



CNR: KAHC010523932026

NC: 2026:KHC:42866-DB
MFA No. 5651 of 2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF AUGUST, 2026

PRESENT

THE HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE

AND

THE HON'BLE MRS. JUSTICE K.S. HEMALEKHA

MISCELLANEOUS FIRST APPEAL NO.5651 OF 2026 (AA)

BETWEEN:

BHARAT CO-OPERATIVE BANK (MUMBAI) LTD.,
HAVING ITS REGISTERED OFFICE AT
'MOHAN TERRACE', FIRST FLOOR,
64/72, MODY STREET,
FORT, MUMBAI - 400 001,
AND BRANCH OFFICE AMONGST OTHERS AT UDUPI,
NEXT TO VISHWAS COMMERCIAL BUILDING,
NEAR TALUK OFFICE, DISTRICT COURT,
UDUPI - 576 101
REP. BY ITS MANAGER,
SRI UDAY S. SALIAN.

...APPELLANT

(BY SRI. PUNDIKAI ISHWARA BHAT, ADVOCATE)

AND:

1. MR. SANTHOSH KOTIAN, MAJOR,
S/O LATE MR. NARAYAN POOJARY,
PROP: M/S. SRI. SIDDIVINAYAKA,
PACKAGING & PRINTING,
R/AT DOOR NO.2-84E,
'SHREE GOUTHAM'
BANYALA, BAIKADY VILLAGE,
HARADY GRAMA PANCHAYAT,
BRAHMAVARA POST,
UDUPI TALUK - 576 213.
2. MRS. MANJULA SANTHOSH KOTIAN, MAJOR,
W/O MR. SANTHOSH KOTIAN,





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RESIDING AT DOOR NO.2-84E,
'SHREE GOUTHAM',
BANYALA, BAIKADY VILLAGE,
HARADY GRAMA PANCHAYAT,
BRAHMAVARA POST,
UDUPI TALUK - 576 213.

...RESPONDENTS

THIS MFA IS FILED UNDER SECTION 37(1)(c) OF THE ARBITRATION & CONCILIATION ACT, 1996, PRAYING TO SET ASIDE THE JUDGMENT DATED 15.04.2026 PASSED BY THE IV ADDITIONAL DISTRICT JUDGE AND COMMERCIAL COURT, D.K., MANGALURU, IN ARBITRATION PETITION NO.07/2025, SETTING ASIDE THE AWARD DATED 12.12.2024 PASSED BY THE HON'BLE ARBITRATOR IN PROCEEDINGS NO.AR/BCB/CNB/UDP/384/2023.

THIS APPEAL, COMING ON FOR ADMISSION, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE
and
HON'BLE MRS. JUSTICE K.S. HEMALEKHA

ORAL JUDGMENT

(PER: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE)

1. The appellant has filed the present appeal under Section 37(1)(c) of the Arbitration and Conciliation Act, 1996 [**A&C Act**], impugning a judgment dated 15.04.2026 [**impugned order**] passed by the learned IV Additional District Judge and Commercial Court, D.K., Mangaluru [**District Court**] in Arbitration Petition No.07/2025. The respondents had filed the said petition under Section 34 of the A&C Act, impugning an Arbitral Award dated 12.12.2024 [**impugned award**] passed by the Arbitral Tribunal.



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2. The learned District Court set aside the impugned award on the ground that the Arbitral Tribunal lacked jurisdiction, as the reference to arbitration was made unilaterally by the appellant [**the Bank**]. The dispute in the present case, therefore, centres on the following question:

"Whether the Arbitral Tribunal was constituted and the disputes were validly referred to it in accordance with law?"

3. Briefly stated, the facts are that the Bank raised claims against the respondents for repayment of the credit facility availed by them. The Bank is a Multi-State Co-operative Bank and is engaged in banking business under the provisions of the Banking Regulation Act, 1949. There is no dispute that it is covered under the Multi-State Co-operative Societies Act, 2002 [**MSCS Act**].

4. The Bank claimed that the respondents, being its members, had approached it for financial assistance by way of a cash credit limit of ₹85,00,000/- for taking over their existing cash credit limit with from NKGSB Co-operative Bank and for meeting their working capital requirement as well as a term loan of ₹1,78,74,000/- for taking over their existing term loan with the said bank.



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5. The Bank claims that the respondents failed to discharge their repayment obligations on account of which the loan accounts were classified as non-performing assets on 20.02.2021. In view of their default, the Bank initiated proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [**SARFAESI Act**], to enforce its security interests in respect of immovable properties mortgaged to it. The Bank thereafter attempted to sell the secured assets/mortgaged properties in exercise of its powers under the SARFAESI Act, in order to recover its dues; however, at the material time, the said attempts were unsuccessful.

6. The Bank also claims that the value of the secured assets was insufficient to recover the entire amount outstanding and payable by the respondents. In the aforesaid circumstances, the Bank invoked arbitration under Section 84 of the MSCS Act, and unilaterally referred the disputes to the Arbitral Tribunal. The Bank filed the statement of claim, raising the following claims:

"Claim Amount: i) Cash Credit Claim Rs.1,32,11,208.44 as on 31.10.2023 together with further interest @ 14.25% per annum inclusive of 2% p.a. penal interest compounded on monthly rests on Principal balance of Rs.90,83,242.44 w.e.f



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01.11.2023 subject to changes in interest rate from time to time plus professional and recovery charges and other costs till full payment under Cash Credit A/c No.003213120000046,

(ii) Term loan claim Rs.2,35,14,791.00 as on 28.10.2023 together with further interest @ 14.25% per annum inclusive of 2% p.a penal interest compounded on monthly rests on Principal balance of Rs.1,55,51,632 w.e.f 29.10.2023 subject to changes in interest rate from time to time plus professional and recovery charges and other costs till full payment under Term Loan A/c No.003233560000068,

(iii) Term loan claim Rs.18,73,179.00 as on 30.10.2023 together with further interest @ 14.25% per annum inclusive of 2% p.a penal interest compounded on monthly rests on Principal balance of Rs.10,45,310.00 w.e.f 31.10.2023 subject to changes in interest rate from time to time plus professional and recovery charges and other costs till full payment under Term Loan A/c No.003233560000112

(iv) FITL Claim Rs.8,43,111.00 as on 31.10.2023 together with further interest @ 13.50% per annum inclusive of 2% p.a penal interest compounded on monthly rests on Principal outstanding of Rs.5,55,120.00 w.e.f 01.11.2023 subject to changes in interest rate from time to time plus professional and recovery charges and other costs till full payment under FITL A/c No.003234010000139.

And professional charges Rs.50,000/- and other recovery charges Rs.3,16,237/- till full payment."

7. The respondents contested the claims raised by the Bank and also objected to the jurisdiction of the Arbitral Tribunal, which comprised a sole arbitrator. As noted above, the disputes essentially concerned whether the Arbitral Tribunal had been validly constituted in accordance with law.



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8. The Bank had sent a letter to the sole arbitrator (Arbitral Tribunal) invoking arbitration and thereafter filed its statement of claim on 20.12.2023. The Bank had neither approached the Central Registrar of Co-operative Societies [**the Central Registrar**] nor the State Registrar of the Co-operative Societies [**the State Registrar**] to refer the disputes to arbitration or to appoint an arbitrator. It had unilaterally filed a statement of claim before the arbitrator selected by it on the premise that the sole arbitrator was one of the arbitrators nominated under a notification dated 01.01.2004.

9. The respondents contested the claim and, in their statement of objections filed on 04.04.2024, questioned the maintainability of the proceedings and raised a plea as to the jurisdiction of the Arbitral Tribunal as contemplated under Section 16 of the A&C Act. The Arbitral Tribunal rejected the said plea by an order dated 25.07.2024. The Arbitral Tribunal held that it had jurisdiction to entertain the reference and adjudicate the disputes, as the State Registrar had nominated the sole arbitrator by a notification dated 01.01.2004 (several years before the disputes arose between the parties). Thereafter, the Arbitral Tribunal proceeded to adjudicate the disputes and rendered the impugned award.



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10. Aggrieved by the impugned award, the respondents filed an application under Section 34 of the A&C Act seeking to set aside the impugned award. The learned District Court considered Section 84 of the MSCS Act and held that the Arbitral Tribunal had not been appointed as required under Section 84(4) of the MSCS Act and, accordingly, set aside the impugned award.

11. The Bank relies on a Notification dated 07.03.2003 issued by the Government of India, Ministry of Agriculture, Department of Agriculture and Co-operation, whereby the powers exercisable by the Central Registrar under Section 84 of the MSCS Act were delegated to the Registrar of Co-operative Societies of the respective States / UTs in respect of societies located in the respective jurisdictions.

12. The Bank claims that, in exercise of the powers so conferred, the State Registrar had issued a notification dated 01.01.2004 appointing five persons as arbitrators. Of these, three were former Additional Registrars of Co-Operative Societies, one was a former Joint Registrar of Co-operative Societies, and one was a former Deputy Registrar of the Co-Operative Societies.



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13. According to the Bank, since the arbitrators had already been appointed pursuant to the said notification, it was entitled to approach any one of them for adjudication of the disputes between the parties. It contends that it could unilaterally select the arbitrator to constitute the Arbitral Tribunal.

14. At this stage, it is relevant to refer to Section 84 of the MSCS Act, which is reproduced below:

"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



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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



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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."

(emphasis ours)

15. A plain reading of sub-section (1) of Section 84 indicates that certain disputes are required to be referred to arbitration. Sub-section (4) of Section 84 specifies that, where a dispute is referred to arbitration under sub-section (1) of Section 84, the same shall be settled or decided by an arbitrator appointed by the Central Registrar.

16. It is also relevant to refer to sub-section (5) of Section 84, which expressly provides that, save as otherwise provided under the MSCS Act, the provisions of the A&C Act would apply to all arbitration under the MSCS Act, as if the proceedings for arbitration were referred to for settlement or decision under the provisions of the A&C Act.

17. Since sub-section (4) expressly provides that the dispute would be referred to an arbitrator to be appointed by the Central

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Registrar, the provisions of Section 11 of the A&C Act, which provide for the appointment of an arbitrator, would be inapplicable. It would, thus, be necessary for the arbitrator to be appointed by the Central Registrar. However, it is apparent that such an appointment would necessarily have to be made after the disputes had arisen and a request for reference had been made. This is clear from the opening words of sub-section (4) of Section 84, which read: "*Where a dispute has been referred to arbitration under sub-section (1)*". The appointment of an arbitrator under sub-section (4) of Section 84 of the MSCS Act, thus, cannot precede the stage of reference of the disputes. It would follow that the Bank was required to approach the Central Registrar or the State Registrar to whom the said powers had been delegated, for reference of the dispute and for the appointment of an arbitrator.

18. We may, at this stage, also refer to the Notification dated 24.02.2003, issued by the Central Government in exercise of powers conferred under Section 4(2) of the MSCS Act, whereby it was directed that the powers under Section 84 of the MSCS Act would also be exercised by the Registrars of Co-operative Societies of the respective States/UTs in respect of societies



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located in their respective jurisdictions. The said notification also sets out the guidelines for exercising such delegated powers. The said notification is set out below:

"MINISTRY OF AGRICULTURE

(Department of Agriculture and Co-operation)

NOTIFICATION

New Delhi, the 24th February, 2003

S.O. 216(E). - In exercise of the powers conferred by Sub-section (2) of Section 4 of the Multi-State Co-Operative Societies Act, 2002 (39 of 2002), the Central Government hereby directs that the powers exercisable by the Central Registrar under Section 84 of the Act shall also be exercisable by Registrar of Co-Operative Societies of the States/UTs in respect of the societies located in their respective jurisdiction, subject to the following guidelines and conditions, that: -

1. Such powers in relation to a National Co-operative Society shall not be exercisable by these officers.
2. The officers shall comply with the directions (other than court cases) as may be given by the Central Registrar, appointed under Sub-section (1) of Section 4 of this Act, from time to time.
3. Appointment of arbitrators by the State Registrar of co-operative societies, shall be subject to following guidelines: -
 - (a) In case of disputes relating to organizational and legal matters, arbitrators should either be a practicing Advocate or retired member of Judicial/Civil services or officers at least of the level of Deputy Registrar and above of co-operative department retired not more than two years prior to the date of appointment.



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- (b) In case of disputes relating to financial and banking matters including recovery disputes, persons having Financial and accounting background like Chartered Accountants/ICWAs/retired bank officers (retired not earlier than two years) may also be considered for appointment in addition to the persons listed in clause 3(a).
- 4. The list of approved arbitrators shall be submitted to the Central Registrar within 15 days of approval. The updated list of all the approved arbitrators should be sent to the Central Registrar on quarterly basis.

[F.No.L-11012/3/2002-L & M]

K.S. BHORIA, Jt. Secy.

19. It is apparent from a plain reading of clause (a) of paragraph 3 of the said notification that the question as to who is to be appointed as an arbitrator is required to be considered in the light of the disputes that have arisen. In terms of clause (a) of paragraph 3, in cases of disputes relating to organisational and legal matters, the arbitrators should either be a practising advocate or a retired member of Judicial / Civil Services or an officer at least the level of Deputy Registrar and above of Co-operative Department, retired not more than two years prior to the date of the appointment.

20. Clause (b) of paragraph 3 provides that, in cases involving disputes relating to financial and banking matters including

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recovery disputes, the arbitrator may be appointed from amongst persons having a financial and accounting background, like Chartered Accountants/ICWAs/retired bank officers, in addition to the persons referred to in clause (a) of paragraph 3 of the notification.

21. This also makes it clear that an arbitrator is appointed after the dispute has arisen, and that the MSCS Act does not contemplate appointing an arbitrator several years before disputes arise.

22. In our view, the Notification dated 01.01.2004 could only be construed as the State Registrar notifying a panel of arbitrators to whom the disputes arising under Section 84 of the MSCS Act may be referred. The party seeking arbitration is required to approach the Central Registrar or the State Registrar, as the case may be, seeking a reference of the disputes to arbitration. The Central Registrar or the State Registrar may then, in exercise of powers under Section 84 of the MSCS Act, appoint an arbitrator to adjudicate the disputes.



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23. In the present case, neither the Central Registrar nor the State Registrar has appointed any arbitrator to adjudicate the disputes that have arisen between the parties.

24. The Bank clearly erred in unilaterally referring the disputes to one of the arbitrators named in the panel of arbitrators, which panel had been constituted almost two decades prior to the reference.

25. As noted above, paragraph 3 of the notification dated 24.02.2003 provides that the Arbitrator should either be a practicing advocate, or a retired member of the Judicial/Civil Services, or an officer who had retired not more than two years of the Co-operative Department of at least the level of Deputy Registrar and above prior to the date of appointment. The reference to the appointment clearly refers to the appointment of an arbitrator after a dispute has arisen, not to an appointment made in anticipation of a dispute that may arise in respect of a transaction that had not yet been entered into between the parties.

26. The learned counsel appearing for the Bank also submitted that since the respondents had not challenged the order dated 25.07.2024 passed by the Arbitral Tribunal rejecting their challenge



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to the maintainability of the proceedings, the said order had attained finality. He contended that in the circumstances, it was not open for the respondents to raise the challenge at a later stage.

27. The said contention is also bereft of merit as is apparent from the scheme of Section 16 of the A&C Act. Section 16 of the A&C Act is set out below:

"16. Competence of arbitral tribunal to rule on its jurisdiction.—(1) The arbitral tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement, and for that purpose,—

- (a) an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract; and
- (b) a decision by the arbitral tribunal that the contract is null and void shall not entail *ipso jure* the invalidity of the arbitration clause.

(2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence; however, a party shall not be precluded from raising such a plea merely because that he has appointed, or participated in the appointment of, an arbitrator.

(3) A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings.



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(4) The arbitral tribunal may, in either of the cases referred to in sub-section (2) or sub-section (3), admit a later plea if it considers the delay justified.

(5) The arbitral tribunal shall decide on a plea referred to in sub-section (2) or sub-section (3) and, where the arbitral tribunal takes a decision rejecting the plea, continue with the arbitral proceedings and make an arbitral award.

(6) A party aggrieved by such an arbitral award may make an application for setting aside such an arbitral award in accordance with section 34."

28. A plain reading of sub-sections (5) and (6) of Section 16 of the A&C Act indicates that in the event a challenge to the jurisdiction of an Arbitral Tribunal is rejected, the parties are required to continue with the arbitral proceedings and challenge the arbitral award.

29. Under Section 37(2)(a) of the A&C Act, a remedy of an appeal would be available against an order passed under Section 16 of the A&C Act only in the event the application is allowed. In other words, if the Arbitral Tribunal had accepted the respondents' challenge to its jurisdiction and had closed the arbitral proceedings, the appellant could have preferred an appeal under Section 37(2)(a) of the A&C Act. However, no appeal would be maintainable against an order rejecting a challenge to the



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jurisdiction of an Arbitral Tribunal. Therefore, the respondents rightly awaited the making of the arbitral award in order to avail of the remedy under Section 34 of the A&C Act.

30. In view of the above, we find no merit in the present appeal. The appeal is accordingly dismissed.

31. Pending interlocutory application also stands disposed of.

**Sd/-
(VIBHU BAKHRU)
CHIEF JUSTICE**

**Sd/-
(K.S. HEMALEKHA)
JUDGE**

MBM
List No.: 2 SI No.: 11