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Exhibit No.14

MAHARASHTRA STATE CO-OP. APPELLATE COURT MUMBAI,
BENCH AT PUNE
(BEFORE V.B. KULKARNI, MEMBER)
APPEAL No. 28 of 2026

ARISING OUT OF THE JUDGMENT AND AWARD DATED 28/06/2019 PASSED IN THE DISPUTE NO. 712/2005
BEFORE CO-OP. COURT NO.2, SANGLI

The Custodian,
Vasantdada Shetkari Sahakari Bank Limited
Sangli, By its Authorized Person and POA Holder,
Chandrakant Ganpati Mote,
General Manager,
Head Office Vasant Market Yard,
Sangli 416416. **..Appellant**

V/S

01] Shankar Pandurang Gadade,
R/o. At/P. Baj, Tal. Jath,
Dist. Sangli.

02] Aannappa Daryappa Gadade,
Since Deceased, by Legal heirs;
2a] Raosaheb Aannappa Gadade,

2b] Bhausaheb Aannappa Gadade,
Both R/o. At/P. Baj, Tal. Jath,
Dist. Sangli.

03] Vithoba Amrut Gadade,
R/o. At/P. Baj, Tal. Jath,
Dist. Sangli.

04] The Managing Director,
Raje Vijaysinh Dafale Shetkari Sahakari
Sakhar Karkhana Ltd., Tipehalli,
Tal. Jath, Dist. Sangli. **.....Respondents**

Ld. Advocate Mr. B.P.Shinde, for the Appellant.
Ld. Adv. Shri. S.B.Olekar, for the respondent No.1.
The respondent No. 2(a), 2(b), 3 and 4 are exparte.

JUDGMENT

(Delivered on 04th of August 2026)

1) Being aggrieved by the judgment and award dated 28/06/2019 partly decreeing the dispute bearing No. 712/2005 by the Judge Co-op. Court No.2 Sangli, the present appeal has been preferred by the original disputant.

2) The appellant is the original disputant where as the respondents are the original opponents. Therefore, the parties are herein after referred to their original status.

3) In order to appreciate the correctness of the impugned judgment and award, following are the facts in the nutshell.

A] The disputant bank has filed the dispute against the opponent No. 1 to 4 for recovery of loan amount of Rs.4,68,322/- with interest thereon @19.5% p.a. from 01/11/2005 till realization.

B] As per the dispute application, the opponents are members of the disputant bank. The opponent No.1 is doing business of harvesting and transporting of sugarcane. For the year 2002-2003 the opponent No.4

factory has requested to issue loan to the opponent No.1 and the opponent No.4 assured to repay loan in case the opponent No.1 fails to repay loan. Accordingly the opponent No.1 has applied for the loan of Rs.2,90,000/- and the opponent No.2 and 3 have accepted surety ship. The opponent No.4 has executed undertaking dated 15/02/2003 and indemnified the opponent No.1. The loan was availed by the opponent No.1 to 4. The agreed rate of interest is 17.5% + 2% p.a. The opponents failed to repay loan dues inspite of notice dated 06/05/2005. Therefore the dispute came to be filed.

C] The opponent No.4 factory contested the dispute but the opponent No. 1 to 3 are placed exparte. The dispute came to be decreed by judgment dated 09/05/2007 holding the opponent No.1 to 4 jointly and severally liable to pay to the disputant bank an amount of Rs.4,67,972/- with interest thereon @17.5% p.a. at monthly rest on Rs.2,90,000/- from 01/10/2005 till realization.

D] By the judgment dated 16/12/2017 passed in Appeal No.90/2017 the exparte judgment passed by the trial Court against the opponent No.1 to 3 has been set aside subject to deposit of Rs.50,000/- and matter remanded back for further evidence of the parties.

4) As per the W.S. of the opponent No.1 to 3 filed at Exh.24, they have denied contentions in the dispute application and prayed for dismissal of the dispute. According to them they were never members of the disputant bank. The disputant bank is in liquidation and therefore the dispute filed in the present form is not maintainable. As the Court has no jurisdiction to entertain the dispute, it is liable to be dismissed. The committee of the disputant bank is facing enquiry U/Sec.88 as one of the allegations is that the loan was illegally disbursed to the opponent No.4 and not to the alleged borrower i.e. the opponent No.1. The opponent No.1 to 3 never do harvesting and transporting of sugarcane as alleged in the dispute application. The opponent No.1 has never raised loan and the opponent No. 1 to 3 have never executed documents as alleged by the disputant bank. The opponent No.1 has never received loan amount of Rs.2,90,000/- or any other amount from the disputant bank and the opponent No.2 and 3 never accepted surety ship. The opponent No.1 to 3 are not aware of the undertaking dated 15/02/2003 executed by the opponent No.4. The contentions about rate of interest allegedly agreed by the opponents is not correct. The theory of raising of loan is false and the opponent No.1 to 3 are unnecessarily involved. Therefore there is no question of repayment of loan by them. They never received demand notice as alleged in the dispute application. The statement of account allegedly maintained by the disputant is not correct and entries therein are false and not binding on the opponents. In the circumstances, the dispute is liable to be dismissed with cost.

5) As per the W.S. of the opponent No.4 filed at Exh.16, the factory has admitted that for crushing season of the year 2002-2003 the disputant bank had sanctioned and disbursed the loan to the opponent No.1 to which the opponent No.4 has given undertaking for repayment. Though the loan is disbursed to the opponent No.1, it is utilized by the opponent No.4 factory. The loan is merely shown to be obtained in the name of opponent No.1 to 3. The opponent No.4 factory is in financial crises and therefore has utilized the loan for running the factory. Therefore the opponent No.4 accepts exclusive loan liability for repayment. The opponent No.4 factory has duly executed documents to raise loan in the name of opponent No.1. However the agreed rate of interest was 16% p.a. and not 17.5% p.a. as claimed by the disputant bank. The statement of account is not properly maintained and shown exorbitant rate of interest. The disputant bank has illegally charged interest by monthly rest without there being agreement to that effect. The opponent No.4 factory is ready to repay the outstanding loan amount with simple interest @13% p.a. without penal interest. The factory is situated in draught prone area. In the year 2002-2003 there was scarcity of sugarcane and therefore the factory did not run in capacity. Thereafter for three year the factory was closed. Therefore the loan could not be repaid in time. In the circumstances, the dispute be dismissed and/or claim be settled by properly calculating the account and by granting suitable installments.

6) On the basis of pleadings issues framed at Exh.19 on 18/08/2006 have been recasted on 11/07/2018.

7) The disputant has examined its representative named Shrirang Ramdev More at Exh.21 and 42. The opponent No.1 has stepped in to the witness box by filing evidence affidavit at Exh.25. The opponent No.4 has examined it representative named Pargonda Siddhappa Devrashi at Exh.35 in the first round of litigation when the opponent No.1 to 3 were exparte. After remand the opponent No.4 was duly served. There is no record calling the witness of the opponent No.4 by issuing witness summons for cross examination by the opponent No.1 to 3.

8) After hearing the parties the trial Court has partly decreed the dispute holding the opponent No.4 liable to pay to the disputant bank an amount of Rs.4,67,972/- with interest @17.5% p.a. on Rs.2,90,000/- from the date of filing of the dispute till realization and pleased to dismiss the dispute against the opponent No.1 to 3 with direction to the disputant bank to refund Rs.50,000/- to the opponent No.1 with simple interest @6% p.a. from the date of deposit till repayment.

9) Being aggrieved by the impugned judgment and award, the appellants/original disputant has preferred the present appeal.

10) Heard both side advocates and perused written notes of arguments filed by the respondent No.1 at Exh.13. The respondent No. 2(a), 2(b), 3 and 4 are served vide Exh.8 to 11 but remained absent. Therefore, placed exparte by order dated 10/06/2026.

11) Considering the arguments advanced by either parties and after perusing the record, following points arise for my determination and I have recorded my findings thereon for the reasons to follow.

Sr.	POINTS	ANSWERS
1	Whether the impugned judgment and award passed are according to the law?	**As per final order.**
2	Whether the disputant bank is entitled for the decree against the opponent No.1 to 3?	**As per final order.**
3	Whether interference of the Appellate Court is warranted?	**As per final order.**
4	What order ?	**As per final order.**

12) **R E A S O N S**

POINT NO.1 TO 3:

The earlier judgment dated 09/05/2007 decreed against all the opponents was exparte against the opponent No.1 to 3. It has been set aside by the judgment dated 18/12/2017 passed in Appeal No.90/2017 preferred by the opponent No.1 to 3. The decree has been set aside only against the opponent No.1 to 3 and remand ordered on condition of deposit of Rs.50,000/-. After remand, the hearing conducted and the impugned judgment came to be passed dismissing the dispute against the opponent No.1 to 3 and order of refund of amount deposited by the opponent No.1 to 3 with interest thereon @6% from the date of deposit till realization. Therefore, the present appeal has been preferred by the original disputant bank.

13) The Ld. Advocate for the appellant/disputant has submitted that the approach of the trial Court is not according to the law. There is no privity of contract between the bank, the borrower and the indemnifier factory. The loan documents clearly show loan disbursement to the opponent No.1. Even the W.S. and evidence of the opponent No.4 factory does not show that the bank has disbursed loan to the opponent No.4 factory. As the disputant bank has disbursed the loan to the opponent No.1, the disputant bank is least concerned to whom loan amount has been transferred by the opponent No.1. The contract to transfer loan amount is between the opponent No.1 and 4 and therefore the loan even though allegedly utilized by the opponent No.4, all opponents are liable jointly and severally to repay loan in question to the disputant bank. The loan documents including promissory note are proved and therefore the burden is on the opponent No.1 to prove non passing of consideration. The statement of loan account is conclusive proof of entries therein. In the present case the statement shows that loan is disbursed in the saving account of the opponent No.1. The opponent No.1 during his cross examination has not denied his saving account number. In the circumstances, the burden has been shifted on the opponent No.1 to prove that the loan is not disbursed to him which the opponent No.1 failed to prove. The opponent No.1 has not called witness of the opponent No.4 for cross examination. The opponent No.1 even withdrawn revision filed by him challenging order dated 01/03/2019 and 20/02/2019 respectively passed on Exh.60 and 59 for calling witness on summons. Therefore the opponent No.1 has not proved that the loan is not disbursed to the opponent No.1 and transferred in the name of opponent No.4 by the disputant bank. In the circumstances, all opponents are jointly and severally liable for loan dues. The opponent No.1 may have right to recover the dues from the opponent No.4 factory, but the right of the disputant against the opponent No.1 to 4 does not extinguish. Therefore this is right case to set aside judgment of the trial Court dismissing the dispute against the opponent No.1 to 3 and decreeing the same holding them or their legal heirs as the case may be jointly and severally liable alongwith the opponent No.4 factory. The opponent No.1 has not discharged burden. The bank has proved the claim to decree the dispute against the opponent No.1 to 3. Thus, the impugned order dismissing the dispute against the opponent No.1 to 3 be set aside and the dispute be decreed against opponent No.1 to 3 holding them liable jointly and severally to repay the loan dues alongwith the opponent No.4 factory.

14) On the other hand it is submitted on behalf of the respondent No.1/opponent No.1 that the Judgment and Award are passed on merit and therefore interference of the Court is not warranted. The reason given by the appellant/disputant bank for granting decree against the opponent No.1 to 3 is not convincing. The burden is in fact upon the bank to prove loan disbursement in favour of the opponent No.1 which is not shifted as the bank has not produced cheque or voucher showing loan disbursement actually made to the opponent No.1. This is very much necessary on the ground that the opponent No.4 by way of W.S. has admitted that the factory has received loan amount and prayed for settlement of account and prayed for installments. Therefore burden is on the disputant bank to show actual disbursement to the opponent No.1 which is specifically denied by the opponent No.1. Therefore in the absence of loan disbursement to the opponent No.1 the trial Court has rightly dismissed the dispute. It is further submitted on behalf of the opponent No.1 that the opponent No.4 factory has admitted actual benefit of the loan amount. Therefore there is no question of saddling responsibility on the opponent No.1 to 3. In fact , the membership of the opponent No.1 to 3 is not proved. Hence the dispute is beyond scope of Sec.91 of the M.C.S.Act 1960. In the circumstances, the decree of the trial Court is correct and interference of this Court is not warranted.

15) The first and foremost objection of the opponent No.1/respondent No.1 is that he is not member of the disputant bank and therefore one of the criteria to bring the dispute within ambit of Sec.91 does not fulfill. The bank has not produced membership application on record. The documents like receipt towards admission fee and extract of resolution are not duly proved. The opponent No.1 has denied membership. In the circumstances, the documents on record are not sufficient to prove membership of the opponents with the disputant. The trial

Court has wrongly observed that non filing of membership application is mere irregularity and that does not go to the root of the matter. The documents on record are sufficient to show membership of the opponents. In fact the documents produced on record are though considered, the opponents allegedly became member after loan disbursement. At the time of alleged loan transaction, the opponent No.1 was not member of the disputant bank. Therefore also the dispute is not maintainable.

16) On the other hand it is submitted on behalf of the disputant bank that the observation of the trial Court about membership is not challenged by the opponents by filing cross objection or separate appeal. Therefore objection regarding membership is not require to be considered. As far as documents on record showing membership are concerned, there are extract of resolution admitting the opponents towards membership, the receipts showing payments towards membership and account statement showing payments towards membership are sufficient evidence to prove membership. In fact, the opponents are nominal members. In the circumstances, the date of resolution is not material to decide membership as resolution is not necessary for nominal membership but approval by authorized officer is sufficient. Unless membership granted, no question of granting loan. The loan application also shows that the opponents are nominal members. Moreover as per the judgment of the Hon'ble Bombay High Court (Aurangabad Bench) in the case of **S.B.Traders Vs Sant Eknath Sahakari Sakhar Karkhana** reported in **2017(6) Mh.LJ. 558,** for consideration of maintainability of the dispute U/Sec.91, on the date of filing of the dispute the disputant had become 'C' class member of the Karkhana, therefore the dispute is held maintainable. The relevant date for consideration of maintainability of the dispute U/Sec.91 is not the date of agreement/membership but the date of on which the dispute is instituted before the Co-operative Court. Therefore the dispute filed in the present form is squarely maintainable and objection raised by the opponents is without jurisdiction.

17) Though the original opponents have not disputed findings of the trial Court on the point of membership either by way of preferring appeal or by filing cross objection, even then this being pure question of law needs to be considered.

18) To look into the objection of the opponents it is necessary to have conspectus of relevant provisions of Sec.91 and Rule 19 of the M.C.S.Act 1960 and M.C.S.Rules 1961.

Section 91; Disputes

(1) Notwithstanding [anything contained] in any other law for the time being in force, **any dispute touching the constitution**, [elections of the committee or its officers other than elections of committees of the specified societies including its officer], **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] if both the parties thereto are one or other of the following :-

(a) **a society**, its committee, any past committee, -------or the official Assignee of a de-registered society]

(b) a member, past member or a person claiming through a member, past member or 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]

(c) a person other than a member --------- or person is or is not a member of the society.

(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…… a de-registered society.]
[Provided that, an industrial……….. of this section.]

[Provided that, an industrial……….. of this section.]

19) Rule 19 Condition to be complied with for admission for membership, etc.

No person shall be admitted as a member of a society unless-

(i) he has applied in writing in the form laid down by the society or in the form specified by the Registrar, if any, for membership;

(ii) his application is approved by the committee of the society in pursuance of the powers conferred on it in that behalf and subject to such resolution as the general body of members may in pursuance of the powers conferred on it in that behalf from time to time pass and in the

case of [nominal or associate] member, by an officer of the society authorised in that behalf by the committee;

(iii) he has fulfilled all other conditions laid down in the Act, the rules and the Bye-law;

(iv) in case of a firm, company or body corporate, society registered under the Societies Registration Act, 1860, a public trust registered under any law for the time being in force relating to registration of public trusts or a local authority, the application for membership is accompanied by a resolution authorising it to apply for such membership.

20) On reading the provisions of Sec. 91 it is clear that, in order to attract provisions of Sec. 91 of the M.C.S. Act, two conditions are prescribed by the section itself. In the first place, certain requirements are prescribed as regards to the nature of the dispute and in the second place certain requirements are prescribed as regards to the parties to the dispute. If conditions prescribed under both the heads are satisfied by a particular dispute, then and then only matter would be legally entertainable by Co-op. court for the purpose of adjudication and decision.

21) In the present case, according to the disputant bank the opponents are its members and the subject matter is recovery of loan advanced to its members. Therefore the dispute squarely falls within scope of Sec.91 of the M.C.S.Act 1960. Whereas the opponent No. 1 to 3 by wayof their W.S. specifically deny their membership and thus challenge jurisdiction of Co-operative Court to entertain dispute U/Sec.91 of the M.C.S.Act 1960. While looking into the evidence on record the disputant has submitted the documents at Exh.48 to 52. They are vouchers showing payment of admission fee of Rs.5/- by the opponent No.1 to 3. The Exh.51 is extract of resolution No.2 passed in the board meeting dated 28/03/2003 bestowing 'B' class membership on 347 applicants who had applied for membership during 26/02/2003 to 26/03/2003 and the account statement at Exh.52 showing payment made by the opponent No.1 to 3 of Rs.5/- each towards admission fee.

22) There is clear provision in Rule 19 (i) that no person shall be admitted as a member unless he applies in writing for membership and as per Rule 19(ii) membership is require to be approved by the General Body/ by managing committee as the case may be. In case of nominal/associate membership, there is no need of resolution of committee/General Body but approval by any officer of the society authorized in that behalf by committee is sufficient.

23) Admittedly, there is no evidence on record that the opponent No.1 has applied for membership and the committee/board of directors of the disputant bank has authorized any officer to approve nominal membership of the opponents. There is even no document on record that any officer of the bank has approved nominal membership of the opponents. The provisions of Rule 19(i) do provide necessity for application for membership and Rule 19(ii) provide approval of nominal membership by authorized officer. In the present case, in the absence of membership application on record and approval of membership by the authorized officer, there is no compliance made by the society accepting nominal membership of the opponents. Unless application is moved by a person contemplated U/Sec.22 of the M.C.S.Act 1960 showing intention to become member and there is approval by society either by passing resolution by managing committee/General Body or approving membership by Authorized Officer as the case may be, it cannot be said that compliance U/Rule 19 is made.

24) The Ld. Advocate for the disputant bank has harped upon receipts showing payment made towards membership and submitted that date of payment is date of approval of membership. Therefore from the date of execution of loan the opponents are members of the disputant bank. The receipts dated 22/03/2003 are at Exh.48 to 50 which are xerox copies shown to be verified by judicial clerk of the Court. However Para No.3 of examination in chief of witness of the bank Shrirang More at Exh.42 shows that the bank has produced verified xerox copies. If the receipts are considered to be proved, there is no application for membership and approval by Authorized Officer. Therefore in the absence of compliance provided U/Rule 19 it is not acceptable that nominal membership of the opponent No.1 to 3 has been proved. On the basis of so called proved receipts and resolution on record are seen, the opponents appear to have been admitted towards nominal membership vide resolution No.2 passed in the board of directors' meeting dated 28/03/2003. Therefore the confirmation of membership is given by the committee and not by the officer who is allegedly authorized for approval of 'B' class membership. When approval is given by the committee on 28/03/2003, the membership is considered to be given on 28/03/2003. Therefore if membership is considered to be proved, it has to be accepted that membership is given to the opponent No.1 on 28/03/2003 and not on 22/03/2003. Mere date of payment of fees does not constitute date of membership. Hence contention of the Ld. Advocate for the disputant bank that the date of payment towards share money/membership fee is required to be considered as date of membership, is not correct. Therefore the alleged membership is subsequent to the execution of loan documents dated 22/03/2003.

25) When the parties were allegedly entered in to agreement by executing loan documents on 22/03/2003, there was no relation of society and member between the disputant bank and the opponents. Therefore transaction entered into by the bank was with nonmembers. Therefore such transaction does not cover U/Sec.91 of the M.C.S.Act 1960.

26) The citation referred by the Ld. Advocate for the disputant is though binding not applicable for the reason that nominal membership of the opponent No.1 to 3 with the disputant bank is not proved. If membership is considered to be proved it is subsequent to the date of sanction of loan and execution of loan documents. Therefore the loan transaction allegedly entered into was not qua membership. Therefore the transaction does not cover U/Sec.91 of the M.C.S.Act 1960 as at the time of agreement sanctioning and allegedly accepting loan liability by executing loan documents, the opponents were not members of the disputant bank. There is even no ratification/contract by either parties, as that would be sufficient to bring the dispute within four corners of Sec.91 of the M.C.S.Act 1960. Thus the dispute more particularly the transaction in question certainly not within four corner of Sec.91 of the M.C.S.Act 1960. Therefore on this ground alone the dispute is require to be dismissed against the opponent No.1. The findings given by the trial Court on the point of membership are not correct and therefore liable to be set aside.

27) As far as the opponent No.2 and 3 are concerned they are alleged sureties and as far as opponent No.4 is concerned he is indemnifier. As per Sec.91(1)(d) of M.C.S.Act 1960 sureties of members need not be members of the society. Therefore membership of the opponent No.2 to 4 is not material to bring them within four corners of Sec.91 of the M.C.S.Act 1960. However as the membership of the opponent No.1 is not proved the dispute is not maintainable against the opponent No.2 and 3 as they are not sureties of member at the time of execution of loan documents. The opponent No.1 was not member at the time of loan execution and therefore the opponent No. 2 and 3 have not signed as sureties of member. In the circumstances, the dispute is require to be dismissed against the opponent No. 2 and 3 also. Therefore the finding of the trial Court on the point of membership are set aside. The decree passed against the opponent No.4 is not challenged and not subject matter of the present appeal. Therefore the decree passed against the opponent No.4 is not set aside.

28) Though the dispute is dismissed on the ground of maintainability, even then I am bound to answer remaining issues as per the provisions of Order XIV, Rule 2 of C.P.C. To support my view I am guided by the judgment passed by the Hon'ble Apex Court in **A.I.R. 1985 S.C., Page 736 and further A.I.R. 1984 Bombay Page 60**, wherein it is held that, when several contentions factual and legal are urged, and when there is scope of appeal from the decision of trial Court, it is desirable to avoid delay and protraction of litigation, that the Court should while dealing with any matter dispose off all the points and not merely rest its decision on one single point.

29) The trial Court has dismissed the dispute against the opponent No.1 to 3 on the ground that the loan disbursement in favour of the opponent No.1 is not proved. The Ld. Advocate for the disputant has submitted that the loan documents are duly proved which show loan disbursement. The loan application filed at Exh.23 shows that the opponent No.1 has applied for loan and he is having saving account No.5592. The documents at Exh.24 to 26 are undertaking of the opponent No.4 factory accepting loan liability. The loan bond at Exh.27 shows that the opponent No.1 has received loan amount of Rs.2,90,000/-. The loan agreement at Exh.28 shows that loan is received. Even promissory note at Exh.30 shows payment of Rs.2,90,000/-. The demand notice and receipts are at Exh.31 and 32. The statement of account filed at Exh.33 shows that amount of Rs.2,90,000/- has been transferred to saving account. The loan documents are proved. Therefore, the burden is on the opponent No.1 to prove non disbursement of loan amount. The disputant bank has successfully shifted burden on the opponent No.1 to disprove contention of the disputant about execution of loan documents and loan disbursement. Therefore the observations of the trial Court and objection raised by the opponent about non production of vouchers showing transfer of loan amount from loan account to saving account is without merit. The opponent No.4 is though beneficiary of loan amount, the disputant bank is least concerned with the said transaction. The transfer of loan amount by the opponent No.1 to opponent No.4 is not with express consent of the disputant bank. There is no agreement between the parties to that effect and no case of the opponent that the disputant bank has disbursed loan to the opponent No.4. Even the opponent No.4 has stated that the loan amount has been transferred by the opponent No.1 to the opponent No.4. Therefore the disputant is entitled to recover loan amount from the opponent No.1 to 4 jointly and severally. It is for the opponent No.1 to decide whether loan amount is to be recovered from the opponent No.4 or not. The opponent No.1 to 3 cannot absolve themselves from loan liability merely on the ground that the opponent No.1 is not beneficiary of loan amount. The disputant bank has successfully demonstrated loan disbursement in favour of opponent No.1 and therefore entitled for loan recovery. In the circumstances, observations of the trial Court dismissing the dispute against opponent No.1 to 3 are not correct and liable to be set aside. Therefore appeal be allowed by setting aside impugned judgment.

30) On the other hand the contention of the opponent No.1 is that the opponents have specifically denied loan transaction and execution of loan documents by way of their W.S.. Therefore entire burden is on the disputant bank. There is no document on record filed by the disputant bank showing transfer of loan from loan account to saving account especially on the background that the loan amount is admittedly received by the opponent No.4. The Court below has wrongly rejected the application of the opponent No.1 filed at Exh.54 to recall witness of the disputant for further cross examination on the basis of charge-sheet filed against the witness in the J.M.F.C. Court. The opponent No.1 has produced copy of charge sheet on record wherein it is mentioned that the bank, its employees, office bearers alongwith the board of directors of the opponent No.4 factory have mis-utilized loan amount allegedly disbursed to the sugarcane harvesters and transporters. The factory through witness has alleged that the amount is partially repaid. The trial Court while rejecting application at Exh.60 for witness summons to chief officer of opponent No.4 factory to produce documents pertaining to loan disbursement has observed that from the W.S. of the opponent No.4 it is evident that the loan amount though appears to be disbursed to opponent No.1 it is actually utilized by the opponent No.4. As amount is utilized by the opponent No.4 witness summons is not require to be issued. Therefore the opponent No.1 did not bring on record documents showing non disbursement to the loan to the opponent No.1. In fact the burden is on the bank and not on the opponent No.1. Therefore withholding of vital documents and not proving actual disbursement, the opponent No.1 is not liable for repayment. The observation of the trial Court dismissing the dispute against the opponent No.1 to 3 is correct. Therefore on merit also the dispute is rightly dismissed.

31) The trial Court is pleased to dismiss the dispute against the opponent No.1 to 3. Therefore the appeal came to be preferred by the disputant bank. The trial Court while dismissing the dispute against the opponent No.1 to 3 has observed that the disputant bank failed to prove that the loan amount of Rs.2,90,000/- has been disbursed by the disputant to the opponent No.1. The W.S. and oral evidence of the opponent No.4 factory clearly show that the loan was utilized by the opponent No.4 factory. The loan documents though show loan disbursement to the opponent No.1, the bank has not produced transfer voucher or cheque to show actual disbursement of loan amount. Therefore it is concluded that the bank does not possess any documentary evidence to show that the loan amount has been received by the opponent No.1.

32) The disputant bank has claimed loan amount from the opponent No.1 to 4. The testimony of first witness of the disputant bank shows that the opponent No.1 to 3 have executed loan documents and the opponent No.4 has executed documents accepting joint and several liability to repay the loan in question. The opponent No.1 to 3 in their W.S. have denied tendering of loan application and execution of loan documents. The opponent No.4 has specifically stated that the loan was raised by the opponent No.1 to 3 and utilized by the opponent No.4 and prayed for installments. The witness of the opponent No.4 in his evidence affidavit and during his cross has admitted that the opponent No.4 factory has received loan amount from the opponent No.1. The opponent No.1 in his examination in chief and during his cross examination has denied execution of loan documents, consideration passed, his signatures on the loan documents and execution of agreement with the opponent No.4 for harvesting and transporting of sugarcane etc.. In short the case of the opponent No.1 is of total denial. Therefore there is word against word. Therefore as per Sec. 101 of the Indian Evidence Act [105 of BSA 2023] initial burden to prove loan documents, execution and loan disbursement is on the disputant.

33) On perusal of the loan documents, the loan application filed at Exh.23 shows that it is dated 22/03/2003 and the loan has been sanctioned on 28/10/2002 vide resolution No.26/3. Therefore it is evident that sanction of loan is much prior to alleged tendering of loan application The stamps to the loan bond and loan agreement dated 22/03/2003 are dated 26/02/2003 and not purchased by the opponents. In the deed of hypothecation, no particulars of vehicle except registration number. There is no document on record showing ownership of hypothecated vehicle. On the date of loan sanction, no loan application was moved to the society and the society had no occasion to sanction the loan. The Loan sanction letter or extract of resolution is not on record. The indemnity documents of the opponent No.4 are dated 15/02/2003 which are prior to execution of loan documents and tendering of loan application.

34) The dispute is filed by Bhupal Dattatraya Chavan. The seal and signature is of administrative director. The extract of resolution No. 32/6 dated 29/10/2005 (Exh.22) authorizes chief officer Kannure, Junior Officer Masurkar and Sankpal, Clerk Aawale and Branch Mangar of Jat Branch to represent the bank. the signatory to the plaint is also authorized to file the dispute. However he is not examined as a witness.

35) Both evidence affidavits are filed by Shrirang More the then Manager at branch Jat during 26/08/2002 to 20/05/2004. The witness of the bank has though stated to be manager at Jat Branch during the relevant period, no document is produced to that effect. Except agreement at Exh.28 no other document shows that the loan documents are executed in the presence of witness. As the witness is deposing in his official capacity and his presence is proved at the time of execution of agreement, his testimony may be believed that the loan documents have been executed in his presence. Against his evidence the opponent No.1 has denied his signatures and execution of loan documents. Though the witness of the opponent No.4 factory has admitted during cross that the opponent No.1 to 3 have executed loan documents, however he has not stated to be executed in his presence and therefore his evidence regarding execution of loan documents by the opponent No.1 to 3 is not sufficient.

36) The testimony of the opponents is usually interested. The higher Courts time and again have held that the representative of the bank/institution deposing regarding execution of loan documents consider to be proved as the opponent has opportunity to cross examine the witness to verify truth and to falsify the statement made on oath. In the present case the witness is also one of the accused in the criminal case alongwith then directors of the disputant bank and the opponent No.4 factory regarding misappropriation of loan amount disbursed to the contractor and sugarcane harvester of the opponent No.4 factory in the year 2001-2002 and 2002-2003 more particularly with allegation that the loan amount shown in the name of borrowers on 22/03/2003 and on 24/03/2003 has been withdrawn and transferred on the very date in the account No.28 of the factory and later on earlier loan accounts of the harvesters shown to be cleared. The witness of the bank has flatly denied during his cross examination about details in criminal cases. He has even not shown willingness to produce documents showing loan disbursement. In the circumstances, on his mere testimony inference of execution of loan documents and non disbursement of loan amount cannot be drawn.

37) The disputant bank has harped upon the promissory note, account extract and note in the loan application that the opponent No.1 bears saving account No.5592. The opponent No.1 has denied execution of promissory note and loan application. He has even denied saving account number. Therefore the disputant bank was bound to prove independently saving account of the opponent No.1, execution of promissory note and passing of consideration. The bank on its own could have produced transfer vouchers, day book, copy of saving account and other relevant documents to pin point passing of consideration in favour of the opponent No.1. Inspite of repeated questions asked to the bank during cross examination of witness, the disputant bank miserably failed to produce these documents and withheld vital documents regarding loan disbursement. These documents were very much necessary on the background of W.S. and evidence of the opponent No.4 that loan is received by the opponent factory and shown willingness to repay the same. The bank even not produced any document to show that the opponent No.1 has transferred amount lying in his saving account in the account of the opponent No.4. In the circumstances, the disputant bank failed to shift burden on the opponents to disprove loan documents and non-passing of consideration. Therefore mere entries in the statement of account are not sufficient to hold contentions of the disputant bank that loan was transferred in the saving account of the opponent No.1. The presumptive value to the entries in the statement of account U/Sec.40 of the M.C.S.Act 1960 cannot be considered proof of loan disbursement. Therefore adverse inference is drawn against the disputant bank that the loan documents and more particularly disbursement of loan amount are not proved.

38) In the circumstances, the trial Court has rightly appreciated position and dismissed the dispute. There is inaction of the opponent No.1 in calling opponent No.4 for cross examination as well as abstinence of the opponent No.1 challenging order of the trial Court refusing to issue witness summons to the opponent No.4 to produce documents to show payments and issuance of witness summons to the police station to prove the complaint lodged against the disputant bank and opponent factory and its office bearers. However these acts do not lead to consider case of the disputant bank, because the bank independently failed to prove loan execution and disbursement. The bank failed to produce documents in its custody which could have thrown light on the true facts. In the circumstances, order of the trial Court dismissing the dispute is correct.

39) Had the loan proved to be disbursed to the opponent No.1, the disputant bank could have claimed loan amount from the opponent No.1 to 4 jointly and severally because there is no agreement between the parties to disburse loan to the opponent No.4 by the creditor bank. The internal arrangement between the opponent No.1 to 4 has no concerned with the disputant bank. Therefore in the present case to whom the loan amount is disbursed is material question to hold the opponent No.1 to 3 liable for loan repayment. The civil cases are to be decided on the principle of preponderance of probability. On the evidence available on record there is no inclination to accept contention of the disputant that the loan is disbursed to the opponent No.1. In the circumstances, contention of the opponents for dismissal of dispute on merit is rightly considered by the trial Court.

40) In view of above discussion the disputant/appellant is miserably failed to prove membership of the opponents with disputant bank that too at the time of execution of loan. The bank even failed to prove loan disbursement. Therefore order of the ld. trial Court dismissing the dispute is correct. In the circumstances, the appeal fails. Thus the argument advanced by either parties is dealt with accordingly, and **the point No.1 to 3 are answered as per final order.**

41) POINT NO.4.

In view of above discussion, the Appeal No.28/2026 is hereby dismissed. Thus , the argument advanced by either parties is dealt with accordingly and the In the peculiar circumstances, there is no cost of appeal. R & P to be sent back to the trial Court. Interim stay granted is hereby vacated.

Hence the order,

ORDER

01] The Appeal No.28/2026 is hereby dismissed.

02] In the peculiar circumstances, there is no cost of appeal.

02] R & P to be sent back to the trial Court.

04] Interim stay granted is hereby vacated.

VAISHALI BALKRISHNA KULKARNI

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Pune
Date:04/08/2026

(V.B.Kulkarni)
Member,
Maharashtra State Co.Op. Appellate Court Mumbai, Bench at Pune.

ORDER

The earlier interim stay passed below Exh.No.5 dated 17/06/2026 granted by this Court is continued till 15/09/2026.

VAISHALI BALKRISHNA KULKARNI

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(V.B.Kulkarni)
Member,
Maharashtra State Co.Op. Appellate Court Mumbai, Bench at Pune.