

(2023) 02 BOM CK 0073

In the Bombay High Court

Case No : Writ Petition No.1510 Of 2022

Dilip Pandurang Thopate

APPELLANT

Vs

Ashokrao V. Thopate And Others

RESPONDENT

Date of Decision : 07-02-2023

Acts Referred:

Constitution Of India, 1950 — Article 227

Maharashtra Co-Operative Societies Act, 1960 — Section 73CA(A1)(1)(v), 75(2)(1), 91

Evidence Act, 1872 — Section 63, 65, 73CA, 79, 106

Code Of Civil Procedure, 1908 — Section 105

Citation : (2023) 02 BOM CK 0073

Hon'ble Judges : A.S. Gadkari, J

Bench : Single Bench

Advocate : A.Y. Sakhare, S.S. Patwardhan, Bhooshan Mandlik, Vishwajeet Sawant, Ajay Joshi, Deelip Patil Bankar, Pooja Patil

Judgement

A.S. Gadkari, J

1) By the present Petition under Article 227 of the Constitution of India, the Petitioner, Original Opponent No.3 has impugned Judgment and Order dated 17th March, 2020 passed by the learned Member, Maharashtra State Co-operative Appellate Court Mumbai, Bench at Pune in Appeal No.131 of 2019 filed by the Petitioner and Appeal No.133 of 2019 filed by the Respondent No.1, thereby dismissing the Appeal No.131 of 2019 filed by the Petitioner and allowing the Appeal No.133 of 2019 filed by the Respondent No.1.

By allowing Appeal No.133 of 2019, the Appellate Court has partly set aside the Judgment and Award dated 30th September, 2019 passed by the learned Judge of the Co-operative Court No.1 at Pune in Dispute No.59 of 2015 and replaced it by its impugned Judgment and Order dated 17th March, 2020. The Petitioner has thus impugned both the Judgments and Orders dated 17th March, 2020 passed by the Appellate Court and Judgment and Award dated 30th September, 2019 passed by the Co-operative Court No.1 at Pune in Dispute No.59 of 2015.

2) Heard Mr. Sakhare, learned Senior Advocate for the Petitioner, Mr. Sawant, learned Senior Advocate for Respondent No.1 and Mr. Patil Bankar, Chief Standing Counsel for Respondent No.3. Perused entire record produced before me. Also perused Additional Synopsis tendered across the bar by Mr. Sakhare, learned Senior Advocate; the rejoinder/submissions/reply of the Petitioner in tabular format and unsigned Notes of submissions tendered across the bar by Mr. V.P. Sawant, learned Senior Advocate for the Respondent No.1.

3) The Respondent No.2 (Org.Oppo.No.1) is a Co-operative Society and is in the business of processing/selling milk, manufactured/processed and or packaging of other dairy products. The Respondent No.1 (Org. Disputant) is the member of Respondent No.2-Society. The Petitioner (Orig. Oppo. No.3) is also a member of Respondent No.2 Society. Respondent No.3 (Org. Oppo. No.2) is the Returning Officer appointed to hold and conduct the election of the Managing Committee of Respondent No.2 Society for the period from 2015 to 2020.

The election program for the Managing Committee of Respondent No.2 Society was published by the Election Authority. As per the said program, nomination papers were to be filed between 18th May, 2015 to 22nd May, 2015; scrutiny of nomination papers was scheduled on 22nd May, 2015; withdrawal of nomination was scheduled between 26th May, 2015 to 9th June, 2015; list of contesting candidates was to be published on 10th June, 2015; voting was scheduled on 21st June, 2015 and counting of votes and declaration of results were to be conducted on 22nd June, 2015.

4) Respondent No.1 was the representative of Jananidevi Sahakari Dudh Utpadak Sanstha Maryadit, Hantoshi, Taluka Bhore and was chosen to be representative of the said Society by following necessary procedure to vote for the said election as well as to contest the said election as a candidate of the said Society. Petitioner was the representative of Jananidevi Sahakari Dudh Utpadak Sanstha Maryadit, Karandi and was also nominated as a representative of the said Society and a candidate to contest the said election. Petitioner and Respondent No.1 filed their nomination papers from Bhore Constituency on 21st May, 2015 and were only two candidates from the Bhore Constituency to contest election of Respondent No.2 Society.

The results of the said election were declared on 22nd June, 2015. Petitioner got elected in the said election by a margin of 53 votes to 6 votes and was elected to the Managing Committee of the Respondent No.2 Society.

5) Being unsuccessful in the said election, Respondent No.1 filed Dispute No.59 of 2015 under Section 91 of the Maharashtra Co-operative Societies Act, 1960 (for short, "the MCS Act") in the Co-operative Court No.1 at Pune on 15th July, 2015. It was and is the contention of the Respondent No.1 that, the Petitioner was disqualified to contest the said election and to be elected to the seat from Bhore General Constituency. That, the Petitioner was disqualified under Section 73-CA (A1)(1) (v) of the MCS Act read with modified bye law Nos.14.26.6 and

14.26.7 of the Respondent No.2 Society.

5.1) The dispute was filed mainly on the following three grounds:-

(i) That, the Petitioner was having interest and/or was running two businesses/entities namely (i) Anant Dudh Pvt. Ltd. at Kikavi and (ii) Anand Dairy at Bhilarewadi, Taluka Haveli, District Pune, which are in the area of operation of Respondent No.2 Society. That, the son of the Petitioner namely Shri. Swapnil Thopate is also running same and similar business as that of Respondent No.2 Society in the name and style of Disha Dairy at Taluka Satara in the area of operation of Respondent No.2 Society. That, Anant Dudh Pvt. Ltd. is carrying on business of manufacturing or processing of milk and other milk dairy products and by-products which are of same and similar categories carried out by Respondent No.2 Society. That, in the said company, Petitioner was a Director and a major share-holder having 17530 equity shares each of Rs.100/- value. The son of his real brother i.e. his nephew namely Shri. Nitin Bhikoba Thopte was also Managing Director of the said Company. That, other brother of Petitioner Shri. Mahadeo Thopte and his son Shri. Ravindra Thopte and Petitioner were also Directors of the said company. All the said Directors were from same family which constitute joint family. It was alleged that the Petitioner fabricated certain documents to show that, in the year 2009 he had resigned from the Directorship or Chairmanship of the said company. However, the fact remained that, the Petitioner continued to be a major share-holder of the said company and the same is governed by his family members who belongs to a joint family.

That, Anand Dairy is a proprietary concern of the Petitioner which also carries on business of packaging of milk activities in the area of operation of Respondent No.2 Society. Thus, the Petitioner was having direct as well as indirect interest in the business which is same or similar to the business activities of Respondent No.2 Society and therefore the Petitioner on the date of filing of nomination form and contesting election, was disqualified to be elected from the said constituency.

(ii) That, the Respondent No.1 filed his objection to the nomination of the Petitioner with Respondent No.3 on 25th May, 2015 along with all the details and documents in support thereof. Petitioner filed his reply to the said objection of Respondent No.1. The said reply was a joint reply on behalf of Petitioner himself alongwith his other family members namely Bhikoba Pandurang Thopte, Rupali Sachin Thopte. That, though the Respondent No.1 lodged objection for the eligibility of the Petitioner to contest the said election, it is alleged that the Respondent No.3 wrongly and improperly accepted nomination papers of Petitioner without considering the objection raised by the Respondent No.1, that there were only two candidates i.e. Petitioner and Respondent No.1 from the said Constituency and therefore the votes secured by the Petitioner could not have been considered by the Respondent No.3 as they were invalid and/or void votes and therefore the result of election declaring the Petitioner as Returned Candidate had been materially affected because of improper acceptance of his nomination papers by Respondent No.3.

(iii) It was alleged that, the Petitioner had deliberately filed false certificate and affidavit along with nomination papers by suppressing material facts that he and his family members were carrying out the same and/or similar business which is being carried out by the Respondent No.2 Society. That, the Petitioner also had filed false documents that his nomination paper i.e. he is resident of Khanpur though he is a resident of Mauje Karandi Budruk. The Petitioner had also filed incorrect and fraudulent Election Identity Card issued by the Election Commission of India.

5.2) Respondent No.1 therefore prayed in the said dispute that, the election of Petitioner i.e. Returned Candidate in the said election of Respondent No.2 from Bhore General Constituency be declared as void and be set aside; since there were only two candidates in the said Constituency and the election of the Petitioner being void, the Respondent No.1 may be declared as having duly elected in the said election from the said Constituency; in the alternative, the Respondent No.1 had prayed that, if the Court comes to the conclusion that the prayer clause (b) of the said Dispute cannot be granted, then in that event a fresh election may be ordered from the said Constituency; that the Petitioner being disqualified not only on the date of his nomination paper or on the date of his election but continues to be disqualified and therefore ceased to be a member of the Managing Committee and had no right to function as a member of the Managing Committee and to represent the said Constituency according to the provisions of modified bye-law No.14.26.7 and therefore he may be restrained by an order of temporary injunction during the pendency of Dispute/Election Petition from taking part in the affairs of Respondent No.2 Society and for other consequential reliefs.

5.3) Petitioner filed his written statement below Exh. No.24. Petitioner contended that, he was not running the businesses by name Anant Dudh Pvt. Ltd. and Anand Dairy. That, he was neither Director of Anant Dudh Pvt. Ltd. nor having shares in the said company. He was not having Joint family. He has no concern with the said company i.e. Anant Dudh Pvt. Ltd. since the year 2009. That, Anand Dairy does not engage in the same business that of Respondent No.2 Sangh.

5.4) Petitioner alleged that, the said dispute so filed was not legal, proper and maintainable in law. Petitioner denied that, he was disqualified to contest the election of the Managing Committee of Respondent No.2 Society. That, he denied that he is/was running the businesses of Anant Dudh Pvt. Ltd. and Anand Dairy. Petitioner contended that, though both the said businesses might be in the area of operation of Respondent No.2 Society however, that has no nexus with the present case. So far as the business run by Mr. Swapnil i.e. Disha Dairy is concerned, the same is admittedly situated at Satara which is out side the area of operation of Respondent No.2 society. Therefore, none of the said business entities disentitles the Petitioner to be a Director of the Respondent No.2 Society. Petitioner categorically denied that, he was/is a Director of Anant Dudh Pvt. Ltd.

and has shares in the said company. As far as his brother and nephew is concerned, the Petitioner pleaded that he had no idea as to whether the said two persons were/are Directors of the said company i.e. Anant Dudh Pvt. Ltd. He denied that, there is joint family of himself and Mr. Bhikoba, Mr. Nitin, Mr. Mahadeo Thopate and Mr. Ravindra. Petitioner contended that, Respondent No.1 had made baseless allegations against him to mislead the Court. Petitioner denied that, Anand Dairy is his proprietary concern and therefore question does not arise of its business and for similarity of business with the business of Respondent No.2 Society. Petitioner had submitted that, his election therefore cannot be set aside and or even challenged. Petitioner therefore prayed that the dispute filed by the Respondent No.1 may be dismissed with costs.

5.5) The Respondent No.2 Society filed its written statement at Exh. No.44 and denied the dispute and allegations made therein and contended that, the Dispute is hit by provisions of non-joinder of necessary parties and mis-joinder of parties to it.

The Respondent No.3 filed his written statement at Exh. No.74 and denied all the allegations levelled against him in the Dispute and contended that, the objection raised by the Respondent No.1 regarding the nomination of Petitioner was rightly decided at the time of scrutiny of nomination and had passed detailed order before accepting nomination papers of the Petitioner. Respondent No.3 alleged that, he has been joined to the said dispute as a party with malafide intention to harass him.

5.6) The Trial Court framed issues below Exh. No. 28. The Respondent No.1 adduced his evidence by an affidavit in lieu of examination-in-chief below Exh. No.30 and along with it, produced copies of documents vide list below Exh. No.31. The said documents were marked as Exh. Nos. 32 to 37 respectively.

5.7) The Disputant was cross-examined on behalf of the Respondents. Petitioner chose not to lead evidence and filed pursis below Exh. No.101 to that effect. At the time of final arguments, Respondent No.1 produced on record copies of certain documents with a list below Exh. No.117 along with an Application below Exh. No.116 for permission to produce the said documents.

5.8) The Trial Court by its Judgment and Order dated 1st February, 2018 was pleased to dismiss the said Dispute filed by the Respondent No.1 with costs.

5.9) Feeling aggrieved by the dismissal of his dispute, the Respondent No.1 preferred an Appeal bearing No.22 of 2018 before the Maharashtra State Co-operative Appellate Court, Mumbai, Bench at Pune. Learned Member of the Appellate Tribunal after re-appreciating entire evidence on record was pleased to allow the said Appeal by its Judgment and Order dated 10th January, 2019.

5.10) The Appellate Court set aside the Judgment and Award dated 1st February, 2018 passed by the Trial Court and allowed the Dispute bearing No.59 of 2015. The election of the Managing Committee of the Respondent No.2 Society for the

period 2015-2020 of Petitioner from Bhore General Constituency was set aside and the Appellate Court declared Respondent No.1 as Returned Candidate from the said Constituency for the period 2015-2020. Petitioner was also saddled with costs of the Dispute.

5.11) Petitioner thereafter preferred Writ Petition No.1565 of 2019 impugning the Judgment and Order dated 10th January, 2019 passed by Maharashtra State Co-operative Appellate Court, in Appeal No.22 of 2018. The Co-Ordinate Bench by its Order dated 7th June, 2019 was pleased to set aside both Judgments and Orders dated 1st February, 2018 passed by Co- Operative Court and 10th January, 2019 passed by the Co-Operative Appellate Court and remanded the dispute back to resume the proceedings in the dispute from the stage of oral evidence and permitted the parties to lead it, in the matter of documents which are produced vide list of documents Exh. No.117 and such other evidence as is permissible in law.

5.12) Respondent No.1 filed Affidavit of examination-in-chief on 25th July, 2019 below Exh. No.125 and produced copies of documents alongwith list at Exh. No.127. The said documents were marked as Exh. Nos.131 to 135. Trial Court after hearing learned Advocates for respective parties passed Order dated 4th September, 2019 below Exh. No.127 in the said dispute.

5.13) Against the said Order dated 4th September, 2019 the Petitioner preferred Revision Application No.64 of 2019 before the Maharashtra State Co-operative Appellate Court, Mumbai, Bench at Pune. The Co-Operative Appellate Court partly allowed the said revision; modified the Order dated 4th September, 2019 passed below Exh. No.127 by the Trial Court to the extent of de-exhibiting Exh. No. 135 (colly) only. The Revisional Court upheld marking of Exh. Nos.131 to 134 for the reasons recorded in the Order dated 20th September, 2019.

5.14) In pursuance of Order dated 20th September, 2019, the Trial Court de-exhibited Exh. No.135 (colly) on 23rd September, 2019. Respondent No.1 was cross-examined on behalf of Petitioner and other Respondents on 24th September, 2019. Petitioner chose not to lead evidence. He did not file Affidavit of examination-in-chief neither entered into witness box to prove or disprove his case. It is an admitted fact on record that, Petitioner did not further challenge the said Order passed by the Revisional Court dated 20th September, 2019 and has accepted its correctness. The said Order holds the field as of today.

6) The Co-Operative Court i.e. the Trial Court after hearing the learned Advocates for the respective parties partly allowed the dispute filed by Respondent No.1 particularly in terms of reliefs sought in prayer clauses (a) and (c) thereof; declared the election of Petitioner from Bhore Taluka General Constituency in the election to the Managing Committee of Respondent No.2 as void and accordingly set aside and directed the Respondent No.2 to hold fresh election for the seat from the said constituency with consultation of the Election Authority by its Judgment and Award dated 30th September, 2019.

7) Petitioner feeling aggrieved by the said Judgment and Order dated 30th September, 2019 passed by the Trial Court in dispute No. 59 of 2015, preferred Appeal No.131 of 2019 before the Maharashtra State Co-operative Appellate Court, Mumbai, Bench at Pune. Respondent No.1 also preferred Appeal No.133 of 2019 feeling aggrieved with not granting of certain reliefs to him by the Trial Court. Appellate Court by its Judgment and Order dated 17th March, 2020 dismissed the Appeal No.131 of 2019 preferred by Petitioner and allowed the Appeal No. 133 of 2019 preferred by Respondent No.1. Appellate Court by its impugned Judgment and Order partly set aside the Judgment and Order dated 30th September, 2019 passed by the Trial Court and replaced it. Appellate Court allowed the dispute bearing No.59 of 2015; election of Petitioner as Returned Candidate from the said constituency was set aside and it was declared that, Respondent No.1 was the Returned Candidate from Bhore Taluka General Constituency in election of Managing Committee of Respondent No.2 Sangh held for the period of 2015 to 2020.

8) At the inception of hearing of the present Petition, both the learned counsel appearing for Petitioner and Respondent No.1 conceded to the fact that, the issue of declaration of successful candidate in the election of Respondent No.2 for the period of 2015 to 2020 has now become an academic issue and therefore this Court has not dealt with it in the present Judgment.

9) Mr. Sakhare, learned Senior Advocate appearing for Petitioner submitted that, Exh. No.134 i.e. the documents of registration and other documents issued by Competent Authority was not exhibited as per Order dated 20th September, 2019 passed by the Revisional Court. That, procedure for exhibiting documents in particular, Exh. Nos. 132 and 134, even as secondary evidence is not followed by Trial Court. That, if the said documents are excluded from consideration then there is no legal evidence to disqualify Petitioner and declare his election as bad in law. The photocopies of the documents obtained under the Right to Information Act (for short "RTI Act") are not public documents. Those documents were certified copies of the public documents. That, the said documents can not be treated as primary evidence of the original documents or secondary evidence in proof thereof.

That, none of the documents annexed collectively at Exh. Nos.133 and 134 bear even attestation thereof as required under RTI Act, as they are not certified copies. That, Courts below have accepted hearsay evidence of Respondent No.1. He submitted that, the said documents being secondary evidence in nature can not be read in evidence without complying with the provisions of Sections 63 and 65 of Evidence Act. The mere marking of documents as 'Exhibits' would not amount to its proof. That, Petitioner can challenge the interlocutory Order i.e. the Order passed by the Revisional Court dated 20th September, 2019 in a substantive Appeal and/or Writ Petition. Interlocutory Orders are capable of challenge in substantive Appeals from Decrees/Awards and therefore the Order passed by Revisional Court can be challenged in the present Writ Petition. Mr.

Sakhare, however fairly admitted that, Petitioner did not object to the marking of Exh. Nos. 131 to 135. However Respondent No.1 did not prove the said documents by examining its author. He admitted that, document at Exh. No.132 appears to be a primary evidence, though not proved. That, marking of document as 'Exhibit' is only a ministerial act for identification of documents and their proof has to be by production of their primary evidence.

In rejoinder to the arguments advanced by learned counsel for Respondent No.1, he submitted that, the documents at Exh. Nos.32 to 37 have been held to be not relevant by the Appellate Court in the impugned Judgment and Order and are omitted from consideration. That, since the said documents are omitted from consideration by the Appellant Court, they now can not be relied upon by the Respondent No.1 in this Petition.

That, reading of a few stray averements out of context from the Petitioner's written statement is not proper and helpful to Respondent No.1.

In support of his submissions Mr. Sakhare, learned Senior Advocate for Petitioner relied on the following decisions :-

"(i) Kumarpal N. Shah (since deceased) through L.Rs. Mrs. Tarunbala Kumarpal Shah & Ors. Vs. Universal mechanical Works Pvt. Ltd., Mumbai & Ors. reported in 2020(1) Mh.L.J.442;

(ii) Thailammal & Ors. Vs. Janardhan Raju & Ors. reported in 1995 Supp (4) SCC 455;

(iii) Kores (India) Limited Vs. Bank of Maharashtra & Ors. reported in (2009) 17 SCC 674;

(iv) C.H. Shah Vs. S.S. Malpathak reported in 1972 Mh.L.J. 816;

(v) Bank of Baroda, Bombay Vs. Shree Moti Industries, Bombay & Ors. reported in 2009(1) Mh.L.J. 282;

(vi) Sait Tarajee Khimchand & Ors. Vs. Yelamarti Satyam Alias Satteyya & Ors. reported in (1972) 4 SCC 562;

(vii) Walchandnagar Industries Ltd., Mumbai Vs. Indraprastha Developers, Pune & Ors. reported in 2015 (3) Mh.L.J.786;

(viii) Kalyan Kumar Gogoi Vs. Ashutosh Agnihotri & Anr. reported in (2011) 2 SCC 532;

(ix) Amolakchand Chhazed Vs. Bhagwandas Arya & Anr. reported in (1977) 3 SCC 566;

x) Mangani Lal Mandal Vs. Bishnu Deo Bhandari reported in (2012) 3 SCC 314 and;

xi) Tukaram S.Dighole Vs. Manikrao Shivaji Kokate reported in (2010) 4 SCC

329.”

Mr. Sakhare therefore prayed that, the Orders passed by both the Courts below may be set aside by allowing the Petition.

10) Mr. Sawant, learned Senior Advocate appearing for Respondent No.1 opposed the Petition and submitted that, even if Exh. Nos. 131 to 134 and in particular 132 and 134 are kept aside from consideration, Exh. Nos. 32 to 37 produced on record by the Petitioner and proved by him in the trial shows clear involvement and interest of the Petitioner in Anant Dudh Pvt. Ltd and Aananda Dairy and requires no further corroboration in that behalf. He submitted that, the Petitioner did not raise any objection for exhibition of Exh. Nos. 131 and 132. That, the exhibition of the said documents is upheld by the Revisional Court and has not been questioned by the Petitioner by filing further proceedings. In the written statement the Petitioner has given vital admissions. Petitioner did not file Affidavit of examination-in-chief nor did he enter into witness box to prove his case. Petitioner has not proved that, the documents in question are not genuine or are not obtained from Competent Authority.

He submitted that, all the arguments of Mr. Sakhare learned counsel for Petitioner, are covered by the decision of Hon’ble Supreme Court in the case of Soni Dineshbhai Manilal & Ors. Vs. Jagjivan Mulchand Chokshi reported in (2007) 13 SCC 293 and therefore the Petitioner now can not request this Court to test the Order passed in Revision in the present Writ Petition. He strenuously submitted that, all the points raised by learned counsel for the Petitioner are academic in nature and nothing else. He submitted that, the decision in the case of Kumarpal N. Shah (since deceased) through L.Rs. Mrs. Tarunbala Kumarpal Shah & Ors. Vs. Universal mechanical Works Pvt. Ltd., Mumbai & Ors. (supra) has no application to the facts of the present case. The Petitioner never raised any objection for exhibition of Exh. No.132 which is a letter alongwith documents before the trial Court. He submitted that, in a recent decision in the case of Garment Craft V/s. Prakash Chand Goel reported in 2022 SCC OnLine SC 29 Hon’ble Supreme Court has reiterated that, the power under Article 227 of the COI is to be exercised sparingly in appropriate cases, like when there is no evidence at all to justify, or the finding is so perverse that no reasonable person can possibly come to such a conclusion that the Court or Tribunal has come to. He submitted that, sufficiency or insufficiency of proof can not be examined in Writ proceedings. That, decisions relied upon by Petitioner have no application to the facts and circumstances of the present case. That, in the present case, both the Courts below have minutely appreciated evidence on record and interference in the impugned Orders by this Court under Article 227 of the Constitution is not necessary. He submitted that, present Petition has no merits and therefore prayed that it be dismissed.

11) Respondent No.1 has contended that, the Petitioner on the date of contesting election of Respondent No.2 society for the period of 2015 to 2020 was disqualified as contemplated under Section 73-CA (A1)(1) (v) of the MCS Act

read with modified bye-law Nos.14.26, 14.26.6 and 14.26.7 of the Respondent No.2 Society.

Section 73-CA (A1)(1) (v) of the MCS Act reads as under :-

Section 73-CA [Disqualification of committee and its members].-[(A1) In the case of a society, which gives loans to members for purchasing machinery, implements, equipments, commodities or other goods, or which deals in such goods, no member, who or whose member of the family is a dealer in such goods or is a director of a company or a partner in a firm carrying on business in such goods, in the area of operation of the society shall be eligible for being elected or nominated as a member of the committee of such society.

Explanation.- For the purposes of this sub-section, the expression "family" shall have the same meaning as explained in the Explanation I, to sub-section (2) of section 75.]

(1) Without prejudice to the other provisions of this Act or the rules made thereunder, in relation to the disqualification of being a member of a committee, no person shall be eligible for being appointed, nominated, elected, co-opted or, for being a member of committee, if he-

(i) Explanation.--

(a)

(b)

(c)

(i)

(ii)

(d)

(e) [(f)

(i)

(ii)

(iii)

(ii) (ii-a)

(iii)

(iv)

(v) carries on business of the kind carried on by the society either in the area of operation of the society or in contravention of the provisions of [clause (b) of sub-section (A-1); or]

[Explanation ****]"

The free translation of modified bye-law Nos. 14.26, 14.26.6 and 14.26.7 of the Respondent No.2 Society is as under:-

14.26 - A candidate will not be allowed to contest election for being a representative of the society in the Board of Directors without fulfilling the prescribed conditions.

14.26.6 - Except investment and loans from the Sangh a candidate shall not have any interest directly or indirectly in the business or activities which are same or similar to that of the Sangh. After the candidate is elected if he has interest in the business or activities of the Sangh he will not be able to be the director of the said Sangh.

14.26.7 - A Candidate shall not have direct or indirect interest in the business which the Sangh is carrying on. Even after elected to the Board of Directors if he develops an interest in the business similar to one being carried out by the Sangh he will not be able to continue to be director of the Sangh.

It was and is the precise contention of the Respondent No.1 that, the Petitioner was having interest and/or was running two businesses/entities namely (i) Anant Dudh Pvt. Ltd. at Kikavi and (ii) Anand Dairy at Bhilarewadi, Taluka Haveli, District Pune which are in the area of operation of Respondent No.2 Society. Son of the Petitioner namely Shri. Swapnil Thopate is also running same and similar business as that of Respondent No.2 Society in the name and style of Disha Dairy at Taluka Satara in the area of operation of Respondent No.2 Society. All the said three entities are carrying on business of manufacturing or processing of milk and other milk dairy products and by-products which are same and similar categories carried out by Respondent No.2 Society. The Respondent No.1 therefore has relied upon the documents issued by Competent Authorities showing involvement of the Petitioner and his family members in the said two entities which are Exh Nos.132, 133 and 134 on record.

12) It is to be noted here that, though this Court by Order dated 7th June, 2019 in Writ Petition No. 1565 of 2019 had permitted the parties herein to lead evidence in the matter of the documents which were produced vide list of documents at Exh. No.117 and such other evidence as permissible in law, the Petitioner neither filed Affidavit of examination-in-chief nor did he enter into witness box to prove his case or disprove the case of the Respondent No.1. Petitioner has failed to prove the fact that, said documents at Exh. Nos.132 to 134 are not genuine documents, issued by the Concerned Authorities or fabricated documents by Respondent No.1. After remand of the case under the Orders of this Court, in the cross- examination of Respondent No.1 nothing has been brought on record which is beneficial to the Petitioner, that he is not having direct or indirect interest in the business or activities which are/were same or similar to the business and activities carried out by Respondent No.2 Society. It is to be noted here that, bare perusal of evidence of Respondent No.1 would

indicate that, in his cross-examination by Petitioner, admissions detrimental to the Petitioner are brought on record.

13) Admittedly, the documents at Exh. Nos.132 to 134 have been obtained by Respondent No.1 under the RTI Act from Competent Authority and therefore there is no reason to disbelieve authenticity of the said documents. Each and every document again need not to be certified by the Authority issued it. The documents obtained under RTI Act are admissible as secondary evidence so long as the Court concerned has no reason to have a doubt about its genuineness, authenticity and production of original document from the custody of the concerned Government Department. Record clearly indicate that, Exh. Nos.131 to 134 reveals that, the said documents were supplied and obtained under the RTI Act by Government Authority. The Appellate Court has observed that, Petitioner did not raise objection to exhibit documents at Exh. Nos.131 and 132. Therefore the said documents at Exh. Nos.133 and 134 (colly) though photocopies can be read in evidence being public documents issued by a Authority of Government established under the law and who was/is in control and possession of the said documents. Therefore, the objection of the learned counsel for Petitioner about the admissibility of the said documents can not be sustained. Therefore the Petitioner now cannot be permitted to take a contrary stand convenient to him. This Court finds that, there is a substance in the contention raised by the learned Advocate for Respondent No.1 that, the arguments advanced by learned Advocate for Petitioner qua the admissibility of said documents i.e. Exh. Nos. 132 to 134 is of mere academic interest and of no avail to the Petitioner.

The licences exhibited at Exh. Nos. 133 and 134 (colly) and proved by Respondent No.1, clearly indicate that, area of operation of Anant Dudh i.e. at Kikavi is within the area of operation of the Respondent No.2 Sangh. Therefore both the Courts below have rightly held that, the area of operation of Anant Dudh is at Kikavi, Taluka Bhore which is within the area of operation of Respondent No.2 Sangh. It is also proved beyond reasonable doubt that, the Petitioner was proprietor of Anand Dairy which was functioning within the area of operation of Respondent No.2 Sangh.

14) It is an admitted fact on record that, Petitioner has accepted the Order dated 20th September, 2019 passed in Revision Application No. 64 of 2019 and did not challenge it at the relevant time. He thereafter participated in the trial of Dispute No. 59 of 2015 filed by Respondent No.1. According to this Court, therefore the Petitioner has acquired the right to challenge it in the present Petition. The Supreme Court in the case of Soni Dineshbhai Manilal & Ors. Vs. Jagjivan Mulchand Chokshi (supra) has held that, it may be true that any Order passed can be questioned on the grounds taken in the Appeal against final Orders, but such interlocutory Orders required to be challenged. What is essential is that, they should not have been appealed against. If a revision has been filed which is a part of the Appellate jurisdiction, although stricto sensu, doctrine of merger

may not apply but Section 105 of CPC also would not apply in such cases. It is held that, each of those Orders attained finality. That, Civil Revision is a part of Appellate jurisdiction.

In the present case, the Petitioner had also agitated the said and same ground before the Appellate Court. As noted earlier, Petitioner had challenged the Order dated 4th September, 2019 passed below Exh. No.127 in the Dispute by way of Revision Application No.64 of 2019 and therefore now the Petitioner can not be permitted to challenge the said Order again in Writ Petition under Article 227 of the Constitution of India.

As noted earlier, Petitioner has accepted the Order dated 20th September, 2019 passed in Revision Application No. 64 of 2019 and thereafter contested the proceedings in the Trial Court as well as before the Appellate Court, on the basis that the said Order holding that the documents produced by Respondent No.1 were properly proved is final and binding upon the parties to the Dispute No. 59 of 2015. According to this Court, the Petitioner has not rebutted presumption under Section 79 of the Evidence Act. The sufficiency or deficiency of proof of the said documents can not be now examined in writ jurisdiction under Article 227 of the Constitution as the said aspect has already been dealt in length by both Courts below and it is the settled position of law that, this Court in its writ jurisdiction can not re-appreciate the evidence on record.

15) Even otherwise the Exh. Nos. 32 to 37 i.e. Electoral Role of village Khanapur (Exh. No.32); Annual Reports of Anant Dudh Pvt. Ltd (Exh. No.33); Certificate of incorporation of Anant Dudh Pvt. Ltd (Exh. No.34); Memorandum of Association of Anant Dudh Pvt. Ltd (Exh. No.35); Agreement between Petitioner as proprietor and Mahanand signed by Petitioner (Exh.No. 36) and 7/12 extracts of relevant land (Exh. No.37) clearly indicate that, the Petitioner and/or his family members were having direct and/or indirect interest in the business or activities which are same or similar to the business or activities carried out by Respondent No.2 Society, on the date of contesting the said election and even after contesting election of Respondent No.2. Agreements executed between Anand Dairy of which the Petitioner was proprietor and Respondent No.2 Sangh also ex-facie reveals that, the Petitioner is also engaged or carries on business of the same kind, carried by Respondent No.2 Society in its area of operation.

16) The 7/12 extracts produced on record also proves the fact that, landed property situated at village Kikavi and Bhilarewadi stand in the name of Petitioner as proprietor of Anand Dairy and Director of Anant Dudh Pvt. Ltd. alongwith other co-owners. The documents produced vide list at Exh. No.127 and marked as Exh. Nos.132 to 134 (colly) are the copies of licences and other related documents issued by F.S.S.A.I. in the name of said company and dairy. The said licences prove the fact that, both the said units were and are existing and were in operation on the date of election in the present dispute to the committee of Respondent No.2 Society. As noted earlier, the Petitioner chose not to lead evidence by entering into witness box to rebut the aforestated evidence

brought on record and proved by the Respondent No.1. Petitioner has failed to either prove or dis-prove the cogent and succinct evidence brought on record by the Respondent No.1 in that behalf. It is to be noted here that, the Petitioner has failed to discharge the onus put upon him under the law and as contemplated under Section 106 of the Evidence Act i.e. to rebut the fact which was/is in exclusive knowledge of the Petitioner. It is thus clear that, Respondent No.1 has proved the fact that, on the date of filing of nomination paper by the Petitioner to contest the election of the Managing Committee of Respondent No. 2 Society and also thereafter continued to be disqualified. All these acts are in contravention of provisions of Section 73-CA (A1)(1) (v) of the MCS Act read with modified bye-law Nos. 14.26.6 and 14.26.7 of the Respondent No.2 Society.

17) The Constitution Bench of the Supreme Court in the case of Syed Yakoob V/ s. K.S. Radhakrishnan & Ors., reported in AIR 1964 SC 477, while enumerating the nature and limits of the jurisdiction of the High Court in issuing a writ of certiorari has held that, the jurisdiction of the High Court to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an Appellate Court. This limitation necessarily means that the findings of fact reached by the inferior court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. That, an error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. A finding of fact recorded by the Tribunal cannot, however, be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding.

The Supreme Court in the case of Shalini Shyam Shetty & Anr. V/s. Rajendra Shankar Patil, reported in (2010) 8 SCC 329 has enumerated the principles in the exercise of High Court's jurisdiction under Article 227 of the Constitution of India. It is held that, the High Courts cannot, at the drop of a hat, in exercise of its power under Article 227 of the Constitution, interfere with the Orders of tribunals or courts inferior to it. Nor can it, in exercise of this power, act as a court of appeal over the orders of the court or tribunal subordinate to it. In cases, where an alternative statutory mode of redressal has been provided, that would also operate as a restraint on the exercise of this power by the High Court. That, the High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of the tribunals and courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.

It is further held that, in exercise of its power of superintendence, the High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or courts subordinate to it, is a possible view. In other words, the jurisdiction has to be very sparingly exercised. That, the power of interference under this Article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and courts subordinate to the High Court.

The afore-stated view expressed in the case of *Shalini S. Shetty (Supra)* has been further affirmed by the larger Bench of the Supreme Court in the case of *Radhey Shyam & Anr. V/s. Chhabi Nath and Ors.* reported in (2015) 5 SCC 423.

The Hon'ble the Supreme Court in the case of *Garment Craft V/s. Prakash Chand Goel* reported in 2022 SCC OnLine SC 29 while considering the supervisory jurisdiction under Article 227 of the Constitution of India, in paragraph No.18 has held as under:-

"18. Having heard the counsel for the parties, we are clearly of the view that the impugned order is contrary to law and cannot be sustained for several reasons, but primarily for deviation from the limited jurisdiction exercised by the High Court under Article 227 of the Constitution of India. The High Court exercising supervisory jurisdiction does not act as a court of first appeal to reappreciate, reweigh the evidence or facts upon which the determination under challenge is based. Supervisory jurisdiction is not to correct every error of fact or even a legal flaw when the final finding is justified or can be supported. The High Court is not to substitute its own decision on facts and conclusion, for that of the inferior court or tribunal. The jurisdiction exercised is in the nature of correctional jurisdiction to set right grave dereliction of duty or flagrant abuse, violation of fundamental principles of law or justice. The power under Article 227 is exercised sparingly in appropriate cases, like when there is no evidence at all to justify, or the finding is so perverse that no reasonable person can possibly come to such a conclusion that the court or tribunal has come to. It is axiomatic that such discretionary relief must be exercised to ensure there is no miscarriage of justice. Explaining the scope of jurisdiction under Article 227, this Court in *Estralla Rubber V/s. Dass Estate (P) Ltd.* has observed:-

"6. The scope and ambit of exercise of power and jurisdiction by a High Court under Article 227 of the Constitution of India is examined and explained in a number of decisions of this Court. The exercise of power under this article involves a duty on the High Court to keep inferior courts and tribunals within the bounds of their authority and to see that they do the duty expected or required of them in a legal manner. The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the subordinate courts or tribunals. Exercise of this power and interfering with the orders of the courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental

principles of law or justice, where if the High Court does not interfere, a grave injustice remains uncorrected. It is also well settled that the High Court while acting under this article cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record. The High Court can set aside or ignore the findings of facts of an inferior court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person can possibly come to such a conclusion, which the court or tribunal has come to.”

18) There are concurrent findings recorded by both the Courts below. After applying the ratio enunciated by the Hon’ble Supreme Court in the decisions mentioned in para No.17 above and the deliberations recorded here-in-above, this Court is of the considered view that, the Petition is dehors of merits. Petition is accordingly dismissed.

19) After the Judgment is pronounced, Mr. Patwardhan, learned Advocate for Petitioner submitted that, Petitioner intends to challenge the present Judgment before the Hon’ble Supreme Court and therefore its operation and implementation may be stayed for a period of six weeks from today.

20) Learned Advocate for the Respondent No.1 opposed the said prayer.

21) However, at the request of Mr. Patwardhan, the operation and implementation of the present Judgment is stayed for a period of six weeks from today.