MHCO300004752024

Dispute Filed On	:	01.07.2024
Dispute Register On	:	01.07.2024
Dispute Decided On	:	11.08.2026
Duration	:	Y M D 02 01 10

IN THE COURT OF JUDGE, CO-OPERATIVE COURT AT AKOLA
(Presided over by Mr. V. V. Joshi)

Dispute No.466/2024. **Exhibit No.51.**

Mahesh Urban Co-op Credit Society Ltd., Malkapur R.No.1227, Tq. Malkapur, Dist. Buldhana. Through It's Manager -Sunil Shriram Agrawal. } Disputant...

---- V/s -----

1. Yashraj Trading Company
Through it's Proprietor -
Sachinsingh Rameshsingh Rajput
Aged - 47 Years, Occu. Business,
R/o.Shivshakti Nagar, Malkapur,
Tq.Malkapur, Dist.Buldhana. }
2. Nitin Chandrakant Patel
Aged - Adult Years, Occu. Business,
R/o.Ganpati Nagar, Part-1, Malkapur, Tq.Malkapur, Dist.Buldhana. }
3 Dr.Vishal Lalchand Zanwar
Aged - Adult Years, Occu. Doctor,
R/o.S.B.I. Colony, Malkapur,
Tq.Malkapur, Dist.Buldhana. } Opponents...

CLAIM: DISPUTE FOR RECOVERY OF RS.25,44,802/-

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Appearance :

Learned Adv.P.M. Rathi for the Disputant.
Learned Adv.D.S. Rathi for Opponent No.1.

Dispute proceeded Ex-parte against Opponent Nos.2 & 3.

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:: JUDGMENT ::

(Delivered on this day of 11th day of August, 2026)

1. The disputant has filed instant dispute under Section 91 of the Maharashtra Cooperative Societies Act (hereinafter referred as 'the M.C.S. Act') for recovery of an amount of ₹25,44,802/-, together with future interest, from the opponents under Section 91 of the Maharashtra Cooperative Societies Act

FACTS OF THE CASE :-

2. According to the disputant, Opponent No.1 was the principal borrower and Opponent Nos.2 and 3 stood as guarantors for the loan transaction. The disputant contended that the loan of ₹18,00,000/- was sanctioned on 15.01.2022 and that the opponents executed the requisite loan documents, including agreement, promissory note and mortgage document.

3. The disputant further contended that, Opponent No.1 approached the Society for a loan on 20.12.2021 and the Society sanctioned ₹18,00,000/- on 15.01.2022. Opponent Nos.2 and 3 allegedly guaranteed the said loan. According to the Society, the opponents agreed to repay the amount on demand with interest at 13% per annum with monthly rests, and in case of default an additional 2% penal interest was agreed.

4. The Society states that the loan account was regularly maintained and the transactions were entered therein. On the basis of the account statement, it claimed ₹25,39,802/- as outstanding and ₹5,000/- towards sundry and typing expenses,

making a total claim of ₹25,44,802/-. It also prayed for future interest at 15% per annum with monthly rests.

5. After service of suit summons, Opponent Nos.2 and 3 failed to appear. Hence, the dispute is proceeded ex-parte against them. Moreover, Opponent No.1 appeared and filed his written Statement below Exhibit No.31. Opponent No.1 has denied the correctness of the claim. His principal defence is that although a loan of ₹18,00,000/- was sanctioned, only ₹17,00,000/- was actually made available to him and approximately ₹1,00,000/- was deducted towards various charges.

6. Opponent No.1 has admitted that a loan of ₹18,00,000/- was sanctioned, but has disputed the actual amount disbursed, the correctness of the account, the amount of interest and penal charges and the amount claimed by the Society. He has specifically contended that he had already paid more than ₹10,00,000/- and that the Society had failed to correctly account for such payments.

7. He further contends that, he paid more than ₹10,00,000/- towards the loan, but all such payments were not reflected in the account extract. He has also challenged the levy of interest, penal interest, NPA charges and other charges and alleged that the account statement is manipulated and unreliable. He has also challenged the jurisdiction and limitation of the proceeding and contended that, the opponents were not members of the Society. However, no documentary evidence has been produced by Opponent No.1 to substantiate his alleged payments

or other defences.

8. Perused the record and documents. Heard both sides vehemently.

9. In view of the pleading of the disputant my learned predecessor framed following issues at Exhibit No.32 and my finding with reasons are as follows.

SR.NO.	ISSUES	FINDINGS
1	Whether the disputant proves that opponent No.1 obtained loan of Rs.18,00,000/- on 15.01.2022 at the rate of 13% p.a. interest from the disputant ?	In the Affirmative.
2	Whether the disputant proves that opponent Nos.2 and 3 stood as guarantors for the loan obtained by opponent No.1 ?	In the Affirmative.
3	Whether the disputant proves that opponent No.1 defaulted to pay the outstanding loan amount of Rs.25,39,802/- as on 31.05.2024 of loan obtained from the disputant ?	Partly In Affirmative.
4	Whether the disputant proves that opponent Nos.1 to 3 jointly and separately liable to pay Rs.25,39,802/- as on 31.05.2024 and 5,000/- towards sundry and typing	Partly in Affirmative.

	expenses ?	
5	Whether the disputant proves that opponent Nos.1 to 3 are jointly and severally liable to pay interest @13% p.a. and penal interest @2% p.a. on outstanding loan amount ?	Partly in Affirmative.
6	Whether opponent No.1 proves that he has paid more than Rs.10,00,000/- to the disputant society and the dispute is filed on the basis of false and bogus documents ?	In the Negative.
7	Whether the disputant entitled for the relief claimed ?	Partly in Affirmative.
8	What order and award ?	As per final order

:: REASONS AND FINDINGS ::

10. In order to strengthen and consolidate the dispute claim, on behalf of disputant it's representative Shri Sunil Shriram Agrawal has only examined at Exhibit No.18. He reiterated as per his plaint. Hence, to avoid repetition, it is not reproduced herein again.

11. Apart from the oral evidence, disputant has relied upon the following documentary evidence viz. Resolution (Exhibit No.22), Loan Demand Application (Exhibit No.23), Agreement (Exhibit No.24), Promissory Note (Exhibit No.25), Mortgage Deed (Exhibit No.26), Certificate (Exhibit No.27), Account Statement (Exhibit No.28) and Share Certificates (Exhibit Nos.40 and 41).

12. After leading oral as well as documentary evidence, disputant has closed it's evidence vide pursis at Exhibit No.39. No documentary evidence has been filed by the opponents, except an application below Exhibit No.8 in which he stated that, he is ready to deposit the loan amount.

AS TO ISSUE NOS.1 AND 2 :-

13. These issues are taken together as they arise out of the same evidence. The Society has examined it's Manager Shri Sunil Agrawal as it's witness below Exhibit No.18. The witness has deposed regarding the loan transaction and has stated that the relevant original loan documents were brought before the Court. The documentary record includes the loan application, agreement, promissory note and mortgage document.

14. More importantly, Opponent No.1 himself has not denied the basic fact that he obtained a loan of ₹18,00,000/- from the Society. His defence is principally directed towards the actual disbursement, subsequent repayments and correctness of the outstanding balance. Thus, the basic loan transaction stands substantially admitted.

15. Under Section 91 of the Maharashtra Co-operative Societies Act, 1960, a dispute touching the business of a Society between the Society and it's member, and a claim involving a surety of a member, falls within the statutory jurisdiction of the Co-operative Court. The provision expressly includes a claim by a Society for a debt or demand due from a member and disputes involving sureties. In the present case, the loan documents relied

upon by the Society, coupled with the admission of Opponent No.1 regarding the loan transaction, establish the existence of the loan transaction.

16. As regards Opponent Nos.2 and 3, the Society has specifically pleaded that they stood as guarantors and has relied upon the loan documents. No written statement, evidence or cross-examination has been offered by them, as they have been proceeded ex-parte. Therefore, the evidence of the Society on this aspect has remained substantially unchallenged. Accordingly, issue Nos.1 and 2 are answered in the affirmative.

AS TO ISSUE NO.3 :-

17. The principal controversy in the present dispute is not the existence of the loan but the correct amount legally recoverable from the opponents. The Society claims ₹25,39,802/- as outstanding as on 31.05.2024. It relies substantially upon the statement of account at Exhibit No.28. However, the mere production of an account extract does not automatically establish every debit entry, interest entry, penal charge or other charge appearing therein.

18. The settled legal position is that entries in books of account are relevant, but they are not, by themselves, sufficient to fasten liability upon the opposite party. Even regularly maintained books of account cannot, by themselves, be treated as sufficient evidence to charge a person with liability; ordinarily there must be further evidence supporting the underlying transaction.

19. The same principle was reiterated by Hon'ble Supreme

Court in *Central Bureau of Investigation v. V.C. Shukla & Ors., (1998) 3 SCC 410*, wherein the Hon'ble Apex Court explained that

> *"the statutory relevance of account entries does not dispense with the requirement of corroboration when liability is sought to be fastened upon another person"*.

The said principle assumes particular significance in the present case because the exact outstanding amount is seriously disputed. The Society's own witness admitted in cross-examination that the entries in Exhibit No.28 were made on the basis of vouchers, but the vouchers themselves were not produced. He also admitted that he did not personally make the entries in the account. He further admitted that the documents relating to the interest calculation of ₹5,64,561/- and account interest of ₹13,703/- were not separately produced and that such interest was generated automatically through the computer system.

20. The witness further admitted that the alleged demand notices issued before filing the dispute were not produced. Therefore, the Court is faced with a situation where the Society seeks recovery of ₹25,39,802/- but has not produced the primary supporting material necessary to verify how the amount was arrived at. The discrepancy becomes still more significant because the witness, during cross-examination, was confronted with the amount of ₹19,61,338/- appearing in the account extract and denied that this was the only amount recoverable. Thus, the oral evidence itself does not suffice and explain the claim of ₹25,39,802/-. The Court cannot grant an award merely because

the claimant is a co-operative credit society. The Society, like any other claimant, must establish the amount legally due by reliable evidence.

21. It is pertinent to note that, where the correctness of the account is disputed, further evidence is necessary. The principle applies with greater force where the claimant seeks recovery of substantial amounts towards interest, penal interest and other charges. In the case in hand, the loan transaction is proved, but the precise outstanding balance of ₹25,39,802/- as on 31.05.2024 is not satisfactorily proved. Consequently, I answered Issue No.3 partly in the affirmative.

AS TO ISSUE NO.4 :-

22. Once the basic loan transaction and guarantee are proved, the borrower and guarantors cannot escape liability, merely because the Society has failed to establish the inflated amount claimed. So, the disputant is entitled for the relief to the extent established by the evidence. The amount of ₹19,61,338/- is the figure which emerges from the account and was specifically put to the Society's witness during cross-examination. The Society's witness did not accept that the said figure represented the total liability, but the Society has not produced satisfactory supporting material to establish why the amount should be increased to ₹25,39,802/-. Therefore, the Society is entitled to recover only ₹19,61,338/-. Moreover, it appears from the bank statement marked as Exhibit No.28 produced by the disputant that, out of the amount of ₹19,61,338/-, an amount of ₹46,680/-

has been shown as “other miscellaneous expenses”. Therefore, after deducting ₹46,680/- from ₹19,61,338/-, the disputant is entitled to recover ₹19,14,658/-. As regards ₹5,000/- towards sundry and typing expenses, there is no satisfactory documentary evidence establishing that this amount constitutes a legally recoverable debt under the loan transaction. Hence, the claim for ₹5,000/- is rejected. Hence, Issue No.4 is answered partly in the affirmative.

AS TO ISSUE NO.5 :-

23. The Society asserts that the contractual rate of interest was 13% per annum with monthly rests and that an additional 2% penal interest was agreed. The evidence of the Society's witness, however, creates a serious difficulty regarding the penal interest. The witness specifically admitted that the agreement at Exhibit No.24 does not contain a stipulation regarding 2% penal interest. He sought to justify the same by stating that it was according to the bye-laws. However, the relevant bye-laws were not produced. He also admitted that the document relating to the applicable interest rate was not filed.

24. A contractual term cannot ordinarily be established merely by oral assertion of an employee when the written contract relied upon by the claimant does not contain the alleged term, particularly when the claimant itself relies upon the written loan agreement. Therefore, the Society has failed to establish a contractual right to recover an additional 2% penal interest. There is also an important distinction between contractual/normal

interest and penal interest. The Constitutional Bench of Hon'ble Supreme Court in *Central Bank of India v. Ravindra & Ors., (2002) 1 SCC 367*, held that "*penal interest is in the nature of a penalty for default and cannot be capitalised so as to earn further interest upon penal interest*".

25. In the case in hand, the Society has not established the contractual or statutory basis for capitalising 2% penal interest and incorporating the same into principal for further calculation of interest. Hence, the claim for 2% penal interest cannot be allowed. As regards the contractual rate of 13%, the loan documents contain the relevant contractual stipulation according to the Society's case. Section 96 of the Maharashtra Co-operative Societies Act specifically provides that in a money claim preferred by a Society against a member, the amount of award representing interest shall not be less than the interest accrued at the contractual rate, subject to the statutory qualification contained therein. However, Section 96 does not relieve the Society from proving the principal outstanding on which such interest is to be calculated. A contractual rate cannot be applied to an unproved or incorrectly computed principal balance. Therefore, I answered Issue No.5 partly in the affirmative.

AS TO ISSUE NO.6 :-

26. Opponent No.1 has specifically pleaded that he has paid more than ₹10,00,000/- towards the loan. However, no receipts, bank statements, payment vouchers or other independent documentary evidence have been filed by him.

Therefore, the specific defence that more than ₹10,00,000/- was paid is not independently established by evidence. Nevertheless, the failure of Opponent No.1 to prove his alleged payments does not automatically prove the Society's claim of ₹25,39,802/-. The burden of proving the amount claimed remains upon the Society. It is a settled principle of evidence that the weakness of the defence cannot substitute for proof of the claimant's own case. Consequently, Opponent No.1 has failed to prove that he paid more than ₹10,00,000/- or that all the documents relied upon by the Society are false or fabricated. Hence, Issue No.6 is therefore answered in the negative.

AS TO ISSUE NO.7 :-

27. The Society has succeeded in proving the basic loan transaction of ₹18,00,000/- and the existence of the guarantee transaction. However, the relief actually claimed is not merely recovery of the principal loan transaction. The Society seeks an award of ₹25,44,802/- together with future interest at 15% per annum with monthly rests. The Court cannot grant a money award for an amount which has not been satisfactorily established by evidence.

28. The claim of ₹25,44,802/- consists of the alleged outstanding amount of ₹25,39,802/- plus ₹5,000/- towards sundry and typing expenses. The evidentiary deficiencies discussed above render the claimed figure unreliable. Further, the prayer for future interest at 15% per annum is also unsupported by the contractual documents placed on record. The Society's own

case is that the contractual rate was 13% per annum. No satisfactory documentary basis has been produced for increasing the rate to 15% for the future period. The Court cannot rewrite the contract between the parties or award a rate of interest merely because such rate has been prayed for. Consequently, the disputant has established its partly entitlement to the relief in the form in which it has been claimed.

29. Opponent Nos.2 and 3 are guarantors. Their liability is co-extensive with that of the principal borrower, subject to the terms of the guarantee. Since the Society has established the guarantee transaction and the guarantors have remained ex-parte, they are liable jointly and severally with Opponent No.1 for the amount awarded. Hence, Issue No.7 is answered partly in the affirmative.

AS TO ISSUE NO.8 :-

30. Having thus, elaborately dealt with the matter from all possible perspective and beyond preponderance of possibilities having demonstrated that disputant is partly entitled for the relief of recovery of alleged amount. The sum and substance of the above discussion in answer to issue No.8, I proceed to pass an order as under :-

:: ORDER ::

01. The dispute is partly decreed with costs.

02. Opponent Nos.1 to 3 are hereby held jointly and severally liable to pay to the disputant Society an amount of ₹19,14,658/- (Rupees Nineteen Lakh Fourteen Thousand

Six Hundred Fifty-Eight only).

03. The disputant Society is entitled to interest at the rate of 13% per annum on the outstanding principal amount i.e. 18,00,000/- from filling of dispute i.e. 01.07.2024 till realization.

04. The claim for additional 2% penal interest is rejected.

05. The claim of ₹5,000/- towards sundry and typing expenses is rejected.

06. Award be drawn up accordingly.

(Pronounced in open court).

VAIBHAV VASANTRAO JOSHI

Digitally signed by VAIBHAV VASANTRAO JOSHI
Date: 2026.08.11 17:55:39 +0530

Akola **(V.V. Joshi)**
Dated : 11.08.2026 **Judge,**
Co-operative Court, Akola.

ENDORSEMENT

Case Argued on	:	11.08.2026
Judgment prepared on	:	11.08.2026
Transcription Ready on	:	11.08.2026
Judgment checked and signed off	:	11.08.2026

C E R T I F I C A T E

It is affirmed that the contents of this PDF file Judgment/Award are same word to word, as per the original Judgment.

Typed by :- Presiding Officer.