Dispute No. 334/2000
Dispute Filed On : 10/04/2000
Dispute Register On : 10/04/2000
Dispute Decided On : 02/08/2019
Duration : Y. M. Days
19 03 23

IN THE COURT OF JUDGE, CO-OPERATIVE COURT AT AKOLA
(Presided over by Shri B.S. Lakhote)

The Akola Janata Commercial Co-operative
Bank Ltd. Akola, Through its Manager
Of the Main Branch Shri Mahendrakumar
Badrinarayanji Kejadiwal, Age – 56 years,
Occu : Service, R/o. Akola,
Tq. & Dist. Akola. …...………….……...……………… **Disputant.**

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

1) M/s Mohan Oil Industries, Akola,
Through its Proprietor Rajeshkumar
Paleram Gupta, Adult,
Occu : Business,R/o Ladaniya
Compound, Mohta Mill Road,
Akola,Tq. & Dist. Akola.

2) Paleram S/o Laherimal Gupta,
Adult, Occu : Business,
R/o Naya Gin, Mohta Mill Road,
Akola, Tq. & Dist. Akola.

Legal heirs of Opponent No.2

2(i) Smt. Shantadevi Palegram Gupta,
Aged 55 years.

(ii) Shri. Rajesh Paleram Gupta,
Aged 38 years.

(iii) Shri. Mohan Paleram Gupta,
Aged 36 years,

No.1 is the wife of deceased and Nos. 2 and 3 are
the sons, Occupation of L.R. No.1 is household
and those of others business,
All R/o Ladaniya Jeen, near Gadi Pool,
Akola, Tq. & Dist. Akola.

3) M/s Giriraj Oil Industries, Akola,
A partnership firm,
Through its Partners :

i) Ashokkumar S/o Ramniwas Gupta,
Adult, Occu : Business.

ii) Pradeepkumar S/o Ramniwas Gupta,
Adult, Occu : Busienss.

Both R/o. Mohta Mill Road, Akola,
Tq. & Dist. Akola. ………………..………..…..… **Opponents**.

Dispute For Recovery of Rs.21,65,958.58.

Adv. R. P. Goyenka for Disputant.
Adv. P. M. Rathi for Opponent No.1.
Adv. R. L. Rathi for Opponent No. 3(i)

J U D G M E N T

Brief facts of the dispute are as follows.

1) The disputant bank registered under the M.C.S. Act and doing the business in banking. The present dispute filed under the signature of its Manager of the main branch Shri. M. B. Kejadiwal.

2) The opponent No.1 applied for grant of term loan to the extent of Rs.2,75,000/- and the disputant bank sanctioned term loan of Rs.2,50,000/- to opponent No.1 subject to condition of giving two guarantors and also hypothecating the machinery for which the loan was taken. The amount Rs.2,50,000/- was duly advanced to opponent No.1 and opponent No.1 executed necessary loan documents in favour of bank. The opponent no.2 and 3 stood as a guarantors for the opponent No.1 and they also executed lettr of guarant6ee in favour of bank, they accepted joint and several liability to pay the dues amount of bank.

3) The disputant bank filed account statement of term loan account from 01/04/1995 up to date. The interest was to be charged @ 16% p. a.

subsequently. Interest was charged as per agreement which provides for penal interest @ 2 % . As per term and condition the rate of interest was to vary from time to time as per the direction of Reserve Bank of India. The loan documents in this term loan from time to time. As per the account a sum of Rs.1,32,934.93 is due from the opponents in the term loan account.

4) The opponent No.1 also applied for grant of hypothecation limit of Rs.5,00,000/- which was sanctioned and advanced to him from time to time. The opponents executed all necessary loan documents. Thereafter opponent No.1 requested for enhancement of said hypothecation loan limit for Rs.10,00,000/- which was also granted to him and finally on 21/01/199 opponent No.1 request for enhancement of this limit accordingly this limit was extended to Rs.15,00,000/-. The disputant has to recover an amount Rs.20,33,023.65 in the said hypothecation account. The disputant charged interest @ 17.5% p. a. on hypothecation loan as per agreement. After considering both the accounts total amount Rs.21,65,958.58 is due from the opponents and they are liable for the same.

5) The opponent No.1 has given the guarantee a well as he has in hypothecation the plant and machinery of the Oil Mill and the stock-in-trade, raw material and all other moveable goods of the Oil Mill together with the plot. The opponent No.1 for securing the loan amount of both these account has given guarantee of opponent No.2 and 3. The opponent no.2 also executed a mortgage by which of deposit of title deed in respect of immoveable property situated on Nazul Plot No.9, Sheet No.26-A, ward No.18 of Akola, that is one fourth of the house No.196. The plot is admeasuring 4000 sq. ft. on which there is a two storied building. He mortgage was given initially on 19/07/1995 and thereafter it was renewed on 22/06/1997 and lastly on 21/01/1999.

6) The opponent No.1 enjoyed the loan facility. The opponent No.1 is the son of opponent No.2 and bank advanced loan amount from time to time in pursuance of documents executed by all opponents. The opponent no.1 did not pay term loan amount by installments regularly, nor he regularized the hypothecation loan account, thus, he failed to abide the term and conditions of agreement. The opponent no.1 failed to show the goods nor he declared the same in the stock statement and he failed to submit monthly stock statement. When officer of the bank visited the place of business of opponent the opponent No.1 obstructed the said officer from verifying the stock. All opponents were call upon by the bank to pay the dues mount but they given false assurance and did not pay the mount. The bank issued a notice on 08/11/1999 through advocate to opponents but the opponents failed to comply the notice. Hence, the disputant pray for recovery of Rs.21,65,958.58.

7) The opponent No.2 during the pendency of dispute expired, his legal heirs brought on record. The opponent no.1 and 2(ii) filed written statement below Ex.104 and they objected for tenability of dispute. They contended that Shri. M. B. Kejadiwal has no authority to file the dispute. They denied the sanction of loan by bank. They contended that this Court has no jurisdiction to try the dispute as the disputant bank is Multi-state Co-operative Society and is governed by provision of Multi-State Co-operative Societies Act and as per the provision of said Act Central Registrar shall be under the act has only got jurisdiction to decide dispute. This provision of M.C.S. Act is not applicable in this case. The opponents are not members of bank. There is no necessary ingredient in the dispute filed by bank.

8) The disputant bank has not pleaded all the material relevant information before the Court, the bank has not field relevant and material documents as per pleading, they have not supplied all documents to opponent No.1. The bank suppressed material facts from this Court and submitted no

evidence can be permitted to be lead by the bank on the vague pleading. According to them, from perusal of documents filed by bank it can clearly seen that the dispute is barred by law of limitation. The opponent denied the renewal and execution of documents. They stated that at no point of time they applied for renewal and they never executed documents. They submitted that the bank had taken signatures of opponents on blank papers and as such bank committed forgery by using the blank papers. They stated that signatory to the dispute is not having any authority to sign, verify and file the dispute. The resolution on which bank relied is no reason in the eye of law. It is necessary to execute the power of attorney duly stamped and required by law for conferring the power on officer.

9) The bank has not followed the legal procedure as laid down for filing dispute. Thus, the presentation of dispute itself null and void and as such same is liable to be dismissed. They stated that they are not liable to pay any amount to the bank. The bank has not maintained the account properly. If the proper accounts are taken by bank then it will be clearly reveal that the alleged amount is not outstanding against the opponents. The disputant bank recovered huge amount by illegally selling of immovable and movable properties of opponent no.1 and his relatives and the amount have not been credited in the alleged account. The bank has not furnished then documents and information related to sell of movable and immovable properties to the opponent no.1. The bank has not filed documents pertaining to the subsequent event. The bank should have to produce the original vouchers, copies of tenders, receipts fees being taken and other documents on the basis of which the bank is claiming the amount. The bank has not filed these documents. The disputant cannot shrink of the responsibility of proving the alleged transaction and alleged liability as simple the alleged stamen of account. The opponents denied the statement. They submitted that the nature of the execution of alleged documents itself speak that those were never effected to be acted upon, no alleged mortgage is created in term of

bank. They stated that this court has no any right to proceed would be relief to mortgage, genuineness of mortgage. The executing power to decide the same lies with the Civil Court only. The alleged documents for enhancement of loan limit field by disputant did not bear require stamp duty and they are not registered. The provisions of Bombay Stamp Act are also applicable to the proceeding before this Court. If the documents filed by bank are perused then the same does not confer any right, title or interest in favour of bank. The bank has not followed rules, circulars regarding waiver of interest and grant of exemption. The blank has charged compound interest which is not legally permissible and also charged the penal interest. According to them, as per circulars, notification of Reserve Bank of India it is bounden duty of the bank to give the wide publicity to the one time settlement scheme and inform the concern account holder but the bank has not made aware the opponents about the same and they pray for rejection of dispute.

10) The opponent No.3(i) & 3(ii) also filed their written statement below Ex.13 and they denied all contents of dispute. They submitted that they never stood guarantors for the loan of opponent no.1. The opponent no.3 is also having account with the disputant bank and for said operation of account officer of disputant bank obtained signature of opponent No.3(i) (ii) on various blank forms and papers including blank papers. The officer of disputant bank never informed this opponent that these signatures will be used for preparation of guarantee agreement. There was no reason for these opponents to stood as a guarantors for the opponent No.1, hence the dispute liable to be dismissed against them. They stated that this Court has no jurisdiction to try the present dispute as disputant is a Multi State Co-operative Society and the Central Registrar established under that Act, only got jurisdiction to decide dispute. Without prejudice to the above, they submitted that the alleged agreement of guarantee is also revoked due to negligency of agreement without consent of opponent No.3 and also on account of any action and negligency on the part of bank which resulted into

loosing of primary security in the form of raw material and stocks and on these count these opponents cannot be held liable. The disputant charted compound interest and they pray for dismissal of dispute.

11) In view of rival contention of the parties issues are framed on Ex.105 and my findings with reasons as follows.

Issues	**Findings**
(1) Whether disputants prove that opponent No. 1 obtained loan Rs.2,50,000? ………..	Positive.
(2) Whether disputant proves that opponent No.1 to 3 are guarantor to the loan of opponent No.1? ………………	Positive
(3) Whether disputant proves that opponents are jointly and severally liable for Rs.21,65,958.58 with interest @ 19% p. a. from 01/03/2000 till realization? …………………………………	Positive
(4) Whether disputant proves that opponents are members of disputant bank? …………….……………	Positive
(5) Whether this Court has jurisdiction to entertain, try and decide the dispute? ……..…	Positive.
(6) Whether dispute is barred by limitation? ………………………	Negative.

(7) Whether opponent No.1 & 2(ii) proves
that disputant bank illegally sold the
movable and immovable properties of
opponent No.1 and his relative, but
sale proceed amount has not credited
in the amount of opponent No.1? …………..…….. Negative

(8) What award and cost? ……………….……… As per final order.

REASONS

12) **As to Issue No.1 to 4 :** These issues are correlated to each other, therefore it would proper to decide these issues commonly. The disputant come with the case that opponent no.1 availed the term loan facility of Rs.2,50,000/- and thereafter availed the hypothecation loan limit from Rs.5,00,000/- to Rs.15,00,000/- but the opponents failed to repay the installment regularly as per agreement and claim amount is outstanding. On other side the opponents denied all allegation of disputant in toto and taken the plea that the officer of bank obtained their signatures on blank documents.

13) The disputant in support to the pleading made in dispute initially examined witness Shri. Ashok Champalal Jain whose affidavit filed below ex.30, but subsequently the disputant filed the application below Ex.82 for permission to lead the evidence of new officer and accordingly application allowed on merit and disputant bank filed affidavit of Shri. Jitendra Mandani below Ex.32 as examination in chief. The opponent advocate Shri. P. M. Rathi and R.L. Rathi cross examined to this witness. The opponents failed to enter into witness box and their right to lead evidence has been forfeited. The disputant bank filed requisite loan documents below Ex.34 to Ex.61.

14) Now, first point for consideration as to whether the opponents are members of disputant bank as the opponents denied their membership.

The burden lies on the disputant to prove membership of the opponents. The disputant witness in his affidavit stated that the opponents are members of bank. The opponents advocate crossed at length but has not cross examined on this aspect. The disputant in support to the oral evidence of witness filed documents to show that the opponents are members of bank and those documents filed with list of documents dated 20/02/2015 those are membership application bear signature of opponents, which is not disputed by opponents. There is no argument on this aspect on behalf of opponents advocates.

15) The next aspect of the matter which is crucial as to whether the opponent No.1 availed the alleged loan facility. The disputant witness deposed all the facts in his affidavit as narrated in dispute application. The opponents advocate Shri P. M. Rathi and R.L. Rathi argued that Shri. Kejadiwal has no authority to file the dispute. In response to this argument Shri. Goyanka advocate for disputant point out Ex.31 resolution No.17/4 dated 01/07/1999 and argued that Shri. M. B. Kejadiwal given authority by bank to file the dispute. Shri.P.M. Rathi also point out the contents of resolution and argued that authority is given only two persons to file the dispute, Shri. Kejadiwal only authorized to lead evidence. I have perused Ex.31 and it appears that Shri. R.M. Mohata and R.G. Deshpande authorized to file the dispute but below the description of allotment of work the word " the name of other persons shown in (a) to (c) appears to whom it was authorized to lead evidence including the name of Shri. Kejadiwal. It means except Shri. R.M. Mohata and R.G. Deshpande , Shri. Kejadiwal was also authorized to file the dispute along with power to lead evidence.

16) Both opponents advocate Shri. Rathi relied on *Sangli Bank Ltd – V- Kanishka Investment Pvt. Ltd. and others reported in 1999(1) All MR 556*. In this case the power of attorney holder filed the suit who was given authority by board of directors of bank. In that case plaintiff fail to prove the

resolution by which power of attorney to filed suit was given and not prove execution of power of attorney as per section 4 of power of attorney Act. In that plaintiff examined three witness. Their lordship held that "*these witnesses has not stated that they were present in the meeting in which board of directors passed resolution and not examined any person who present n the meeting and copy of resolution is not properly proved.*" The fact in the present matter is different. In the matter at hand there is no power of attorney given to the witness. The Ex.31 authorizes to Kejadiwal to file the dispute because in the above matter suit was filed under C.P.C and present case filed under section 91 of M.C.S. Act and according to the section 40 of the M.C.S.Act, copy of any entries of any book, register or list regularly kept in the course of business of the society, is admissible as evidence, the entry of the resolution Ex31 taken the original minute register of the meeting maintained by the bank and the witness was brought original proceeding book at the time of cross with him which reflect form his evidence.

17) The Order 29 of Civil Procedure Code dealt with the provision in regard of suit filed by or against the Corporation and according to Rule-1 '*In suit by or against a Corporation any pleading may be signed and verified on behalf of Corporation by Secretary or by any Director or other principle officer of Corporation who is able to depose the facts of cases'*. The disputant counsel also relied on **Navjeevan Industries Jalgaon Vs.Dena Bank Jalgaon reported in 2009(3)Mh.L.J.759.** In that case the appellant raised point in the written statment that plaint is not signed by authorized person. Wherein their lordship held that "*sufficient evidence on record to show that all original Manager are duly authorized to sign the plaint on behalf of bank – presentation of the plaint was valid.*" Their lordship in para 11 of judgment referred Ruling of **Hon'ble SC United bank of India Vs.Naresh Kumar AIR1997 S.C.3** which is also referred in above Judgment **Sangli Bank Ltd.** Therein Hon'ble SC held "*In case like the present where suit are instituted or defended on behalf of public corporation, public*

interest should not be permitted to be defeated on mere technicality. The procedural defect which do not go to the root of the matter should not be permitted to defeat just cause. There is sufficient power in the courts, under the code of civil procedure , to ensure that injustice is not done to any party who has just case." In the matter at Ex.31 the name of Shri. Kejadiwal who filed the dispute shown as a Manager and in view of the above rulings, the dispute rightly filed by Shri. M. B. Kejadiwal.

18) The opponents advocates Shri P. M. Rathi and R.L.Rathi also argued that Shri. Jitendra Mandani has no right to led evidence. Shri. P. M. Rathi point out cross examination of disputant witness and argued that there is absence of name of witness in resolution field below Ex.114 by which the witness alleged to authorize him to lead evidence. I have perused this resolution No.25 dated 24/01/2013 by which the bank authorized certain persons to led evidence on behalf of bank. It is a fact that there is no specific name of disputant witness mentioned in the resolution but the witness specifically stated that the name of his designation is mentioned in the said resolution. The disputant witness led evidence as a Assistant Manager of bank and the resolution at Ex.114 it is authorized to Assistant Manager to led evidence, therefore, I am disagreed to the contention of the Shri. Rathi that person who led evidence on behalf of the bank has no right to led evidence. The evidence lead by witness is duly authorized.

19) As far as disbursement of loan amount is concerned, the disputant advocate Shri. Goyanka argued that the term loan granted to opponent No.1 Rs.2,50,000/- and thereafter hypothecation loan limit of Rs.5,00,000/- granted and from time to time extended till Rs.15,00,000/-. Shri. Goyanka also argued that opponents admitted the signatures on loan documents and execution of documents and those documents remain unchallenged as the opponents failed to enter into witness box.

20) Per contra, Shri. P. M. Rathi advocate of opponent no.1 argued that Ex.36 mentioned only sanction of Rs.1,05,000/. There is a different cause of action for two loans and hence separate dispute should have to filed. The opponent No.3(i) advocate Shri. R. L. Rathi also contended that the documents produced by disputant not exhibited during the cross of witness Shri. Mandani whose affidavit is on Ex.92, these documents exhibited at the time of evidence of witness whose affidavit is at Ex.30 and therefore, it does not mean that documents proved and cannot be considered as the witness examined below Ex.30 not appeared for cross. Further, argued by Shri. R. L. Rathi that all documents are xerox copies and person has not power to certify these copies, there must be resolution to authorize the person to certify the documents, the documents are also not verified from originals, hence not admissible in evidence. It is also point out by Rathi that the date of resolution not mentioned. The loan sanction have shown on 29/05/1995 but sanction letter given on 31/03/1995 before sanction of loan and the bank has not field document, therefore adverse inference be drawn against the disputant as disputant bank withheld the documents dated 29/05/1995.

21) In order to examine the correctness in the submission of respective advocate, I have perused the evidence on record. It is not necessary to repeat the examination-in-chief of the disputant witness. The witness stated that the opponents signed documents and he know the signature of the opponents. Admittedly, the none of the opponents entered into witness box, then in such circumstances it is required to see whether the opponents succeed to prove their defence through the cross of disputant witness.

22) As far as loan amount Rs.2,50,000/- is concerned, the witness Shri. Mandani deposed that on 26/05/1995 the opponent applied for term loan to the bank and it is signed by the opponents and bank sanction term loan Rs.2,50,000/- and bank issued sanction letter dt31-03-1995 which is

disputed by the opponents. The Adv. for opponent no.1 Shri. P.M.Rathi cross to the disputant witness and in cross witness specifically given admission that opponent no.1 on 26/05/1995 applied for loan Rs.2,75,000/- and Rs.2,50,000/- sanction in the meeting dated 29/05/1995. It is also brought on record though cross that opponents signed documents in the presence of the witness. These crucial admission itself is supporting to the disputant case. There is no necessity of any corroborative evidence. The admission is the best peace of the evidence.

23) It is a fact that amount Rs.1,05,000/- mention in Ex.36 that is disbursement of loan. However, the witness specifically explained in cross that this amount is installment of sanction of loan amount Rs.2,50,000/. The account statement Ex.118 reflect the debit entries of amount from 31-03-1995. As far as the letter dated 31/03/1995 which is at Ex.34 is concerned, it is issued before sanction of loan which di sputd by the opponents. The disputant informed a sanction of loan amount Rs.2,50,000/- the evidence on record shows that loan amount Rs.2,50,000/- sanctioned to the opponent no.1 as per his loan application dated 26/05/1995 which is sanctioned on 29/05/1995, then sanction letter has to be issued after 29/05/1995 but shown to issue on 29/03/1995.

24) The disputant advocate Shri. Goyanka fairly admitted that instead of month May the month March wrongly inserted. The opponents advocate in this regard brought on record in cross the reason as to why before sanction of loan letter dated 31/03/1995 issued to opponent and witness stated the reason that on the oral request of opponent for loan and execution o loan documents subsequently on this condition issued a first sanction letter. It is a fact that as per the bank rules the sanction letter has to be issued after sanction of loan but in the matter issued before sanction which is sort of mistake on the part of bank, it will called as irregularity in the procedure of sanction of loan, but it does not means that sanction of loan illegal. Therefore

I hold that the disputant sanction term loan Rs.2,50,000/- to the opponent No.1.

25) The next contention about grant of hypothecation loan limit from Rs.5,00,000/- to Rs.15,00,000/-. According to disputant, the hypothecation loan limit Rs.5,00,000/- sanctioned and advanced to the opponent no.1 and thereafter extended to Rs.10,00,000/- and then finally on 21/01/1999 enhanced the limit to the extent of Rs.15,00,000/-. The opponents disputed the sanction of these hypothecation loan limits on the ground that disputant only filed a document of Rs.15,00,000/- and not filed a document of Rs.5,00,000/- and Rs.10,00,000/. It is argument of opponent Shri. Rathi that disputant has not proved sanction of Rs.5,00,000/- to opponent, the document are not filed on record in respect of Rs.5,00,000/- and Rs.10,00,000/- and only Rs.15,00,000/-. There is no document in regard of withdrawal of amount. The disputant withheld vital documents and for that relied on **Romeo Anacleto D'souza Vs. Edgar Havlock D'souza reported in 2014(3)ALL MR 183**. In this case the plaintiff was withheld the medical record of the deceased showing that deceased was good condition at the time of execution of will deed and their lordship held "*plaintiff having withheld the relevant evidence, adverse inference need to be drawn against him u/s114(g) Evidence Act."* But with due respect ruling is not applicable for the reason that the disputant relied on other documents which are vital to the case of the disputant. the disputant advocate Shri. Goyanka argued that mere not filing the documents in regard of loan limit of Rs.5,00,000/- and Rs.10,00,000/- it does not mean that the opponent has not availed said facility, the loan documents of Rs.15,00,000/- is on record which is sufficient to constitute that opponent no.1 availed hypothecation loan limit of Rs.15,00,000/- and Shri. Goyanka point out these documents on record.

26) The document Ex.43 to Ex.53 indicate that the disputant sanctioned hypothecation loan limit of Rs.15,00,000/-. Now in absence of

not filing of documents of sanction of loan limit Rs.5,00,000/- and Rs.10,00,000/- what would be the effect on case of disputant that is required to examine. The documents which are produced on record including the term loan and hypothecation loan are certified true copies and these documents exhibited at the time of filing of affidavit of disputant witness Shri. Ashok Jain. The point raised by the opponent advocate Shri. Rathi that these documents has not proved by witness Shri. Ashok Jain as he has not turned for cross examination.

27) The disputant initially filed affidavit as examination in chief of Shri.Ashok Champalal Jain below Ex.30 and he deposed that opponent no.1 applied for loan limit Rs.5,00,000/- and applied for enhancement of Rs,10,00,00/- and then for Rs.20,00,000/- and bank sanction loan limit Rs.5,00,000/- then Rs.10,00,000/- and then enhanced limit Rs,15,00,000/-, he further deposed that he know the signature of the opponents on the document and identified signature and hence documents exhibited according to settle position of law merely exhibiting documents does not means that contents of the documents proved. The disputant in order to prove the documents examined witness Shri.Mandani.

28) The witness Shri. Jitendra Mandani who in his affidavit stated that the opponents executed the documents and he identified the signatures of opponents on these documents. This witness in cross examination also admitted that he brought the original documents on the date of cross examination then the opponents advocate should have to examine the originals from the custody of witness and should have verify with the documents on record but contrary the opponents advocate referred these documents produced on record to the witness in cross and cross examined on these documents. This fact itself indicate that on the date of cross examination the opponents were no objection to read these documents. The opponents advocate Shri.R.L.Rathi place reliance on **2003 CJ (Bom) 867**

Rajkumar Sudarshan Agarwal Vs. Debt Recovery Appellate Tribunal wherein their lordship observed that "*there no presumption in law that bank documents and the bank officer are always truthful.*" But with due respect ruling is not applicable as the fact and circumstance in the present matter is different. Shri. R.L. Rathi also relied on **2004 (2) ALL MR 290 Bama Kathari Patil Vs. Rohidas Arjun Madhavi** and argued that mere exhibition of documents does not means the documents proved and also relied on **2008(4)ALL. MR 808 Bank of India Vs.M/s Allibhoy Mohammed** to show that documents has to be prove as per section 67 to 73 of Evidence Act.

29) I am agree with the contention that exhibition of documents is an administrative act but the evidence of the disputant witness indicate that he identified the signature of opponents. The opponents advocate itself brought on record from the mouth of disputant witness that "*documents Ex.33 to Ex.52, Ex.54 & Ex.58 signed by opponents in presence of disputant witness, the loan limit Rs.5,00,000/- extended to Rs.10,00,000/- and for that the opponents applied to the bank.*" These two facts supporting to the case of disputant and it is sufficient that hypothecation loan limit of Rs.5,00,000/- to Rs.10,00,000/- and from Rs.10,00,000/- to Rs.15,00,000/- enhanced to opponent no.1. In context of above two ruling of Hon'ble High the opponent has not prove that documents produce by the disputant not proved as per Evidence Act, hence with respect these two ruling is not helpful to the opponents.

30) The other aspect of this case also necessary to see and that is the defence of the opponents. The opponent No.1 & 2 took the plea that disputant bank obtained their signatures on blank documents and committed forgery by using the blank papers. They never applied for loan and for renewal of further loan. Shri. Goyanka Adv. for the disputant relied on **Bank of Mah. Vs. M/s Aevees Pharmaceuticals and other.** Their lordship held "*Renewal of loan document, second renewal of documents executed by*

barrower, this renewal also bind the guarantors, guarantors waived all their right which they had under the contract Act, In the circumstances it is not necessary to have prior consent of the guarantors to renew the financial facilities or loan documents." In the matter at hand the opponent no.1 applied for the enhancement of hypothecated loan from Rs.5,00,000/- to Rs.10,00,000/-which subsequently extended to Rs.15,00,000/- and documents reflect the signature of the opponents which is not denied by the opponent no.2 and 3 sureties. Hence this ruling squarely applicable.

31) When the opponents took such defence then they ought to have entered into witness box and should have to prove their defence. The opponents advocate Shri. Rathi contended that opponents proved their defence through the admission of disputant witness given in cross, therefore, there is no necessity to examine the opponents. I am agreed with the contention Shri Rathi. The opponents have not filed Pursis stating that they proved their defence through the admission in cross and hence they do not want led evidence. The opponents being failed to tender evidence inspite of opportunity ,their right to lead evidence forfeited.

32) Now, what sufficient admission given in cross by disputant witness that is relevant, I have gone through the cross examination of disputant witness but except admission of non filing of documents in respect of hypothecation loan limit of Rs.5,00,000/- and Rs.10,00,000/- there is nothing favourable to the opponents and favourable to disputant admission in regard of loan amount Rs.5,00,000/- and Rs.10,00,000/- brought on record by the opponents counsel in cross prove these fact. The documents though exhibited through evidence of the Shri.Ashok Jain Ex.30, but documents proved by the witness Shri.Mandani Ex.92. The disputant advocate Shri. Goyanka place reliance on **AIR 1999 SC 1341 Iswar Bhai C. Patel Vs.Harihar Behera and another and AIR 1999 SC 1441 Vidhyadhar Vs.Mankikrao and another** and argued that the opponents being failed to

enter into witness box the adverse inference needs to draw against them. The opponents failed to enter in to witness box for the reason known to them. According to their plea the disputant obtained their signature on blank documents was necessary to enter in to witness box and proves the defence, it is not proved through the cross examination of the disputant witness.

33) The opponent No.3(i) in his written statement stated that disputant bank obtained his signatures on blank forms for operating of his account as he is also having account with the bank and the officer of bank never informed that his signatures will use for operation of guarantee agreement. Now, whether there is a substance in the defence of these opponents. These opponents are running the industry, they are educated person, they are known very well the contents of documents. They did not make any complaint to bank or higher authority for obtaining their signatures on blank forms. Had it been so, they would not have remained silent. They would definitely complained to higher authority of bank against the branch manager for having obtain signature on blank loan documents. Such educated person is not expected to sign blindly on documents.

34) The Hon’ble Bombay High Court in **Central Bank of India –V- Sayan bakery and Pvt. Ltd. 2008(5) ALL MR 126 held** that “*a person who sign document with contents a contractual assessment, bound by it even though he is not ready, even though he has ignored all the pressurize legal effects”.* It is admitted fact that documents produced on record bear their signatures then the point remain whether the disputant bank misused these documents . The opponents never stated that documents produced on records are different than the documents signed by them. It appears from their written statement that after perusing the document produced by disputant they have taken such defence. If the disputant would have taken the signature on blank documents then the opponents would have not taken defence that disputant bank recovered huge amount of loan and the disputant bank has not given the information about one time settlement scheme. It

means that the opponents very well know the transaction of loan and use of said loan amount. Hence in view of the above ruling the adverse inference need to drawn against the opponents.

35) The opponents admitted their signatures on loan documents but they are not proved that the disputant made forged on these documents.. The opponent advocate Shri R. L. Rathi relied on **M/s Deshmukh Co. Publisher Pvt. Ltd. V/s Avinash Khandekar reported in 2005 All MR 33.** Wherein it is held by their lordship that "*mere no objection to formally exhibit documents neither amount to admission of documents nor it can be treated as admission of contents thereof".* In this case photo copies of documents produced by the plaintiff and counsel of the defendant made endorsement on list of documents that defendant do not challenge genuineness of documents and signature thereon and court exhibited documents treating as admission their lordship observed that "*the only person competent to give evidence on the truthfulness of the contents of the documents is the writer thereof examined before the court."* In that case nature of the documents were different in comparison to the documents filed in the case at hand , the documents therein were in writing but in the matter hand are prescribed printed forms on which the opponents admittedly made signature , the opponents when made their signature they were aware about the nature of the documents. Hence with due respect it is not assistable to the opponents.

36) The disputant counsel Shri.Goyanka relied on **AIR 2003 SC 4548 R.V.E. Venktachala Gounder Vs.Arulmigu Viswesaraswami and V.P.Temple** wherein held by their lordship "*Admissibility of documents- objection should be raised when it is tender and not subsequently- documents admitted in evidence without objection- cannot be said to be admissible being photo copies, original of which were not produce."* The opponents has not taken any objection at the time of exhibiting the documents and in the matter at hand the opponents admitted their signatures then ought to prove the fact

that documents which they alleged to be blank, fill up by the bank officer and made forgery.

37) Assuming for the sake of the argument that opponents made signature on blank documents, but it cannot ignore to the title documents on which they signed. The opponents are educated persons. Shri. Goyanka counsel for the disputant relied on **2010 SAR (Civil) 78 M/s Grasim Industries Ltd. Vs. M/s Agarwal Steel,** it held by their lordship that " *when person signed documents there is presumption , unless there is proof of force or fraud , that he has understood the document and only the he has affixed his signature thereon."* In the matter at hand the opponents signed documents, it is presumed that they signed it after knowing nature of the documents, unless prove fraud committed by the disputant, the opponents failed to discharge the burden about forgery of fraud of documents.

38) The disputant Adv Shri. Goyanka in order to cleared the point raised by the opponent Adv.Shri. R.L.Rathi that evidence in regard of loan Rs.5,00,000/- and Rs.10,00,000/- document withheld by the disputant, relied on **AIR 1991 Allahabad 226 Govind Laxman Solapurkar Vs. Dattatraya Kelkar and AIR 1967 SC 256 Mahant Shri. Srinivas Ramanuj Das Vs. Surjanarayan Das** wherein Their lordship held that "*non production of evidence/ documents adverse inference cannot be drawn."* In matter disputant prove that opponent applied for the loan Rs.5,00,000/- and for Rs.10,00,000/-hence no need to drawn adverse inference against the disputant for non production of these documents.

39) The opponent advocate Shri. R.L. Rathi argued that documents produced on record are certified copies cannot be read in evidence as the documents not proved by witness Shri. Ashok Jain who was remained absent for cross examination. It is further argued that the person who certified these documents has no authority to certify it because as per Rule 34 of M.C.S. Act the person should be authorized by managing committee, however no such

document field by disputant on record. To consider the argument of Shri. Rathi I have gone though the documents. It is a fact that the documents are certified copies but the witness of disputant Shri. Mandani at the time of cross was brought original with him. I have already discussed above that the documents produce on record proved by the witness Shri. Mandani. The Rule 34 dealt with provision for authorization to certify the documents by managing committee, this rule is in consonance with the section 40 of M.C.S.Act and the Section 40 of M.C.S. Act provide for admissibility of entry in any book, Register, or list which is regularly kept in the course of business of society. The loan documents on which the opponent signed are not fall within any category of Section 40 of the M.C.S. Act these documents except resolution and account statement independently executed and are not part of any entry in Registers. Therefore, there is no merit in the contention of opponents advocate.

40) The opponents counsel point out that there is no signature of surety no.3 on the documents Ex.56 agreement hence he is not liable for claim amount. The disputant Adv. Shri. Goyanka argued that merely not singing this document by the opponent no.3 , it does not means that he is entitled for discharged and for that place reliance on AIR 1987 Smt. R. Lilavati Vs. Bank of Baroda. but fact in this case and fact in the matter at hand are not identical hence with due respect it is not helpful to the disputant. In the dispute, there is other documents except Ex.56 on record which bear signature of the opponent no.3 which is sufficient to held that opponent no.3 is surety. The document Ex.56 is agreement.

41) The opponents advocate contended that promissory note has not affixed sufficient stamp duty and for that relied on **Shivshankar Sahakari Upsa Jalsinchand Sanstha Ltd. V/s Nanded District Central Co-operative Bank reported in 2012() All MR 259.** Wherein their lordship held that *“promissory note – recovery of loan basis on promissory note*

which is not affixed stamp – As per definition under Section 2(22) of Stamp Act and Section 4 (Chapter II) of N.I. Act subject promissory note I covered under Stamp Act, Admissibility in evidence- Recovery of loan on basis of promissory note which is not duly stamped – Promissory note which is payable – Otherwise that on admission no duly stamped – same is inadmissible in evidence". In context of this ruling I have perused promissory note Ex.35 and it appear that said promissory note affixed sufficient stamp duty as required as per law. It appears from the proceeding that the opponents below Ex.24 was filed application for dismissal of dispute or for de-exhibit the document Ex.35 and Ex.45 promissory note and in the said application the opponent taken same contention and said application on merit came to rejected. The above raised objection now in regard of promissory note has already been decided which is unchallenged.

42) The opponent as stated above took the plea of obtain their signature on blank documents and considering the evidence on record they have not proved their defence. The disputant issued a notice to the opponents and they have received the notice and the acknowledgment thereof is on record below Ex.63 to Ex.65 but they have not given any response to the said notice or made any complaint against the bank after receipt of notice in regard of obtaining their signatures on blank documents. Ex.54 to Ex.58 are the application of hypothecation loan limit, mortgage deed, agreement which bears signature of opponents. These documents remained unchallenged. Considering the above evidence on record I came to the conclusion that disputant proved that the opponents availed the term loan facility and hypothecation loan limit facility of Rs.5,00,000/- to Rs.15,00,000/- and for that the opponents No. 2 and 3 are sureties.

43) The next point as to whether the amount claim by disputant in prayer clause is outstanding towards the opponents or not. For that the disputant filed account statement on Ex.61 of term loan of Rs.2,50,000/- and

on Ex.62 & Ex.118 of account statement of hypothecation loan limit Rs.5,00,000/- to Rs.15,00,000/-. The opponents as usual denied the outstanding amount. The opponent No.1 advocate Shri. P.M. Rathi argued that disputant has not proved the entries in the account statements because witness admitted in the cross. The opponent No.1 3(i) advocate Shri. R.L. Rathi also supported to the contention of advocate Shri. P.M. Rathi and argued that the account statement challenge by the opponent, disputant filed a book of account which is not admissible. Per contra, the disputant advocate Shri. Goyanka submitted that disputant witness proved the entries of account statement. The document Ex.61 is of term loan of Rs.2,50,000/- and document Ex.62 and Ex.118 is a account statement of hypothecation loan limit.

44) It is a fact that the oppoentnNo.2 mortgaged the property for the loan of opponent no.1. According to disputant, the bank sold the machinery of opponent No.1 for Rs.2,75,000/- and sale proceed amount transferred to term loan account which became nil and the mortgaged property under Securitization Act has been sold on 03/08/2011 and the sale proceed amount of Rs.6,35,000/- transferred in hypothecation loan account. The witness of disputant deposed the same fact in his affidavit and he asserted that only Rs.11,12,038.58 is outstanding amount towards the opponents. The disputant filed a documentary evidence that is sale certificate on record. The opponent has not challenged the sale of mortgaged property. The opponents advocate in cross examination brought on record the admission of sale of mortgage property. So it is undisputed fact but the opponents advocate Shri.P.M.Rathi argued that without permission of opponent no.1 the said sale proceeds amount transferred in the other accounts. It is required to mention here that the liability of guarantors as per section128 of contract Act is coextensive with the borrower. The bank has every right to sell the mortgage property which is done by the bank. The bank followed requisite procedure to sale the mortgage property of the opponent which indicated from the document on

record. The opponents who are guarantors has not objected at that time, therefore, now it cannot be contended that said sale of properties is illegal.

45) The account statement Ex.61 is a computerized statement. The entries of this account statement is properly maintained and as on 01/03/2000 the amount Rs.1,32,934.93 shown as outstanding. The Ex.62 is account statement of hypothecation loan limit of Rs.15,00,000/- which shows the entry of sanction of limit Rs.5,00,000/- on dated 01/01/1996. The opponents withdrawn the amount from time to time and as on 28/02/2000 the amount Rs.20,33,023.65 appear as outstanding as mention in the dispute. The account statement Ex.118 is also supported to this. It appears from the Ex.118 that amount Rs.27,563.57 as remaining outstanding amount of term loan after adjustment of sale proceeds amount is transferred to the hypothecation loan account. The amount Rs.6,35,000/- transferred by disputant on 02/09/2011 which is a sale proceed amount in hypothecation loan account, the entry reflected in the account statement . The amount Rs.11,12,038.58 appears as outstanding as on 31/05/2014. This account shows as outstanding after the adjustment of sale proceeds amount and disputant now claiming said amount.

46) The account statement Ex.61 and Ex.62 certified by officer of the bank and Ex.118 bear a certificate under Section 2 of Bankers Book Evidence Act. The opponents counsel has not cross examined on any of the entries of account statement and has not shown that entries in the account statement are bogus. The opponent advocate relied on **Chandradhar Goswami V/s 1966 J (SC) 40, AIR 1981 Bombay 446, Zena Sorabji V/s Mira Hotel** and try to establish mere on the basis of account statement person cannot be charged with liability. In Chandradhar case it is held by their lordship that “ *No person can be charged with liability merely on the basis of entry in book of account”.* **And in Zena case** *it is held that “Section 34 – Book of account – consists of bundle of sheets – separately*

conveniently is not book of account – even bound ledger book by itself has no evidentary value". In these two rulings there is a reference of Section 34 of Evidence Act under which the person cannot held liable for amount merely on basis of account statement.

47) The disputant advocate contended said section is not applicable. I am agree with contention of disputant advocate for the reason that Section 34 is not applicable. The Section 40 of M.C.S. Act specifically provides for admissibility of entries in books of account. The account statement which is computerized are the copies of original account maintained in computer and admissible under Section 40 of the M.C.S. Act. I would like to relied on **Ghanshyamdas Chaudhary – V/s – Chikhali Urban Bank Mh.L.J. 2007(3) 567,** wherein their lordship observed that *"Section 34 is not applicable when Section 96 of the M.C.S. Act provision is incorporated in the M.C.S. Act".* Section 96 of the M.C.S. Act is in regard of contractual rate of interest. Hence, with due respect the above rulings is not applicable. The opponents nowhere in their written statement stated that such and such entries in the account statement produce on record are illegal nor brought through the cross of the disputant witness on record. The opponent only asserted that the account statement is not properly maintained but I stated above no singal entries shown by the opponent of account statement which is illegal. Hence I held that disputant proved the account statement. Hence, I hold that the amount Rs.11,12,030.58 is outstanding towards the opponents. The opponent no.2 during the pendency of the dispute expired and the disputant brought on record the legal heir of the deceased opponent no.2, they are liable for the proved amount to the extent of the property left by the decease at the hand of these legal heir.

48) **As to Issue No. 5 :** The opponents in their written statement raised the point of jurisdiction stating that the disputant bank registered under the provisions of Multi State Co-operative Societies Act and governed

by said provision, the Central Registrar established under the said Act has only got jurisdiction to decide the dispute. As far as jurisdiction of this Court is concerned, there are two criteria which required to fulfill as mentioned in Section 91of the M.C.S. Act. According to Section 91 of the M.C.S. Act, the subject matter must be fall within the subject mention in Clause (1) of section 91 and secondly, the parties to the dispute must be one of the parties specifically fall within category Clause (a) to (e) of section 91(1) of M.C.S.Act . . Their contention that jurisdiction of this Court come to an end once the bank registered under the Multi State Co-operative Societies Act. . According to disputant advocate Shri. Goyankar when the disputant bank converted in Multi State Co-operative Societies Act at that time the machinery for recovery of loan was not available, the Hon'ble High Court was stayed the provision of Multi State Co-operative Societies Act and therefore, disputant filed a dispute under Section 91 of the M.C.S. Act.

49) The opponent No.1 advocate Shri. P.M. Rathi argued that disputant bank registered under Multi State Co-operative Societies Act in the year 1999 and on the date of filing of dispute the bank registered under Multi State Co-operative Societies Act and central Registrar was authority to hear the dispute. The opponent No.3(i) advocate Shri. R.L. Rathi also argued that the bank registered under Multi State Co-operative Societies Act 1984 in the year 1999 then it governed under the provision of Multi State Co-operative Societies Act and dispute is not tenable.

50) In order to examine correctness in the submission of the respective counsels of the parties, the status of the disputant bank on the date of filing of the dispute is the germane. The dispute filed in the year 2000. It is an undisputed fact that disputant bank registered under Multi State Co-operative Societies Act 1984 in the on 29-12-1999 as reflected from order of the Hon'ble High court Bombay, Bench Nagpur. The said Act 1984 replace by new Act 2002. Now, the question whether the disputant bank registered

under Multi State Co-operative Societies Act 1984 in the year 1999 and dispute filed in the year 2000 is tenable. The disputant relied on judgment of Hon'ble High Court Bombay, Bench Nagpur delivered in **Civil Revision application No. 213/2003 M/s Balaji Ginning and Pressing Industry –V/s – Tirupati Jinning and Pressing Factory** and also placed a reliance on **Vikas Chaudiwala –V/s – Shamrao Vitthal Co-operative Bank reported in LE (Bombay)2014 page 239** and also relied on **Grater Bombay Co-operative Bank Ltd. – V/s- United Yarn Textile Pvt. Ltd of Supreme Court reported in Mh.L.J. 2007(3) page 434.**

51) The opponent advocate Shri. Rathi also relied on **2007(5) ALL MR 364 – Adarsh Jinning and Pressing Factory –V/s – State of Maharashtra & Others, Ishwar Bhai Patel –V/s – State of Maharashtra reported in 2007(5) ALL MR 376** and placed reliance on judgment of Hon'ble Bombay High Court reported in **Mh.L.J. 2004 page 705 Narendra Kantilal Shah –V/s – Joint Registrar, Co-operative Societies Bombay and Others.** In **Adarsh Jinning & Pressing**, fact was that petitioner therein who was debtor challenge recovery certificate issued by respondent No.3 on 28/10/2002 against him and also challenge government circular dated 08/01/2001 & 16/01/2003. In that case after obtaining recovery certificate respondent No.4 initiated proceeding for recovery of amount and issued notice for recovery and seal property of petitioner, the possession was taken by bank and it was put on auction and respondent No.6 accepted price of petitioner property and deposit entire amount with bank. Meanwhile petitioner filed Civil Application No.285/2004 and court issued order not to hand over possession of property to purchaser and Civil Application No.7918/2004 filed by respondent No.6 for refund of deposit amount Rs.71 lakhs. The Hon'ble Court set aside circular dated 16/01/2003 and sale of property and order to continue possession of property of bank with direction to refund Rs.7 lakhs to respondent No.6. The point in this case raised in regard of jurisdiction of authority who issued recovery certificate and in spite

of circular dated 08/01/2001 permitted execution of order under section 156 of State Act 1960. It appears from this judgment that interim relief was granted in writ filed by Cosmos Bank allowing authority under State Act to entertain application under Section 101 of State Act and decide same. It is held by their lordship that *"Multi State Co-operative Societies Act 2002 came into force on 19/08/2002 and Multi State Co-operative Societies had no dispute regarding mechanism and as such they were allowed to have recourse of section 101 of State Act. Hence, recovery certificate dated 28/10/2002 obtained by respondent No.4 bank under section 101 of State Act should be held legal and valid."*

52) The disputant advocate Shri. Goyanka filed copy of petition for special leave to Appeal No. 101/2008 – Adarsh Jinning V/s. State of Maharashtra and argued said case remanded by to Hon'ble High Court. I find substance in the contention, but ground of remand of mater is different, that was whether circular dated 08/01/2001 & 03/10/2002 issued by Registrar stating that Section 101 of M.C.S. Act would continue applied even after Multi State Co-operative Societies Act 2002 came in to force or not. The opponent further relied on **Chiranjilal Shrilal Goenka V/s. Jasjit Singh & Other reported in 1993(2) S.C. 507,** there is reference of this ruling in Adarsh Jinning case wherein their lordship observed that *"jurisdiction come only from law lean and cannot be exercised otherwise, the jurisdiction or the power of the Court to deal with matter or make an order carrying binding force in the fact. The jurisdiction to try case could only be conferred by law enacted by legislature, the jurisdiction conferred by statute and even Supreme Court cannot confer the jurisdiction on authority or tribunal".* The fact and circumstance in that case and in the present case being different with due respect is not applicable.

53) The next ruling Balaji Jinning & Pressing case is concerned, it is held by their lordship that *"by virtue of enactment of Multi State Co-*

operative Societies Act 2002 the society registered under Multi State Co-operative Societies Act 1984 automatically came to be registered under new Act on 19/08/2002". It is also held that *"The various provision of Multi State Co-operative Societies Act were stayed between period 9th August 1999 the date on which writ petition No.1952/99 and 19th August 2002 the date when new act came into force".* It is observed by their lordship that *"the provision which had to govern the recovery of co-operative societies were M.C.S. Act registered of bank under Multi State Co-operative Societies Act had turn in incohalt and therefore, recovery proceeding under M.C.S. Act were not just competent but were to be legal and only remedy".* This order passed by their lordship while pending Misc. Application No.458/2009 as the applicant filed the application for review of judgment of their lordship and this review application rejected. It appears from the said judgment that provision of said Act was stayed. Therefore, disputant filed the dispute. I agree with the contention of disputant Advocate for the reason that after considering the case law Adarsh Jinning & Balaji Jinning & Pressing, it appears that the stay was granted to the provision of Multi State Co-operative Societies Act 2002. Hence the disputant recourse remedy under Section 91 of the M.C.S. Act.

54) The next ruling on which opponent relied is **Narendra Kantilal Shaha V/s. Joint Registrar Co-operative Societies**. In this case it is held by their lordship that *"on the date on which Debt Recovery Tribunal has been constituted, the courts and authority under the M.C.S. Act 1960 and Multi State Co-operative Societies Act 2002 ceased to have jurisdiction to entertain the application submitted by co-operative bank for recovery of their dues".* The disputant counsel relied on **Grater Bombay United Yarn full bench judgment of Supreme Court**, wherein their lordship held that *"Co-operative bank shall be under M.C.S. Act 1960 transacting the business of banking do not fall within the meaning of Banking Company Act as defined by Section 5(C) of Banking Regulation Act 1949 and hence the provision of recovery of Debt Due to Bank and Financial Institution Act 1993 are not*

applicable for recovery of dues by co-operative bank from their members". Their lordship referred the issue before appropriate bench for disposal of case on the point whether co-operative bank transacting business of banking do not fall within the meaning of banking Company and therefore, provision of recovery of Debt Dues to Bank and Financial Institution Act 1993 by invoking the doctrine are not applicable to the recovery of dues by co-operative bank from their members. The disputant advocate argued that the judgment is not final and filed a copy of **Pandurang Chi -V/s – Vishwasrao Patil Muergul Sahakari Bank Ltd. reported in 2016 CJ (SC) 9819** and point out that judgment of **Grater Bombay** referred to Larger Bench. I have gone through both ruling of Narendra Kantilal Shaha & Grater Bombay. At this juncture the ratio laid down in Grater Bombay Co-operative Bank is applicable because yet Larger Bench judgment is not decided, conflicted issue revised in both cases referred above in regard of jurisdiction of this Court for the dispute filed under Section 91 of the M.C.S. Act. Their lordship in judgment of Grater Bombay referred the case Narendra Kantilal Shah. Hence at present the principle laid down in Grater Bombay case is applicable to the present matter. The disputant bank registered in the year 1999 under Multi State Co-operative Societies Act 1984 but there was no machinery available and it was doubt in the mind of the bank under which provision the recovery proceeding should have to be filed, the bank invoked the proviso of Section 91 of the M.C.S. Act and considering the judgment of their lordship in Civil Application No.4/2009 decided on 17/08/2010 the disputant properly and legally filed the dispute under Section 91 of the M.C.S. Act in 2000. Assuming for the sake of argument that the bank registered subsequently Under Multi State Co-operative Societies Act and dispute filed thereafter then point is required to see that the bank registered under Multi State Co-operative Societies Act 1984 deem to register under Multi State Co-operative Societies Act 2002 and such deem provision is also incorporated in Section 126 of Multi State Co-operative Societies Act. When the blank said to be registered automatically under Multi State Co-operative

Societies Act 2002 and dispute filed in 2000 then certainly the provision of Section 126 of Act is attracted. The Clause (6) of provision 126 speak that *"save as otherwise provided in this Act, any legal proceeding pending in any Court or before Central Registrar or any other authority at the commencement of this Act shall be continued to be in that Court or before Central Registrar or that authority as if this Act has not been passed".*

55) The disputant filed a dispute in the year 2000 and deem to register under said Act 2002 then the proceeding pending that is dispute before applicability of said Act 2002 as per provision 126 (6) this court has jurisdiction to decide the dispute. In this context, I am relied on **Abhiday Co-operative V/s State of Maharashtra in Writ Petition No.2618/2008** in that case the recovery proceeding on 10/11/2004 was filed and Assistant Registrar rejected certificate under Section 101 of M.C.S. Act on 11/07/2006, during the pendency of revision the bank on 11/01/2007 converted into Multi State Co-operative Societies Act 2002. The respondent No.3 rejected the revision. In that case the lordship held that *"the provision of said Act in fact indicate that the Court and authority under M.C.S. Act continue to have jurisdiction to decide the matters which were validly filed before them before conversion of society registered under Multi State Co-operative Societies Act. The Multi State Co-operative Societies Act do not contain any provision for transfer of pending proceeding under M.C.S. Act to the authority constitute under Multi State Co-operative Societies Act".* In this case their lordship in judgment referred the ruling of **Tirupati and Balaji and Adarsh Jinning and Pressing** on which the disputant and opponents respectively relied. In view of the above rulings the provision of Section 126 (6) of Multi State Co-operative Societies Act is also applicable for the reason that disputant bank deem to register under Multi State Co-operative Societies Act 2002. Therefore, considering the ruling of both parties the dispute is tenable under Section 91 of the M.C.S. Act and this court has jurisdiction to decide disptue.

56) **<u>As to Issue No.6</u>** : It is one of the contention of the opponent that dispute is barred by limitation. The opponent No.1 advocate Shri. P.M. Rathi submitted that dispute is barred by limitation, the dispute filed for different loan and therefore, cause of action for two loans are different, two different disputes should have to file. The opponent no.(i) advocate Shri. R.L. Rathi also supported to the opponent No.1 advocate. The disputant advocate Shri. Goyanka argued that period of limitation is provided for 12 years in case of mortgage property. Firstly as far as cause of action as argued by Shri. Rathi is concerned, admittedly two loan on two different occasion sanction to the opponents. The O-2 Rule-3 C.P.C. provided

> "*a plaintiff may unite in the same suit several cause of action against the same defendant , same defendant jointly, and plaintiff having cause of action in they are jointly interested against the same defendant or the same defendants jointly may unite such cause of action in the same suit.*"

57) In view of the provision the disputant allowed to several cause of action in the one suit. As far as period of limitation for filing of dispute is concerned, Section 92 of M.C.S.Act provides period of limitation and considering the subject matter in the dispute of recovery of loan the Section 91(1)(a) would applicable and according to said provision the period of limitation starts from the date of death of member or cessation of membership, however in the matter none of the event occur. The disputant advocate has not point out specific provision under which Act provides 12 years of limitation. The said provision is incorporated under Limitation Act, which is not applicable to the proceeding filed under Section 91 of the M.C.S. Act. The opponents advocate also has not disclosed as to how the dispute is barred by limitation. As long as person is a member of the bank it cannot be said dispute was barred by limitation, because period of limitation start from his death or cessation of membership as held in the case **Solapur Merchant Cooperative Bank Ltd. Vs. Shri. Devidas Narasayya Vannal**

and other Reported in 1984 C.T.J. 375. I do not find that dispute is barred by limitation.

58) **<u>As to Issue No.7</u> :** The opponent in their written statement asserted that disputant illegally sold the property of opponents and huge amount recovered from the opponents. The opponent No.3(i) made application below Ex.114 for amendment of written statement praying to allow Para No.10-A in written statement adding fact that the disputant sold property for lessor price in collusion without notice to opponent No.3(i) and hence alleged surety liable to discharge. This application on merit rejected. The opponent during course of cross examination has not touched to this point and asked on this line The disputant contention that the property of opponents sold during pendency of dispute and sale proceed thereof transferred in the account statement of opponent. The witness of disputant in his evidence categorically stated this fact as to how the amount of sale proceed adjusted in the account statement of opponent, the witness in his affidavit asserted that after transfer of sale proceed amount Rs.11,12,038.58 is outstanding.

59) The disputant advocate Shri. Goyanka submitted that this issue cannot be decided because issue No.7 decided by the authority as the property sold under SERFASI Act, the sale certificate duly issued by the authorized office and legality and validity of sale certificate cannot decide by this Court.

60) The disputant produced on record copy of sale certificate issued by the authorized officer of disputant bank. The opponents have not disputed this fact. The counsel of opponent No.1 Shri. P.M. Rathi in cross of disputant witness asked question on this point and brought on record about sale of property. The point whether this Court cannot decide the such issue, the answer would be negative for the reason that the disputant during pendency

of dispute sold property of opponent and opponent No.1 in his written statement taken defence that such sale of property is illegal. It is pertinent to note that as per Order 8 of Civil Procedure Code issue has to frame from pleading of the party, hence, this issue framed. The disputant filed application below Ex.106 praying to recast the issue and to struck down this issue as the bank sold property by taking action under provision of SARFASI Act in year 2004 and 2011. This application on merit rejected.

61) The evidence on record shows that sale proceed amount transfer in the account of opponent. The disputant is a bank and the bank has right to initiate proceeding for recovery of loan amount under said Act. If the opponent felt that such act of disputant is illegal, then the opponent ought to have take action against the disputant under said special Act. The document produced on record indicate that before sale of property the bank published notice in newspaper and said property itself purchased by wife of opponent No.1. The opponent No.1 at this stage cannot say that transaction is illegal. The opponent No.1 at that time was silent. Considering the provision of SERFESI Act the act of the disputant of sale of property of opponent under said Act is legal. Hence my finding to this issue is negative.

In view of the above reasons, I came to the conclusion that disputant proved its case against the opponents and I proceed to pass the following order.

O R D E R

(1) The dispute is hereby partly allowed with costs.

(2) The opponents shall jointly and severally pay Rs.11,12,038.58 with 17.5% p. a. interest from 01/03/2000 till realization.

(3) Award be drawn accordingly.

Sd/-

At Akola
Dated : 02/08/2019

(Shri. B. S. Lakhote)
Judge,
Co-operative Court, Akola.

Judgment Delivered on : 02/08/2019
Judgment check & signed on : 14/08/2019

Sd/-
(Shri. B. S. Lakhote)
Judge,
Co-operative Court, Akola.