

MHJN050007092025



Regular Civil Suit No.39 of 2025
Dattatray Billare V/s Deogiri
Nagaari Sahakari Pathsantha

Order Below Exh.16
(Passed on 20.03.2026)

- 1] This is an application under Order 7 Rule 11 of the Code of Civil Procedure. Say of the plaintiff was called on said application. The plaintiff has given say on the back leaf of the application.
- 2] Read the application and say. Heard, both the sides. Perused all the documents on record.
- 3] Present suit is instituted for perpetual injunction, wherein, plaintiff has contended that he has borrowed some loan amount from the defendant patsansta and towards the security of loan amount, he has mortgaged his agricultural land Gat No.138 adm. 0 H. 81 R. to the patsansta. Thereafter, plaintiff has made default in the payment of the borrowed amount. Hence, the patsansta is going to sale his mortgaged property by auction and for that purpose public notices given. By way of present suit, plaintiff wants to restrain perpetually to the defendant pathsantha for sale by auction the mortgaged property. Defendant has made an application under Order 7 Rule 11 of the Code of Civil Procedure on the grounds that plaintiff has no cause of action and he has not instituted the suit in proper Court.
- 4] Learned advocate Shri. A. A. Jawalekar for the defendant submitted that on the date 16.03.2018, as per the executed loan agreement defaulter plaintiff has agreed to raise the objection not in the civil Court. Learned advocate Shri. A. A. Jawalekar draws the attention of the Court on various clauses of loan agreement, wherein in

respect of jurisdiction, this matter should be filed in the co-operative Court. Further, he submitted upon Sections 163 and 164 of the Maharashtra Co-operative Societies Act, 1963, wherein no civil or revenue Court shall have the jurisdiction in respect of any dispute which is required to be referred to Co-operative Court and notice is necessary in case of suit. He also argued upon the Section 91 of the Maharashtra Co-operative Societies Act and submitted that this court has no jurisdiction to try this suit. Further, learned advocate Shri. A. A. Jawalekar submitted that as the plaintiff is the member of this Deogiri Nagari Sahkari Patsanstha which is registered under Maharashtra Co-operative Societies Act, 1963. Hence, their dispute is required to be filed in the Co-operative Court. Hence, plaintiff has no cause of action.

5] Learned advocate Shri. R. B. Ambhore for the plaintiff argued at length. He submitted that if the mortgaged agricultural land sold in the auction then, it will cause great injustice with the plaintiff. Moreover, he submitted that the defendant is planning to sale by auction his mortgaged agricultural land. So, it would cause injustice to the plaintiff. He further submitted that plaintiff is not the member of Co-operative Society further giving of loan and recovery of it is not the internal work of the Co-operative Society. Only the matter, which are related to the internal work of the Co-operative Society will go the Co-operative Court. He further argued that as per the Section 164 of the Act, the defendant should have given two months prior notice to the plaintiff but, the defendant has not make compliance of it.

6] For the purpose of discussion, here I would like to quote Order VII Rule 11 of the Code of Civil Procedure ;

- a) Where it does not disclose a cause of action.
- b) Where the relief claimed is under valued and the plaintiff on

being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so.

- c) Where the relief claimed is properly valued but, the plaint is written upon paper insufficiently stamped and the plaintiff, on being required by the Court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so.
- d) Where the suit appears on the statement in the plaint to be barred by any law.

7] I have gone through the Order VII Rule 11 of the Civil Procedure Code. This application is filed by the defendant Order VII Rule 11 (d) of the Civil Procedure Code i.e. plaint to be barred by the other law. Now, it is necessary to see that whether this suit is barred by any other law. Hence, it is necessary to go through the contentions of the application. As per the application vide Exh.16, it is contended that the defendant is the Co-operative Society and the plaintiff is the borrower of the patsanstha. The plaintiff has made default in payment of loan amount hence, defendant patsanstha send demand notice to the plaintiff despite it, plaintiff has not paid loan amount of the patsanstha. Hence, defendant Co-operative Society started their recovery procedure as per their rules. The plaintiff while taking loan from the patsanstha makes an agreement with the patsanstha that if he makes any default in payment of loan amount, the patsanstha has every right to recover the loan amount from the property of the plaintiff. Plaintiff has made default in payment of loan amount and hence, patsanstha started their procedures. But, mean time plaintiff has filed this suit against the Co-operative Society to restrain it from making sale of his property. As per the defendant, the patsanstha has their own law i.e. the Maharashtra Co-operative Societies Act, 1960 and Rules 1961. In that Act, the

jurisdiction of Civil Court barred for or in connection with the matters of the patsanstha. Hence, defendant has filed this application.

8] Now, it is necessary to see that whether the jurisdiction of the Civil Court is barred by the Maharashtra Co-operative Societies Act, 1960 for or in connection with their matters. The learned advocate of the defendant quoted some Sections of the Act which shows that Civil Court has no jurisdiction to entertain the matters touching the business of Co-operative Societies. Those Sections are 91, 163 and 164 of the Maharashtra Co-operative Societies Act, 1960.

9] Now, it is also necessary to gone through the plaint of the plaintiff. On perusal of the plaint, it becomes clear that on 09.06.2025, when the plaintiff saw the board upon his mortgaged land about it sale that time plaintiff went for negotiation with the defendant patsanstha, so cause of action is there to the plaintiff for institution of the suit.

10] After perusing the plaint, it appears that this suit is filed against the Co-operative Societies and filed in connection with the recovery of loan amount given by the defendant patsanstha to the plaintiff.

11] Now, it is necessary to see the documents filed by both the parties on record. The plaintiff has filed on record 7/12 extract for Gat No.138, mutation entry No.1476 of the Gat No.138, mortgaged deed No.852/2018 dated 09.03.2018, copy of notice given prior to the recovery certificate, valuation certificate dated 17.09.2020. The notice given by the defendant before making auction sale of the property situated at Walkhed admeasuring 81 R belonging to Gat No.138. Defendant has filed loan demand application dated 29.11.2017, loan demand application dated 16.03.2018, promissory note and debenture given by the plaintiff to the defendant dated 16.03.2018, mortgage

deed dated 12.03.2018, document No.852/2018, notice issued by the defendant patsansta to the plaintiff for regulating his loan account dated 25.07.2019, postal receipts of the notice issued by the defendant to the plaintiff, acknowledgment of notice issued to the plaintiff, recovery certificate of Sub-registrar as per Maharashtra Co-operative Societies Act, 1960 (Section 101), prior notice given by the special recovery officer to the plaintiff for recovery from immovable dated 19.07.2021, order given to the special recovery officer to recover from immovable dated 23.09.2021, proclamation published in Dainik Aanandnagari and etc. Defendant has produced on record along with list at Exh.18 all the copies are photocopies of the documents whereby loan was given. Upon default of plaintiff, the defendant patsansta has given notice to the plaintiff in respect of his default, mortgaged deed, promissory note, loan demand application, postal receipt, acknowledgment receipt and recovery certificate received from Assistant Registrar under Maharashtra Co-operative Society Rule, 1969, prior notice given by recovery officer and the given to the special recovery officer about redemption from immovable property.

12] I have also gone through the loan agreement, in that agreement it is clearly mentioned that if the plaintiff has made default in payment of loan amount then, defendant patsansta has right to sale out the mortgaged land without prior intimation to the plaintiff. The said condition was accepted by the plaintiff. I have also gone through the Sections 163 and 164 of the Maharashtra Co-operative Societies Act, as per Section 163 :-

Save as expressly provided in this Act, no Civil or Revenue Court shall have any jurisdiction in respect of—

(a) the registration of a society or its by-laws, or the amendments of

its by-laws, or the dissolution of the committee of a society, or the management of the society on dissolution thereof; or

- (b) any dispute required to be referred to the Co-operative Court, for decision;
 - (c) Any matter concerned with the winding up and dissolution of a society.
- (2) While a society is being wound up, no suit or other legal proceeding relating to the business of such society shall be proceeded with or instituted against the society or any member thereof, or any matter touching the affairs of the society, except by leave of the Registrar, and subject to such terms as he may impose.
- (3) All orders, decisions or awards passed in accordance with this Act or the rules shall, subject to the provisions for appeal or revision in this Act be final; and no such order, decision or award shall be liable to be challenged, set aside, modified, revised or declared void in any Court upon the merits or upon any other ground whatsoever.

As per the provisions of this Section, the jurisdiction of the Civil and Revenue Court is expressly barred in connection with the dispute required to be referred to the Co-operative Court for decision.

13] I have also gone through the provision of Section 164 of the said Act.

No suit shall be instituted against a patsanstha, or any of its officers, in respect of any act touching the business of the

patsanstha, until the expiration of two months next after notice in writing has been delivered to the Registrar or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims, and the plaint shall contain a statement that such notice has been so delivered or left.

In the said Section, it is clearly mentioned that two months prior notice to the Registrar is mandatory and without said notice suit shall not be instituted. I have perused the plaint minutely, but in the said plaint, it did not appears to be mentioned.

14] I have also gone through the Section 91 of the said 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 other than elections of committees of the specified societies including its officer, conduct of general meetings, management or business of 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 Liquidator of the society; 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 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 Section 43, 44 or 45, and any person claiming through such person;
- (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 or de registered society or the Official Assignee of such a de-registered society.

Provided that, an industrial dispute as defined in clause (k) of Section 2 of the Industrial Disputes Act, 1947, or rejection of nomination paper at the election to a committee of any society other than a notified society under Section 73-IC or a society specified by or under Section 73-G, or refusal of admission to membership by a society to any person qualified there for or any proceeding for the recovery of the amount as arrears of land revenue on a certificate granted by the Registrar under sub-section (1) or (2) of Section 101 or sub-section (1) of Section 137 or the recovery proceeding of the Registrar or any officer subordinate to him or an officer of society notified by the State Government, who is empowered by the Registrar under sub-section (1) of section 156 shall not be deemed to be a dispute for the purposes of this Section.

(2) Sub section (2) deleted

(3) Save as otherwise provided under sub-section (2) of section 93,

no Court shall have jurisdiction to entertain any suit or other proceedings in respect of any dispute referred to insub-section (1).

Explanation 1- A dispute between the Liquidator of a society 6or Official Assignee of a de-registered society and 7the members (including past members, or nominees, heirs or legal representative or deceased members) of the same society shall not be referred to the Co-operative Court under provisions of sub-section (1).

Explanation 2 - for the purposes of this sub-section a dispute shall include-

- (i) a claim by or against a society for any debt or demand due to it from a member or due from it to a member, past member or the nominee, heir or legal representative of a deceased member, or servant or employee whether such a debt or demand be admitted or not;
- (ii) a claim by a surety for any sum or demand due to him from the principal borrower in respect of a loan by a society and recovered from the surety owing to the default of the principal borrower, whether such a sum or demand be admitted or not;
- (iii) a claim by a society for any loss caused to it by a member, past member or deceased member, by any officer, past officer; or deceased officer, by any agent, past agent or deceased agent, or by any servant, past servant or deceased servant, or by its committee, past or present, whether such loss be admitted or not;
- (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.

As per this Section, the dispute relating to the Co-operative Societies Act should be referred to the Co-operative Court. Also, in the said Section criteria of the dispute which should be referred to the Co-operative Court is given. As per Section 91 (1) (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 section 43, 44 or 45, and any person claiming through such person;

It means dispute should be referred to the Co-operative Court.

15] Perused the terms of loan wherein, plaintiff has agreed that if the plaintiff is not pay the loan amount then, the society will have right to recover it from the mortgage property and that time there is no need of plaintiff's permission and if the loan amount not recovered from the mortgage property then, the society also will have right to recover it from the other property of the plaintiff at the time of giving loan to the plaintiff, patsansta made him its member, hence the said dispute should have been referred to the Co-operative Court as per the Sections discussed above. The learned advocate of the defendant submitted the judgment of Hon'ble Bombay High Court *Vidyut Karmachari Patsansta Maryadit, Nagpur V/s Ratansingh Ramsingh Khande*:- I have gone through the case law minutely in that judgment it is held that defendant is Co-operative society and the plaintiff it's member. The society run the business of accepting deposits and lending money to the members. The plaintiff borrowed the loan from the said patsansta. It was the plaintiff case that the plaintiff over paid the loan amount. The present dispute falls squarely within the campass of

disputes which are interested to the jurisdiction of Courts constituted under the Maharashtra Co-operative Societies Act. The term 'business of society' used in Section 91 of the Maharashtra Co-operative Societies Act encompasses within its fold the dispute of present nature without ambiguity whatsoever.

Means as per Section 91 of the said Act, the dispute touching the business of the society or patsanstha formed under the Maharashtra Co-operative Societies Act should be referred to the Co-operative Court.

16] On going through the plaint, the cause of action is there to the plaintiff but, on going through provisions of Sections 91, 163 and 164 of the Maharashtra Co-operative Societies Act, 1960. I come to the conclusion that jurisdiction is not vested with the Civil Court. Issue of Court fees has to be decided by the concerned Court. Hence, application of the defendant for rejection of the plaint on the ground that Civil Court has no jurisdiction deserves to be allowed. Hence, I pass the following Order :-

ORDER

- 1] The application (Exh.16) is hereby allowed.
- 2] As the application (Exh.16) is allowed, the plaint is hereby rejected.
- 3] Copy of this application and order be annexed with plaint i.e. Exh.1.
- 4] No order as to costs.
- 5] Decree be drawn up accordingly.

(Order is dictated and pronounced in open Court)

Place : Partur
Dated : 20.03.2026

(V. B. Dombe)
Civil Judge (Junior Division)
Partur.

CERTIFICATE

"I affirm that the contents of this P.D.F. file order are word to word same, as per original order."

Name of Stenographer : **M. D. Adhe**
Name of Court : **V. B. Dombe**
Civil Judge (Jr. Dn.), Partur.
Judgment dictated on : 20.03.2026
Transcript ready on : 20.03.2026
Judgment Signed by
Presiding Officer on : 20.03.2026
Judgment uploaded on : 20.03.2026

(Madhav D. Adhe)
(Stenographer Grade-3)