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In the Court of Judge, Co-operative Court Satara at Satara.
(Presided over by Smt. Swapnali Methaji Waghmare, Judge)

Dispute No. CCT 658/2010
CNR No. MHCO110000902010

Order

(Below application Exh.48)

The present application is filed by the opponent no. 04 and he prayed to reject the dispute under order VII Rule 11 of CPC.

02. The opponent no. 04 filed an application below exh. 48. Opponent no. 04 stated that, in view of the claim, the disputant has filed the present dispute for the recovery of amount of Rs. 4,74,343/- for the alleged misappropriation of amount. The opponents submitted that, the dispute is not maintainable and this Court has no jurisdiction in respect of this dispute. This dispute is barred by the provision of Sec 91 of MCS Act, 1960 and the dispute has no any cause of action. The opponent further stated that, there was no privity of contract between the disputant society and the opponent no. 01 to 04 in respect of contract arising out of the claim amount. The dispute is barred by non-joinder of necessary parties. The opponents further stated that, there was no privity of contract between the disputant and the opponents. The opponent no. 04 further stated that, the opponent no. 01 is not coming in the witness box and

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state his case on oath and available for cross-examination therefore, his W.S cannot be read in the evidence. As a debtor, the opponent no. 01 has neither given permission to the disputant society to recover his debt from the opponent no. 04 nor filed recovery proceeding against the opponent no. 04. Therefore, the opponent no. 04 is not liable for the alleged loan amount. On these grounds, the opponent prayed to reject the dispute against the opponent no. 04 under Order VII Rule 11 clause (a) and (d) of CPC.

03. The disputant filed say at Exh. 49. The disputant stated that, the present application filed by the opponent no. 04 is only filed to delay the matter. The said application is given to stop the oral evidences given by the parties as the opponent no. 04 has committed misappropriation in the disputant society. The disputant has completed its oral evidence from the opponents has commenced across 136 connected disputes regarding the misappropriation of funds. The claims arise from the alleged fraud and misappropriation committed by the opponent no. 04 who was serving as a Director and Secretary for long period of time revealed during Test Audit. The disputant contends that, provisions under Order VII Rule 11 do not apply to dismiss claims founded on fraud at this stage, praying for the rejection of the opponent's application. The disputant asserts that, the opponent's objection regarding the Court's lack of jurisdiction is baseless. The disputant argues that the cause of action starts running from the date the fraud was discovered. The disputant contended that, the present application is filed to prolong the hearing of the case. The prayers in the application are without any support of evidence, documents and is to prolong the dispute. The application is false and frivolous and it amount to fraud on court as there are wrong and illegal grounds are raised in the application. This is

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nothing but to delay the proceeding. Therefore, the disputant prayed for the rejection of the application.

04. After hearing both the parties and perusing the documents on record following points arise for my consideration.

<u>Sr. No.</u>	<u>Points</u>	<u>Findings</u>
1.	Whether the dispute is liable to be rejected under Order VII Rule 11 of CPC ?	In Negative
2.	What order ?	As per final order

REASONS

AS TO POINT NO. 1 AND 2

05. As per the case of the disputant, the opponents are entitled to repay the disputed amount. The opponent no. 04 has misappropriated the amount of the disputant since year 1975. The opponent no. 01 to 03 are borrower and sureties who have borrowed loan from the disputant but failed to repay the same. The disputant also contended that, the opponent no. 04 misappropriated the loan amount sanctioned in the name of opponent no. 01 to 03. The disputant stated that, the misappropriation at the hands of the opponent no. 04 revealed from the Test Audit. The disputant argued that, the misappropriation alleged to have been committed by the opponent no. 04 will be proved at the time of hearing of case

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and production of connected evidence. The Test Audit is a strong evidence against the opponent which became helpful to prove the case against the opponent at the end of trial. Therefore, the disputant has filed the present dispute against the opponent.

06. Perusal of record. It is not disputed that, the opponent no. 04 was serving in the disputant Patsanstha since year 1975. The opponent not disputed that, misappropriation of amount has been committed in the disputant Patsanstha. It is only dispute that, whether the alleged misappropriation has been committed by the opponent no. 04 or not. The disputant has sought relief in the present dispute in respect of recovery of misappropriated amounts from the opponents. Whereas the opponent no. 04 stated that, avernments in the dispute are not maintainable in this Court under Sec 91 of the MCS Act. There is no cause of action for filing this dispute. There is not privity of contract between the disputant and the opponents. The dispute is required to be rejected for non-joinder of necessary party. There is no any agreement between the disputant and opponents about the recovery of debt from opponent no. 04. The Advocate for the opponent relied on following case law.

Southern Automatic Industries Pvt. Ltd Vs. Mrs. N. S. Talpade

1983 (3) Mh.LJ

The Hon'ble Court held in this case that, *"for deciding question of jurisdiction, one must look to the avernments in the plaint as a whole and it is not permissible to look to the written statement. Jurisdiction of Court must be*

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determined only from avernments in the plaint and not on the basis of defenses in written statement or on the basis of issues raised and it is only the Court in which the suit has been filed which has jurisdiction to determine the same."

07. At this stage, it is required to see Sec 91 of MCS Act.

(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 [***]. 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, any past or present officer, any past or present agent, any past or present servant or nominee, heir or legal representative of any deceased officer, deceased agent or deceased servant of the society, or the Liquidator of the society for the official Assignee of a deregistered society].

(b) a member, past member of a person claiming through a member, past member of a deceased member of society, or a society which is a member of the society for a person who claims to be a member of the society;

(c) a person other than a member of the society, with whom the society, has any transactions in respect of which any restrictions or regulations have been imposed, made or prescribed under sections 43, 44 or 45, and any person claiming through such person;

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(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 Liquidator of such a society for deregistered soci or the official Assignee of such a de-registered society).-----

(iv) a refusal or failure by a member, past member or a nominee, heir or legal representative of a deceased member, to deliver possession to a society of land or any other asset resumed by it for breach of condition as the assignment.

08. This provision under Sec 91 contains non-obstante clause as the opening word of provision indicate that, notwithstanding anything contained in any other law for time being inforce, dispute touching the management or business of the society shall be referred to the co-operative court. Thus, in order to constitute an issue which amounts to dispute entertainable by the Co-operative Court, it must satisfy two conditions i.e the dispute must be between member and the society and it amongst other touches to the management or business of the society.

09. A legal procedure for recovery of monitory losses or damages through a Civil Court Action is to file and pursue a Civil Recovery Suit. A party often brings these kind of litigation attends another to recover damages. In such

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circumstances, the dispute should contain the facts constituting cause of action and when it arose, facts showing jurisdiction of Court, statement of value of subject matter of dispute for the purpose of jurisdiction and Court fees etc. Considering the contents of dispute, it appears that, the disputant has mentioned detail amount of misappropriation, the disputant also mentioned the period during which the alleged misappropriation of amount was committed. The disputant further mentioned about forged entries in the registrar on the basis of which misappropriation of amount was committed. The disputant has given details that, such type of dispute is entertained by this Court. The disputant has filed related documentary evidence in support of the pleadings. However, it appears that, the disputant has well mentioned required contents in this dispute which are triable by this Court.

10. The dispute can be instituted under Order IV of Civil Procedure Code before the Civil Court and under Sec 91 of MCS Act before Cooperative Court for recovery of money. Therefore, the dispute must be description of facts of case and the exact amount being claimed along with any interest. As per the Indian Contract Act, its provision governs any agreement or contract between two more parties. If one party not fulfill their obligations, a recovery suit can be filed. But, not all breaches leads to smooth recovery. It is critical to understand, when a claim is valid and when it merely chasing a lost caused. Such type of dispute being primarily of Civil nature by itself is not a ground to quash the proceeding because in cases of forgery or fraud, there would always be some element of Civil Nature.

11. On perusal of dispute, it appears that, there is some material or

contention in the dispute which may not be sufficient enough to immediately to reach conclusion of guilt of the opponents. But, has some potentiality to indicate connivance of the opponents with the disputant patsanstha for creating forged entries in the document with intention to misappropriate the amount. It cannot be overrule that, the financial position of the disputant and the borrower have ultimately brought severe financial crisis to discredit the disputant. Therefore, though it is the contention of the opponent that, the Test Audit is conducted after institution of this dispute, but the contentions in dispute are prima-facie found supportive with the Test Audit. However, it cannot say that, there is no cause of action for filing this dispute. It is not disputed that, the opponent no. 04 was serving in the disputant patsanstha. Therefore, possibility of committing misappropriation of amount by misusing official capacity cannot be ignored. In such circumstances, though it is mentioned in above cited case law that, not to look into the written statement, but as stated above, avernments in the plaint also sufficient to determine cause of action. Hence above cited case law is applicable here.

12. The opponent stated that, there is no privity of contract between disputant and opponent. Therefore, the dispute is barred by provisions of Indian Contract Act. But, as stated above, the opponent no. 04 has not denied that, he was working in the disputant patsanstha. The nature of transaction being official transaction. It is prima-facie shows that, the opponent no. 04 was serving as a Director and Secretary and having vast power in his hands during his service. Therefore, possibility of handling this financial transaction by the opponent cannot be ignored. Therefore, it found that, the present suit is recovery of misappropriated amount but the same is not based on the bill of exchange or

negotiable instrument. After that also, the dispute is tenable and there is no bar of provision of Indian Contract Act. Because, as per the cause of action, the dispute is depends on false entries in the daily registars on the basis of the opponents have alleged to have been committed misappropriation.

13. The provision of Sec 91 prevails over any other law for the time being inforce. When the statute make specific provision with regard to the creation of forum, such forum only would be empowered to decide the dispute. The position of law on the point is clear to state that, in view of Sec 91, there is no bar for co-operative court to decide any dispute between the member and society and dispute in respect of recovery of misappropriated amount. The opponent no. 04 further stated that, the opponent no. 01 is not coming in the witness box and states his case on oath and available for cross-examination. Therefore, this written statement cannot be read in the evidence. Though it is true that, till today, the opponent no. 01 has not examined himself but this is the matter of trial. At the conclusion of trial, it would be decided as to whether the written statement of the opponent no. 01 is acceptable in the evidence or not. However, the written statement of the opponent no. 01 and non-examination of the opponent no. 01 as a witness cannot become ground to reject the dispute.

14. Further the opponent stated that, the opponent no. 01 who is a borrower has not given any permission to the disputant to recover his debt from the opponent no. 04. The opponent also stated that, there is no any agreement between disputant and the opponent about recovery of debt from the opponent no.04. However, the disputant having no locus-standi to file dispute for debt of opponent no. 01 against the opponent no. 04. But here, it is required to note that,

in the dispute also, the disputant has made separate allegations of misappropriation of loan amount of the opponent no. 01. In such circumstances, the opponent no. 04 cannot rely his case on the pleading mentioned in the dispute against the opponent no. 01. The opponent no. 04 has to prove his case independently. It is also required to note that, prima-facie the dispute shows that, no any liability of debt of the opponent no. 01 is on the shoulder of the opponent no. 04. The disputant has separately mentioned about alleged conduct of opponent no. 04 for misappropriation in the disputant's statement. Therefore, these grounds, given by the opponent no. 04 are not sufficient to reject the dispute.

15. Considering the averments as stated above in the dispute now I deal with the provisions of Order VII Rule 11 of CPC which provides that the plaint shall be rejected on the ground that (a) where it does not disclose a cause of action (b) where the relief claimed is undervalued (c) where the relief claimed is properly valued but the plaint is written upon the paper insufficiently stamped (d) where the suit appears from the statement in the plaint to be barred by any law (e) where it is not filed in duplicate (f) where the plaintiff fails to comply with the provisions of Rule 9. While deciding the application under Order VII Rule 11 the contents of the plaint shall be considered as it is. Perusal of the entire statement filed by the disputant to this application it is seen that as per the contents of the test audit, the alleged misappropriation committed by the opponent is revealed. Therefore, from these contents of dispute, it appears that the disputant has given clear cause of action for institution of this dispute.

16. Therefore the averments in the dispute are not barred by section 91

of the MCS Act because the dispute is pending for hearing and the proof of misappropriation of amount is required to decide the liability. Only on the basis of pleading, it cannot be finally held about whether the misappropriation of amount committed by opponent or not. There must be detail evidence required to conclude the issue between parties. Hence I find substance in the submissions of the learned advocate for the disputant.

17. As per the contentions in the dispute, the disputant stated that, the opponent has committed misappropriation of huge amount. For that they have instituted Criminal Case against the opponent. Here, it is required to see, what is the meaning of misappropriation? The misappropriation is the intentional, illegal use of the property or funds of another person for one's own use or other unauthorized purpose. However, misappropriation is committed when the property or funds involved have been lawfully entrusted to the person. In circumstances where the funds are accessible to but not entrusted to the person is not misappropriation but it is a misapplication of power. Misappropriation is an act of stealing something that the person has been asked to take care of and using it for himself. In other words, it can also be said that, misappropriation is unauthorized, improper or unlawful use of funds or other property for the purpose other than that for which intended.

18. On the basis of above referred concept of misappropriation, it is required to again see the contentions in exh. 01. In the dispute, the disputant stated that, the opponent no. 04 was serving as a Director and Secretary from year 1975 till 2008. During that period, the opponent no. 04 has made false entries and misappropriated huge amount. However, here it appears that, as per the say of

disputant the opponent has misused his position and misappropriated amount. Here, it can say that, if any person is entrusted with someone else money but uses it for their own benefit then such person might be committed misappropriation of amount. In the dispute, the disputant has sought for relief of recovery of misappropriated amount which is well within the provision under Sec 91 of MCS Act, 1960.

19. The advocate for the disputant argued that the aforesaid application has preferred under Order VII Rule 11 of the Civil Procedure Code, 1908, however, the opponent has miserably failed to point out under which Sub Rule of 11, the said application has been preferred and hence, on this ground itself, the application deserves to be rejected with heavy exemplary cost. No legal and lawful ground or contention has been raised by the opponent which warrant for rejection of complaint under any Sub Rule of the Rule 11 of Order VII of Civil Procedure Code 1908 and hence on this ground itself, the application is liable to be rejected with cost. As per the audit report, it is prima-facie seen that, the opponent no. 04 responsible for the misappropriation of amount. For that purpose, criminal cases are also pending against him. On the other hand, all the opponents have used the misappropriated amount. But, to prove all these facts, detail hearing of case is necessary. However, the reasons mentioned by the opponent in this application are not sufficient to reject the dispute under Order VII Rule 11 of CPC. Considering all such circumstances, the application of the opponent no. 04 not deserve to allow. Hence, I answer point no. 01 in negative and point no. 02, I pass following order.

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Order

1. Application at Exh.48 is rejected.
2. Parties to bear their own cost.

(Dictated and Pronounced in Open Court.)

Place : Satara
Date : 24/ 08 / 2026

(Smt. Swapnali Methaji Waghmare)
Judge
Co-operative Court, Satara