

CASE BRIEF

Case Name: *Rajlaxmi Multistate Credit v. Gajanan Vasant Shribhate & Ors.*

Case No.: Arbitration Appeal No. 77/2025

Court: Hon'ble Bombay High Court

Coram: Hon'ble Mr. Justice Nivedita P. Mehta.

Date: 14 October 2025

1. FACTUAL MATRIX

1.1. Rajlaxmi Multistate Credit Cooperative Society Ltd., (**"Appellant"**) is a registered Multi-State Co-operative Society having its registered office at Yavatmal, and is governed by the provisions of the Multi-State Co-operative Societies Act, 2002 (**"Societies Act"**). The Appellant contended that Gajanan Vasant Shirbhate (**"Respondent No.1"**) and Deepak Sopanrao Dehankar (**"Respondent No. 2"**) approached the Appellant Society with a request for sanction of a loan for the purpose of house repairs. After completion of requisite formalities, a loan of ₹5,50,000/- was sanctioned and disbursed to Respondent Nos. 1 and 2 on 01.03.2024 Whereas Yogesh Radhesham Gupta, (**"Respondent Nos.3"**) and Kishor Manohar Dhole (**"Respondent Nos.4"**) stood as guarantors for the loan. As per the loan agreement and the bye-laws of the Society, the borrowers undertook to repay the said loan amount along with interest at the rate of 15% per annum.

1.2. Respondent Nos. 1 and 2 defaulted in repayment of the loan installments, resulting in a substantial outstanding liability. Despite issuance of repeated notices by the Appellant Society, the Respondents failed to discharge their outstanding liabilities. Consequently, on 19.12.2018, the Appellant referred the dispute to be resolved through arbitration.

1.3. Accordingly, as contemplated under Section 84 of the Societies Act read with Section 23 of the Arbitration and Conciliation, 1996 (“**Arbitration Act**”), the dispute was referred for arbitration. Upon due consideration, the Commissioner for Co-operation and Registrar of Co- operative Societies, Maharashtra State, Pune, appointed Shri A.G. Gupta as the sole Arbitrator by letter dated 13.12.2018.

1.4. Subsequent to such appointment, arbitral proceedings commenced. Although the Respondents were duly served, they neither filed a written statement nor participated in the proceedings. The learned Arbitrator, after hearing the matter ex parte, passed an Award dated 27.04.2019 directing Respondents to jointly and severally pay a sum of INR 6,32,473.43 to the Appellant Society along with future interest at the rate of 17% per annum from 19.12.2018 till realization. The Arbitrator also awarded costs in favor of the Appellant.

1.5. The arbitral award was challenged by the Respondents under Section 34 of the Arbitration Act. The learned District Judge, *vide* judgment dated 01.02.2025, (“**Impugned Judgment**”) set aside the arbitral award. Being aggrieved, the appellant preferred an appeal under Section 37 of the Arbitration Act, challenging the Impugned Judgment.

2. CONTENTIONS OF THE APPELLANT BEFORE THE BOMBAY HIGH COURT

2.1. It was the case of the Appellant that the loan agreement did not contain any express provision permitting interest on interest, and hence the arbitral award violated fundamental principles of justice. The Appellant contended that the learned Principal District Judge failed to appreciate the statutory scheme

under the Societies Act, which provides for arbitration as a statutory remedy under Section 84.

2.2. It was also submitted that when an Arbitrator is appointed in accordance with the statutory framework governing Multi- State Co-operative Societies, there is no requirement of mutual consent under Section 11 of the Arbitration Act. It was further argued that Section 34(2) of the Arbitration Act does not apply in its entirety to statutory arbitrations governed by the special legislation.

3. CONTENTIONS OF THE RESPONDENTS BEFORE THE BOMBAY HIGH COURT

3.1. The Respondent Nos. 1 and 2 premised their submission on the ground that under Section 3(n) of the Societies Act, “member” means a person joining in the application for registration of a Multi State Credit Cooperative Society and includes a person admitted to membership after such registration. However, the Respondent contended that the Appellant has not placed any material on record to indicate that the applicants were admitted to the membership of Appellant society.

3.2. It was also argued that the appointment of the sole Arbitrator was made unilaterally by the Appellant and without obtaining the consent of the Respondents, thereby violating the mandate of Section 11 of the Arbitration Act. Hence, the arbitral award is vitiated.

3.3. The Respondent Nos.3 and 4 submits that they are not members of the appellant Society and, therefore, the arbitration proceedings initiated under Section 84 of the Societies Act of 2002 are not maintainable as against them.

1. ISSUES

- A. Whether appointment of Arbitrator under Section 84 of Multi-State Co-operative Societies Act, 2002 requires mutual consent under Section 11 of Arbitration and Conciliation Act, 1996?
- B. Whether the arbitral award is liable to be set aside for charging interest on attention being in conflict with public policy of India under Section 34(2)(b)(ii) of Arbitration and Conciliation Act, 1996?
- C. Whether the Respondent Nos. 3 and 4, being guarantors, are amenable to the arbitration proceedings under the Multi-State Co-operative Societies Act, 2002?

2. JUDGMENT

2.1. **ISSUE A:** The Bombay High Court expounded that the Societies Act vide Section 84 provides for the resolution of disputes arising between a Multi-State Co-operative Society and its members, officers, employees or sureties through arbitration and the procedure for appointment of arbitrator is governed by the rules and notifications issued under the Act.

2.2. It was further held by the Bombay High Court that, it is a well settled principle of statutory interpretation that special laws override general laws in case of a conflict. The maxim *Generalia specialibus non derogate*, which means general law cannot derogate the special law is befitting in the present case. Arbitration Act is a general law providing for a dispute resolution mechanism. Whereas, the Societies Act is a special legislation which, under Section 84, provides for a dispute resolution by way of Arbitration and procedure therefore is to be adopted as per the Arbitration Act. The Societies Act is a special statute and therefore the general statute that is Arbitration Act cannot override the provisions of Societies Act.

2.3. The Bombay High Court further expounded that statutory arbitration refers to a situation where a law mandates arbitration for certain types of disputes, rather than the parties voluntarily agreeing to it. Arbitration Act provides a framework for these mandatory proceedings and the same are conducted under the general provisions of the Act. The Societies Act, being a special enactment governing Co-operative Societies' functioning across multiple states, has its own self dispute resolution mechanism under Section 84 of the Societies Act.

2.4. The procedure adopted in the present case, namely the forwarding of the societies proposal to appoint Shri A.G. Gupta as arbitrator to the Registrar and subsequent appointment by the Commissioner, is in consonance with the procedure under the Societies Act. Therefore, the absence of individual consent from the Respondents does not render the appointment of the arbitrator invalid. Moreover, the Respondents have never objected to such appointment of arbitrator at the initial stage, nor have they raised any jurisdictional objection during the arbitration proceedings. In fact, perusal of the arbitration award clearly indicates that the notices of the proceedings were duly served upon Respondents.

2.5. In this regard, the Bombay Court placed strong reliance on the recent judgment of Hon'ble Supreme Court in *Bank of India v. M/s Sri Nangli Rice Mills Pvt. Ltd. & Ors.*, 2025 SCC OnLine SC 1229. The Hon'ble Apex Court has clarified that under Section 11 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, disputes between creditors must mandatorily be arbitrated under the Arbitration Act. In doing so, the Supreme Court eliminated the need for any written agreement referring the dispute to arbitration and effectively ousted the jurisdiction of the Debt Recovery Tribunal. Thus, the Hon'ble Apex Court's findings echo the

broader legislative trend across multiple statutes to channel certain categories of disputes away from the court system into expert, time-bound arbitral processes, promoting the overall efficiency and stability of these regulated sectors.

2.6. Consequently, as regards Issue No. 1, the court was of the opinion that the consent of Respondents is not required and the appointment is valid.

2.7. **ISSUE B:** The Bombay High Court expounded that in this context, it would be relevant to refer to the Agreement of Term Loan executed between the Appellant and Respondents. Clause 7 of the Agreement clearly states that it is agreed by the borrower that the interest at the rate of 15% per annum shall be calculated with monthly/ quarterly/ half yearly/ yearly rest, and shall be charged on the daily balance until the same is fully liquidated. Clause 8 states that it is further agreed by the borrower that the defaulted amount shall carry additional penal interest at 2% per annum till the date of full and final realisation.

2.8. It is thus clear that there is a contract for payment of interest and penal interest between the parties. It appears that the interest is charged on daily balance due upon the loan account and therefore, it cannot be said that charging of interest is improper. Further, the interest awarded by the Arbitrator was simple future interest at 17% per annum from the date of reference until realization, along with the principal outstanding.

2.9. The Bombay High Court placed reliance upon the *ONGC Ltd. v. Saw Pipes Ltd.*, (2003) 5 SCC 705, where the court held that an award could be set aside for patent illegality only if such illegality appears on the face of the award and goes to the root of the matter. Charging of penal interest or commercial rates of interest especially when provided for in bye-laws or loan agreements does not by itself violate public policy unless it is usurious, unconscionable, or expressly prohibited by law. In the absence of a specific contractual or statutory

prohibition, the arbitrator's award of interest even if arguably on a higher side cannot be said to be in conflict with public policy of India.

2.10. The Bombay High Court clarified,

- i. First, that there is a distinction between consensual arbitrations and statutory arbitrations. In the present case, the appointment of the arbitrator was made in accordance with the procedure prescribed under the Societies Act, and therefore did not require mutual consent under Section 11 of the Arbitration Act.
- ii. Second, the finding regarding charging of interest upon interest lacks any evidentiary basis and misapplies the doctrine of public policy. The arbitral award merely enforces the terms already agreed to. There is no material to show the award suffers from patent illegality.

2.11. **Issue C:** Whether Respondent Nos. 3 and 4, being guarantors are amenable to the arbitration proceedings under the Societies Act?

2.12. The Bombay High Court expounded that the contention of Respondent Nos. 3 and 4 that they are not "*members*" of the Society and hence not bound by arbitration under Section 84 of the Societies Act is misplaced. It was held that the scope of Section 84 of the Societies Act is broad and includes sureties and guarantors as persons who can be made parties to a dispute referable to arbitration. The expression used in Section 84(1)(c) includes any person providing guarantee in relation to the transaction of the Society. Hence, the dispute with Respondent Nos. 3 and 4 is squarely covered under the statutory arbitration mechanism.

2.13. It is a settled law that a guarantor's liability is co-extensive with that of the principal debtor under Section 128 of the Indian Contract Act, 1872, unless otherwise provided.

2.14. Therefore, Respondent Nos. 3 and 4 cannot escape liability merely by claiming non-membership, as they voluntarily assumed liability by signing binding legal documents. As such, Respondent Nos. 3 and 4, being guarantors are amenable to the arbitration proceedings under the Societies Act.

3. PSL OPINION / ANALYSIS

6.1. Arbitrator Appointment Under Section 84 of the Societies Act.

The judgment decisively held that appointment of an arbitrator under Section 84 of the Societies Act does not require mutual consent under Section 11 of the Arbitration Act. The Court applied the fundamental principle of statutory interpretation that special legislation overrides general legislation (*generalia specialibus non derogate*). The Societies Act, being a special statute governing multi-state cooperative societies, provides its own dispute resolution mechanism independent of consensual arbitration requirements. The Registrar's authority to appoint arbitrators from an approved panel without party consent reflects the legislative intention to ensure expeditious resolution of disputes involving cooperative societies. This ruling clarifies that statutory arbitrations are inherently different from consensual private arbitrations and cannot be subjected to the mutual consent requirement applicable to contractual arbitrations. This is in line with Vidya Drolia & Indo-Unique judgements where arbitrability of Tenancy disputes was clarified.

6.2. Charging Interest on Interest and Public Policy Under Section 34(2)(b)(ii).

The Court conclusively rejected the argument that charging interest on interest violates public policy under Section 34(2)(b)(ii) of the Arbitration Act. The Bombay High Court emphasized that the loan agreement explicitly authorized interest calculation with monthly/quarterly rest on daily balances. Critically, the award did not impose compound interest; rather, it quantified outstanding

liability. The Bombay High Court held that absent patent illegality appearing on the face of the award, and absent usurious or unconscionable rates, commercial interest charges do not violate public policy. Citing *ONGC Ltd. v. Saw Pipes Ltd.*, the judgment reaffirmed that awards cannot be set aside for public policy violations merely because the quantum appears high when contractually provided. This pragmatic interpretation recognizes the enforceability of contractually agreed interest terms without resorting to public policy doctrines, thereby protecting contractual certainty in commercial lending arrangements. Further, it also reinforces the position with respect to section 31 which allows the arbitrator to award interest at such rate it deems fit.

6.3. Whether Respondent Nos. 3 and 4, being guarantors are amenable to the arbitration proceedings under the Societies Act?

The court rejected the guarantors' argument that they were not "*members*" of the society and therefore not bound by the arbitration clause. The court found that Section 84(1)(c) of the Societies Act has broad scope and explicitly encompasses any person providing a guarantee in relation to the society's transactions. This statutory language clearly brings guarantors within the arbitration framework, making them amenable to dispute resolution proceedings.