent Nos. 4 and 5 are the guarantors of the loan, and they are the members of the Society. It was alleged that after disbursement of loan, respondent Nos. 1 and 2 avoided repayment of the loan as per the installments decided at the time of disbursing the loan. It was further alleged that present respondent Nos. 1, 2, 4 and 5 had availed the membership rights of the society and therefore, the dispute touches the business and management of the society. Hence, as per Section 84 of the Act of 2002, the dispute was referred and the same was tenable under the provisions of law.

8. In response to the lodging of reference to the Arbitrator, notices were issued to the respondent Nos. 1 and 2. The said respondents vide Exhibit Nos. 9 and 10, informed the Arbitrator that because of surge of COVID-19 in the year 2021, their entire business was collapsed and therefore, they are not in a position to repay the loan. Accordingly, requested to grant time for repayment of loan.

9. The said communication of the respondent Nos. 1 and 2 was taken on record by the Arbitrator. Thereafter the claim affidavit has been filed by the appellant. The Arbitrator, on the basis of claim affidavit, passed the impugned award dated 25/06/2022 holding that respondent Nos. 1, 2, 4 and 5 are jointly and severely

liable to pay Rs. 1,29,34,497/- with interest at the rate of Rs.19% per annum from 13/2/2021 along with all charges till its realization of the entire amount.

10. The respondent Nos. 1 and 2 thereafter preferred an application under Section 34 of the Act of 1996 before the learned District Judge. The respondents before District Judge raised a grievance that in absence of any proof of the respondents being member of the society as contemplated under the provisions of Act of 2002, the matter was entertained by the Arbitrator under the presumption that they were members of the society. Therefore, it was submitted that the Arbitrator committed patent illegality in entertaining the dispute and hence the respondents sought indulgence of the Court in the matter.

11. By the impugned judgment, learned District Judge, after framing the issue, “as to whether the case is made out to interfere by invoking the powers under Section 34 of the Act of 1996 or not”, has specifically recorded the finding in affirmative. While affirming this finding, learned District Judge has held that he has perused the entire record and proceedings of the Arbitrator, and could not found any document on record to indicate that respondent Nos. 1 and 2 have been admitted to the membership of the appellant/society. It is further recorded that although the appellant/bank, had stated that by executing the term loan agreement, the appellants had agreed to the rules and bye-laws of the society, neither the said rules nor the bye-laws of the

society were produced to substantiate the claim that appellants had acquired any interest in the applicant No.1/ society. Thus, it was not established on record that respondent Nos. 1 and 2 are admitted to be the members of the society and consequently the reference proceedings under Section 84 of the Act of 2002 are itself illegal. It is recorded that same was a patent illegality of entertaining the Arbitration without considering the basic ingredients. Hence, the award passed by the Arbitrator was quashed and set aside.

12. In the light of the above said factual position, the appellant approached before this Court and raised the ground, which can be formulate as under :-

- a] Whether the learned District Judge transgressed the scope of Section 34 of the Act of 1996 in interfering the award.
- b] Whether learned District Judge was justified to hold that respondent Nos. 1 and 2 being not admitted as a members of the appellant/society, the Arbitrator is justified to entertain and decide the arbitration proceedings.

13. In respect of first issue regarding the scope of interference of the learned District Judge in the Arbitration Proceedings, it would be relevant to refer the Section 34 of the Act of 1996, more particularly Section 34 of the Clause 2(a) which reads as under :-

34. Application for setting aside arbitral award :-

(1)

(2) An arbitral award may be set aside by the Court only if -

(a) the party making the application [establishes on the basis of the record of the arbitral tribunal that]—

(i) a party was under some incapacity; or

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

14. A perusal of this provision clearly states that an Arbitration Award can be set aside by the Court if the Arbitral award deals with a dispute not contemplated by,

or not falling within, the terms of submission to Arbitration, or it contains decisions on matters beyond the scope of submission to Arbitration. Further the same can be set aside if the Court finds that award is patently illegal appearing on the face of the award. Hence, considering this provision, it is clear that under such contingencies the arbitral award can be set aside by the Court.

15. It will be relevant to refer the judgment of the Hon'ble Supreme Court of India in the case of ***Delhi Metro Rail Corporation Limited Vs Delhi Airport Metro Express Private Limited***¹, wherein the Hon'ble Supreme Court of India, has observed in paragraph Nos. 34, 35 and 36, which reads as under :-

34. The contours of the power of the competent court to set aside an award under Section 34 has been explored in several decisions of this Court. In addition to the grounds on which an arbitral award can be assailed laid down in Section 34(2), there is another ground for challenge against domestic awards, such as the award in the present case. Under Section 34(2-A) of the Arbitration Act, a domestic award may be set aside if the Court finds that it is vitiated by 'patent illegality' appearing on the face of the award.

35. In ***Associate Builders vs. Delhi Development Authority***² a two-judge Bench of this Court held that although the interpretation of a contract is exclusively within the domain of the arbitrator, construction of a contract in a manner that no fair-minded or reasonable person would take,

¹ (2024) 6 SCC 357

² (2015) 3 SCC 49

is impermissible. A patent illegality arises where the arbitrator adopts a view which is not a possible view. A view can be regarded as not even a possible view where no reasonable body of persons could possibly have taken it. This Court held with reference to Sections 28(1)(a) and 28(3), that the arbitrator must take into account the terms of the contract and the usages of trade applicable to the transaction. The decision or award should not be perverse or irrational. An award is rendered perverse or irrational where the findings are;

- (i) based on no evidence;
- (ii) based on irrelevant material; or
- (iii) ignores vital evidence.

36. Patent illegality may also arise where the award is in breach of the provisions of the arbitration statute, for instance the award contains no reasons at all, so as to be described as unreasoned.

16. It will also be profitable to refer the judgment of this Court in the case of ***Smt. Veena Wd/o Naresh Seth vs Seth Industries Limited***³, wherein this Court observed in paragraph Nos. -52 and 56 are as under :-

“52. If the above principle applies to arbitral proceedings under the 1996 Act, the arbitrator having lacked inherent jurisdiction, did not have seisin of the case because the subject-matter was alien to his jurisdiction. The award was therefore made by a tribunal entirely lacking in jurisdiction in respect of the subject-matter of the dispute. The arbitrator having lacked inherent jurisdiction to decide the matter his lack of jurisdiction was not curable and could not have been waived. The award would therefore be void. The only question is whether the ratio of these judgments would also apply to a Court hearing a petition under section 34

of the Arbitration and Conciliation Act, 1996. If the ratio applies to matters under the 1996 Act it would be open to the petitioners to urge these contentions in a petition under section 34 of the said Act even if it was not raised before the arbitrator.

56. I cannot persuade myself to accept Mr. Kamdar's submission that as the term 'validity' in Section 16(1) includes questions of inherent lack of jurisdiction, if an objection of inherent lack of jurisdiction is not raised, it cannot be raised in a petition under section 34.

Questions relating to the lack of jurisdiction which can be waived or cured, must be raised as required under section 16 of the Act. In that event, the challenge to such findings under section 34 of the Act would be dealt with in the same manner and on the same principles as a challenge to an award in any other respect. Questions relating to inherent lack of jurisdiction may also be raised before the arbitrator. However, that does not imply that if not raised before the arbitrator questions relating to inherent lack of jurisdiction cannot be raised in a petition under section 34 of 1996 Act.”

17. Per contra, the submission of the appellant is that the powers under Section 34 of the Act of 1996 are restricted by various judgments of the Hon’ble Supreme Court of India, for that purpose he has relied upon the following judgments:

- a] **Punjab State Civil Supplies Corporation Limited and Anrs Vs Sanman Rice Mills and Ors** ⁴
- b] **S.V.Samudram Vs State of Karnataka and Ors** ⁵
- c] **Fancy Builders Private Limited Vs Memon**

⁴ 2024 SCC OnLine SC 2632

⁵ (2024)3 SCC 623.

Co-operative Bank Ltd., ⁶

**d] Rajlaxmi Multi-State Cooperative
Society Limited Yavatmal Vs Gajanan
Vasant Shirbhate and others⁷**

18. The appellant, by relying upon judgments of the Hon'ble Supreme Court of India as well as this Court, submitted that an Arbitral Award cannot be interfered- with on the ground that award is illegal or erroneous in law, nor can the Court, under Section 34 of the Act of 1996, reappraise the evidence adduced before the Arbitral tribunal. According to the appellant, even an award which may unreasonable or is non-speaking to some extent cannot ordinarily be interfered with by the Court. It is stated that even if two views are possible, there is no scope for the Court to re-appraise the evidence and take a view different from that taken by the Arbitrator. So also, it is stated that proceedings under Section 34 of the Act of 1996, are summary in nature and are not like a full fledged regular civil suit. Therefore, the scope of Section 37 of the Act of 1996, is supervisory in nature. As such, under Section 34 of the Act of 1996, the Court cannot set aside the award, if the requirement of Section 34 is satisfied. According to him, interfering the award would amount to crossing "Laxman Rekha".

19. From the judgment referred by both the parties and perusal of the Section 34 of the Act of 1996, in my

⁶ 2015 SCC OnLine Bom 4915.

⁷ Arbn. Appeal No. 77/2025 dt. 14/10/2025 (Nagpur Bench)

considered opinion, this Court can look into Arbitration Award, in case if it is established before the Court that arbitral award deals with a dispute not contemplated or passed without following the terms of the arbitration, or if the decisions on matters is passed beyond the scope of arbitration. Interference is also permissible if it is found that the award is vitiated by patent illegality appearing on the face of the award.

20. In this background, it will be relevant to consider what is the patent illegality. In this regard, it will be relevant to refer the judgment of the Hon'ble Supreme Court of India in the case of *SSAngyong Engineering and Construction Company Limited Vs National Highways Authority of India (NHAI)*⁸, wherein the Hon'ble Supreme Court of India in paragraph No.41 of the judgment has discussed of the decision can be considered as a perverse.

“41. What is important to note is that a decision which is perverse, as understood in paragraphs 31 and 32 of Associate Builders (supra), while no longer being a ground for challenge under “public policy of India”, would certainly amount to a patent illegality appearing on the face of the award. Thus, a finding based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside on the ground of patent illegality. Additionally, a finding based on documents taken behind the back of the parties by the arbitrator would also qualify as a decision

based on no evidence inasmuch as such decision is not based on evidence led by the parties, and therefore, would also have to be characterised as perverse.”

21. In the light of this legal position, it will be now relevant to consider whether in the present case there is any patent illegality committed by Arbitrator or whether the Arbitration Award passed by the Arbitrator is beyond scope of the submission to the arbitration.

22. In the present case, admittedly, before the Arbitrator the matter was referred under Section 84 of the Act, 2002. The Section 84 of the Act of 2002 would be necessary to be considered in the matter.

84. Reference of disputes - (1)

Notwithstanding anything contained in any other law for the time being in force, if any dispute [other than a dispute regarding disciplinary action taken by a multi-State cooperative society against its paid employee or an industrial dispute as defined in clause (k) of section 2 of the Industrial Disputes Act, 1947 (14 of 1947)] touching the constitution, management or business of a multi-State co-operative society arises--

(a) among members, past members and persons claiming through members, past members and deceased members, or

(b) between a member, past members and persons claiming through a member, past member or deceased member and the multi-State co-operative society, its board or any officer, agent or employee of the multi-State co-operative society or liquidator, past or present, or

(c) between the multi-State co-operative society or its board and any past board, any officer, agent or employee, or any past officer, past agent or past employee, heirs or legal representatives of any deceased officer, deceased agent or deceased employee of the multi-State co-operative society, or

(d) between the multi-State co-operative society and any other multi-State co-operative society, between a multi-State co-operative society and liquidator of another multi-State co-operative society or between the liquidator of one multi-State co-operative society and the liquidator of another multi-State co-operative society,

such dispute shall be referred to arbitration.

23. A bare perusal of this provision states that if any dispute touching to the constitution, management or business of Multi-State Cooperative Society arises among members, past members and persons claiming through members, past members and deceased members, then such dispute shall be referred to arbitration. It is further made clear that for such reference of dispute amongst members, the consent is not at all necessary as it is a statutory provision for settlement of dispute between the members of the Multi-State Cooperative Society.

24. In the light of this Section 84 of the Act of 2002, it would be further relevant to refer Section 25 of the Act of 2002, which defined who may become the members. This provision specifically stipulates under Section 25(3) that any person eligible for membership of a Multi-State

Cooperative Society, on his application can be admitted as a member by such society. So also, the society is required to dispose of such application within a period of four months from the date of receipt and communicate to the applicant within fifteen days from the date of decision delivered to do exercise by the society of communicating the decision, there is a deeming provision that on the date of expiry of such period, it will be treated as refusing admission to the person applying for the membership. As such, perusal of Section 25 of the Act of 2002, it is clear that no person can be become a member automatically, and there is requirement of express decision of the society for accepting his membership, and further such application should be made by the person to get the membership of the society.

25. In the light of this legal position, I have perused the dispute referred by the appellant bank to the Arbitrator, the claim affidavit, and the decision of the arbitrator.

26. From these documents, it is revealed that, Appellant to establish the fact that, respondent Nos. 1 and 2 are the member of the society, has only relied upon the ledger book showing the share capital in their names as a proof of membership. Except this, no other document is placed on record.

27. Furthermore, the arbitrator, while deciding this vital issue which goes to the root of the matter in his

award has only recorded in para-8 that disputant society proved that opponents are members of disputant society and dispute is tenable under Section 84 of the Act of 2002. Except this, there is no discussion on the part of the arbitrator that how the present respondent No.2 became a member of the society, particularly when, under Section 25 of Multi-State Cooperative Societies Act, 2002, the specific procedure is incorporated to become the member of the society. As such, prima-facie, it is clear that this issue was not properly dealt with by the learned Arbitrator.

28. It is further pertinent to note that the powers available under Section 84 of the Act of 2002, for reference of the proceedings without consent, is permissible only in the case, if the dispute is amongst the members of the society. Therefore, the essential ingredient which needs to be established would be that Respondent Nos.1 and 2 are the members of the society against whom the dispute is referred. For that purpose, necessary documents, such as an application for getting membership of the cooperative society, or to demonstrate from bye-laws of the society as to how Respondent Nos.1 and 2 became the members of the society while disbursing the loan, ought to have been established on record. However, no such document has been placed on record by the disputant bank. Only the ledger book has been relied upon to conclude that respondent Nos. 1 and 2 are the members of the bank.

29. In the circumstances, it will be relevant to refer the judgment delivered by this Court in identical set of the facts in the case of ***Prakash Vrundavan Thakkar Vs Nagpur Nagrik Sahakari Bank Ltd. and others reported in 2014 (3) Mh.L.J. 349***, wherein this Court while considering the Section 84 of the Act of 2002 has considered the definition of member and the material which required to be placed on record. Accordingly, this Court observed in paragraph Nos.8 and 11 as under:-

“8. There is absolutely no material placed on record to indicate that the petitioner was admitted to the membership of the respondent no.1 Society upon payment to the society the dues in respect of membership. Neither the rules nor byelaws of the society are produced to substantiate the claim that the petitioner acquired any such interest in the society or is admitted to membership of the respondent No.1 Society as is prescribed under the rules or bye-laws of the said society. It has not been established that the petitioner is a member, past member or a person claiming through any such member, past member or deceased member of the society.

11. In the absence of there being any evidence on record to show that the petitioner was a member of respondent no.1 society at the time of referring the dispute under Section 84(1)(b) of the Multi-State Co-operative Societies Act, the learned Principal District Judge has committed an error of law in holding that the arbitral tribunal had jurisdiction to entertain, try and decide the dispute between the petitioner and the respondent no.1 society. ”

30. Per contra, the appellant in support of his submission has heavily relied upon the judgment of this Court in Arbitration Appeal No. 77/2025 decided on 14/10/2025, wherein, this Court held that the guarantors of a loan are the members of the society. This Court to

held that they are the members of Society, relied upon Section 128 of the Indian Contract Act, whereby the guarantor's liabilities is extensive with that of principle debtor and accordingly hold that the Arbitral award passed against them is legal and proper. However, in that case, the issue was not discussed about the principal borrower. As such, with due respect, I am of the opinion that judgment delivered by the Coordinate Bench of this Court in Arbitration Appeal No. 77 of 2025 is not applicable in the matter rather the judgment delivered by this Court in the case of ***Prakash Vrundavan Thakkar (supra)*** of the Co-ordinate bench of this Court is applicable in the matter.

31. In the present case, in my opinion, not deciding the issue whether the respondent Nos.1 and 2 are members of the society or not is the patent illegality committed by the Arbitrator. It is not established by the appellant/society even before this Court that they are members of the society, consequently, the jurisdiction exercised under Section 84 of the Act of 2002 automatically goes and consequently proceeding decided by Arbitrator are vitiated.

32. It is further pertinent to note that as per the settled principles of law, if the Arbitrator passed the award by taking into accounts something irrelevant and same is not based on concrete evidence and thereby, he has committed wrong in arriving of its conclusion, same amounts to patent illegality. As such, considering this settled principles of law, in the present case, as the Arbitrator has recorded his finding without having any

concrete evidence before him and take into account the ledger book only to reach to the conclusion that respondent Nos. 1 and 2 are the members of the society is perse illegal and same is indirect violation of Section 25 of the Act of 2002.

33. In the circumstances, I am of the considered opinion that, the case of the respondent Nos. 1 and 2 preferred before the District Judge specifically comes into the category of the exceptions provided under Section 34 (2) and 2(a) of the Act of 1996. Hence, there is no perversity or illegality committed by the District Court while passing the impugned judgment.

Accordingly, I do not find any merits in the present appeal and hence, present appeal stands **dismissed** with no order as to cost.

(PRAVIN S. PATIL, J)