

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
COMM. ARBITRATION PETITION (L) NO. 6358 OF 2022**

Deepti Prakash Ghate ...Petitioner  
Vs.  
NKGSB Co. Op. Bank Ltd. ...Respondent

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Mr. Vishal Pattabiraman a/w. Mr. Mittal Munoth, for the  
Petitioner.

Mr. Joel Carlos, for the Respondent No.1.

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**CORAM : MANISH PITALE, J.  
DATE : 7<sup>th</sup> JANUARY 2023**

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**JUDGMENT :**

. Heard learned counsel for the parties. Admit. Heard finally  
with the consent of the learned counsel for the parties.

2. By this petition, the petitioner has challenged award dated  
19/9/2019, passed by a sole arbitrator in pursuance of statutory  
arbitration undertaken as per Section 84 of the Multi-State Co-  
operative Societies Act, 2002 (hereinafter referred to as the Act of  
2002). By the impugned award, the petitioner alongwith others  
has been jointly and severally held liable to pay a specific amount  
alongwith interest to the respondent-Bank.

3. The brief facts leading up to filing of the present petition are that according to the respondent-Bank, the principal borrower i.e. M/s. Erica Healthcare Pvt. Ltd. was advanced loan and cash credit facility, to which the petitioner alongwith others was a guarantor. It was the case of the respondent-Bank that a Deed of Guarantee was also executed in that context. There was default in repayment of loan and this led to disputes between the respondent-Bank and the principal borrower, pursuant to which arbitration proceedings were initiated under Section 84 of the Act of 2002.

4. In the said proceedings, the petitioner alongwith the principal borrower and the other guarantors were made parties. According to the respondent-Bank, the petitioner and the other parties to the arbitration proceedings were evading service, due to which the respondent-Bank had to serve the petitioner by way of substituted service. According to the respondent-Bank, upon the petitioner being served, the matter proceeded before the learned arbitrator. On 19/9/2019, the impugned award came to be passed, wherein the operative portion directed as follows:

AWARD

*1. The Opponents No.1 to 7 are ordered and directed to pay jointly and severally to the Disputant Bank viz: NKGSB Co-operative Bank Ltd. an amount of Rs.8,74,11,165-22 due as on 31-5-2019 with future*

*interest thereon @ 15% p.a. from 1-6-2019 till realization.*

*2. The Opponents are further directed to pay Rs.46,500/- towards arbitration charges and Rs.12,500/- towards Administrative cost.*

*3. The Bank is at liberty to attach the Bank accounts of the Opponents, if found necessary.*

5. According to the petitioner, she was completely unaware of the said proceedings, for the reason that she was never served with notice and the entire proceedings were conducted behind her back. It was only when the respondent-Bank addressed a letter dated 31/10/2019, to the employer of the petitioner, annexing a copy of the award that she became aware of the impugned award. It is further the case of the petitioner that the Recovery Officer addressed a communication to the employer on 31/12/2021, as a reminder to attach the salary of the petitioner for satisfying the liability imposed upon her under the impugned award.

6. It is the specific case of the petitioner that even till date she has not been served with the original signed award by the arbitrator and it was only when coercive steps were taken through her employer, that she was constrained to approach this Court by filing the present petition under Section 34 of the Arbitration

and Conciliation Act, 1996 (hereinafter referred to as the Act of 1996).

7. Mr. Vishal Pattabiraman, learned counsel appearing for the petitioner submitted that the issue of limitation in the present case would not arise, for the reason that the petitioner was never served with the original signed copy of the award. In this regard, reliance was placed on judgment of the Supreme Court in the case of *The State of Maharashtra and Ors. Vs. M/s. Ark Builders Pvt. Ltd. (Judgment and order dated 28/2/2011 in Civil Appeal No.2152/2011)*.

8. It is further submitted that in any case, the impugned award deserves to be set aside on the ground of gross violation of principles of natural justice, for the reason that the petitioner was never served with notice as regards the said arbitration proceedings. It is submitted that the documents now available on record before this Court clearly indicate that the notice sent by Registered Post AD was returned with the remark 'Not Known' and that subsequent attempts made to serve through substituted service on the part of the respondent-Bank could not be said to be enough to satisfy the requirement of law. Therefore, it was submitted that the impugned award deserves to be set aside on the said ground.

9. It was further submitted that in the present case, in any event, the impugned award was passed against the petitioner, without jurisdiction by the learned arbitrator, on a proper interpretation of Section 84 of the Act of 2002. By relying upon the definition of the expression 'Member' as per Section 3(n) of the said Act, and the specific stipulations in Section 84(1) thereof, it was submitted that the petitioner, not being a member of the respondent Multi-State Cooperative Bank, there was no question of the learned arbitrator assuming jurisdiction in the matter, as against the petitioner. In support of the aforesaid submission, the petitioner relied upon the documents placed by the respondent-Bank before this Court with the additional affidavit, which indicate that although the principal borrower was inducted as a regular member and other guarantors were inducted as nominal members, the petitioner never submitted any form for membership, thereby indicating that Section 84(1) of the Act of 2002, could not have been invoked, in so far as the petitioner was concerned.

10. On this basis, it was submitted that the impugned award was rendered without jurisdiction and hence, vulnerable to interference under the limited scope available under Section 34 of the Act of 1996.

11. On the other hand, Mr. Joel Carlos, learned counsel appearing for the respondent-Bank, submitted that in the present case, the principal borrower had defaulted and therefore, the Bank was constrained to invoke Section 84(1) of the Act of 2002, seeking reference of disputes to arbitration. In so far as service of notice on the petitioner was concerned, it was submitted that the Bank attempted to serve the petitioner on the address available with it. It was crucial that the said address pertained to the very apartment, which was attached and sold by the respondent-Bank for satisfying the liability of the principal borrower and that therefore, it was incumbent upon the petitioner to have divulged her latest and correct address, as she was always aware about the recovery proceedings initiated by the respondent-Bank against the principal borrower. It was submitted that, in any case, the petitioner stood validly served by way of substituted service and that therefore, there was no substance in the contention regarding violation of principles of natural justice, during the arbitration proceedings.

12. On the issue of limitation, the learned counsel appearing for the respondent-Bank fairly submitted that the position was covered by the aforementioned judgment of the Supreme Court in the case of *the State of Maharashtra & Ors. Vs. M/s. Ark Builders Pvt. Ltd. (supra)*.

13. In so far as the interpretation of Section 84(1) of the Act of 2002 is concerned, the learned counsel for the respondent-Bank relied upon Section 84(2)(b) of the said Act to contend that the said provision read in conjunction with Section 84(1) and Section 3(n) thereof, would indicate that even if the petitioner could not be said to be a member of the respondent-Bank, the learned arbitrator could exercise jurisdiction in the disputes that arose in the facts and circumstances of the present case.

14. This Court has considered the rival submissions in the present matter. Although, the grounds pertaining to violation of principles of natural justice and the aspect of limitation have been highlighted on behalf of the petitioner, this Court is of the opinion that the issue which really goes to the root of the matter pertains to interpretation of Section 84 of the Act of 2002, in order to examine as to whether the petitioner is justified in claiming that the impugned award was rendered without jurisdiction, qua the petitioner.

15. In order to appreciate the rival contentions, it would be appropriate to refer to Section 84 of the Act of 2002, which reads as follows:

*84. Reference of disputes: -*

*(1) Notwithstanding anything contained in any*

*other law for the time being in force, if any dispute [other than a dispute regarding disciplinary action taken by a multi-State co-operative society against its paid employee or an industrial dispute as defined in clause (k) of section 2 of the Industrial Disputes Act, 1947 (14 of 1947)] touching the constitution, management or business of a multi-State co-operative society arises-*

*(a) among members, past members and persons claiming through members, past members and deceased members, or*

*(b) between a member, past member and persons claiming through a member, past member or deceased member and the multi-State co-operative society, its board or any officer, agent or employee of the multi-State co-operative society or liquidator, past or present, or*

*(c) between the multi-State co-operative society or its board and any past board, any officer, agent or employee, or any past officer, past agent or past employee, heirs or legal representatives of any deceased officer, deceased agent or deceased employee of the multi-State co-operative society, or*

*(d) between the multi-State co-operative society and any other multi-State co-operative society,*



*between a multi-State co-operative society and liquidator of another multi-State co-operative society or between the liquidator of one multi-State co-operative society and the liquidator of another multi-State co-operative society, such dispute shall be referred to arbitration.*

*(2) For the purposes of sub-section (1), the following shall be deemed to be disputes touching the constitution, management or business of a multi-State co-operative society, namely:*

*(a) a claim by the multi-State co-operative society for any debt or demand due to it from a member or the nominee, heirs or legal representatives of a deceased member, whether such debt or demand be admitted or not;*

*(b) a claim by a surety against the principal debtor where the multi-State co-operative society has recovered from the surety any amount in respect of any debt or demand due to it from the principal debtor as a result of the default of the principal debtor, whether such debt or demand is admitted or not;*

*(c) any dispute arising in connection with the election of any officer of a multi-State co-operative society.*

*(3) If any question arises whether a dispute*

*referred to arbitration under this section is or is not a dispute touching the constitution, management or business of a multi-State co-operative society, the decision thereon of the arbitrator shall be final and shall not be called in question in any court.*

*(4) Where a dispute has been referred to arbitration under sub-section (1), the same shall be settled or decided by the arbitrator to be appointed by the Central Registrar.*

*(5) Save as otherwise provided under this Act, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to all arbitration under this Act as if the proceedings for arbitration were referred for settlement or decision under the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996).*

*This clause relates to settlement of disputes touching the constitution, management or business of a multi-State co-operative society. It further provides that such disputes shall be referred to the Co-operative Disputes Settlement Authority. It also specifies the disputes which shall be deemed to be disputes touching the constitution, management or business of the multi-State co-operative society. (Notes on Clauses).”*

16. It would be relevant to refer to Section 3(n) of the said Act, which defines the expression 'member'. The same reads as follows: -

*Section 3(n): "member" means a person joining in the application for the registration of a multi-State co-operative society and includes a person admitted to membership after such registration in accordance with the provisions of this Act, the rules and the bye-laws.*

17. It is significant that the Act of 2002 provides for a detailed procedure under which a person is inducted as a member of a Multi-State Co-operative Society. This entails the submission of application form as prescribed as per Rules and bye-laws.

18. This has some significance in the context of sub-section (1) of Section 84 of the Act of 2002, which is quoted above. The aforesaid provision makes it clear that disputes shall be referred to arbitration, which arise amongst members, past members and persons claiming through members and the Multi-State Co-operative Society touching upon the constitution, management or business of the said society.

19. Therefore, it is clear that only such disputes as specified in the aforementioned provision could be referred to arbitration. In

the present case, the petitioner asserts that she never applied for membership of the respondent-Bank (a Multi-State Co-operative Society) and therefore, she was never inducted as a member of the same, thereby showing that Section 84(1) of the said Act, could not have been invoked in her context. It is clear that a dispute, which is not covered under the said provision would not be capable of being referred to arbitration under the said provision. The respondent-Bank was required to show that the dispute, which was referred to arbitration arose between the respondent-Bank and a member, past member or a person claiming through a member.

20. Section 3(n) of the Act of 2002, specifies as to who is to be treated as a member. It requires the person who is to be treated as a member to have applied for membership with the Multi-State Co-operative Society and having been admitted to such membership. The documents on record placed alongwith the additional affidavit filed by the respondent-Bank show that the principal borrower had applied for regular membership of the respondent-Bank and the other guarantors (respondents before the learned arbitrator) had applied for nominal membership. The application forms duly filled and signed by the principal borrower and other guarantors were placed on record with the additional affidavit. Such an application on behalf of the petitioner is conspicuous by its absence. It is clearly stated on behalf of the

respondent-Bank that it does not have any such documents pertaining to the petitioner in its record. Thus, it becomes clear that the petitioner never applied for membership and therefore, there is no question of she being admitted as a member of the respondent-Bank (a Multi-State Co-operative Society).

21. Since the petitioner cannot be treated as a member of the respondent-Bank, even if disputes arose between them, the respondent-Bank could not have invoked Section 84(1) of the Act of 2002, for referring the said dispute for arbitration in so far as the petitioner was concerned. The said contention raised on behalf of the petitioner therefore, deserves to be accepted. The said proposition is also supported by the judgment of the Single Judge of this Court in the case of *Prakash Vrundavan Thakkar Vs. Nagpur Nagrik Sahakari Bank Ltd. and Ors.*<sup>1</sup>. In the said case, in similar facts, where a Multi-State Co-operative Society desired to proceed against a guarantor who was not a member of the society, it was held that reference to arbitration and the consequent award passed by the arbitrator against such guarantor were unsustainable. This Court allowed the appeal, setting aside the order passed by the District Court, which had upheld the award passed by the arbitrator against such guarantor. The said case appears to be close on facts to the present case and therefore, this Court is convinced that the aforementioned contention raised on behalf of the petitioner, in the context of Section 84(1)

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<sup>1</sup>2014(3) Mh.L.J. 349

of the Act of 2002, deserves to be accepted.

22. In so far as reliance placed by learned counsel appearing for the respondent-Bank on Section 84(2)(b) of the Act of 2002 is concerned, suffice it to say that sub-section (2) of Section 84 thereof, elaborates the aspect of disputes touching upon the constitution, management or business of a Multi-State Co-operative Society. It does not dilute any requirement of Section 84(1) of the Act of 2002, which pertains to disputes that can be referred to arbitration and the parties to such disputes that can be referred to such arbitral proceedings.

23. In so far as the question of violation of principles of natural justice is concerned, there is some substance in the contention raised on behalf of the respondent-Bank that in view of substituted service, it can be said that the petitioner was served with notice and that therefore, the arbitrator was justified in proceeding against the petitioner. This Court is not going into the details of the manner of service of notice and the rival contentions raised in that regard, for the reason that on the question of jurisdiction of the arbitrator itself, this Court is convinced that the contentions raised on behalf of the petitioner deserve to be accepted.

24. As regards the question of limitation, the position of law clarified by the Supreme Court in the case of *State of*

*Maharashtra Vs. M/s. Ark Builders Pvt. Ltd. (supra)* shows that the period of limitation would start to run only when the original signed award was served on the petitioner. There is nothing on record to show that original signed award was ever served on the petitioner and therefore, the period of limitation was never triggered.

25. It was only when the petitioner was served with a copy of the award through her employer that she became aware about the same. As per the law laid down in the said judgment, such method of service of a copy of the award on the petitioner would not trigger limitation and therefore, the contention raised on behalf of the petitioner deserves to be accepted.

26. In the light of above, this Court finds that the petitioner has made out a case for interference with the impugned award under Section 34 of the Arbitration and Conciliation Act, 1996, for the reason that the arbitral award was rendered without jurisdiction, as the disputes could not have been referred for arbitration under Section 84(1) of the Act of 2002, in so far as the petitioner was concerned. In view of the above, the impugned award is set aside, in so far as the petitioner is concerned.

27. Needless to say, it would be open for the respondent-Bank to seek such other remedy, as may be available in law, to recover the amount from the petitioner as a guarantor, if permissible in

law and the present judgment shall not come in the way of the parties in that regard.

28. The petition stands disposed of in above terms.

**MANISH PITALE, J.**