


**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

D.B. Civil Miscellaneous Appeal No. 3942/2023

Adarsh Co-Operative Bank Limited, (Formerly Madhav Nagrik Sahakari Bank Limited), Headquarters At 3, Batti, Sirohi, Rajasthan, Regional Office At 22, Dhadhiya House, Moti Doongri Circle, Jaipur Through Its Authorized Officer

----Appellant

Versus

1. Prem Singh Vaidya S/o Shri Navrang Singh, Aged About 40 Years, R/o H. No. 16, Naryan Nagar, Benad Road, Behind Kamani Factory, Jhotwara, Jaipur
2. Sole Arbitrator Shri Arif Mohammed Madani, R/o-302, Felicity Tower, Sahkar Marg, Jaipur

----Respondents

For Appellant(s)	:	Mr. Ashok Mehta, Sr. Adv. assisted by Mr. Vineet Mehta Mr. Aditya Mitruka Mr. Mudit Singhvi Ms. Priya Khushalani and Mr. Siddharth Sharma
For Respondent(s)	:	Mr. Sumit Khandelwal with Mr. Sumit Kumar Soni

**HON'BLE THE ACTING CHIEF JUSTICE MR. SANJEEV PRAKASH SHARMA
HON'BLE MR. JUSTICE BALJINDER SINGH SANDHU**

Order

Date of conclusion of arguments: 3rd November 2025

Date on which judgment was reserved: 3rd November 2025

**Whether the full judgment or only
the operative part is pronounced: Full Judgment**

Date of pronouncement: 8th December 2025

Per: Baljinder Singh Sandhu, J

1. The present appeal under Section 37 in The Arbitration And Conciliation Act, 1996 (hereinafter referred to as 'Act of 1996') has been preferred by the appellant Adarsh

cooperative Bank limited (hereinafter referred to as 'the Bank') assailing the order dated 12.10.2023 passed by the commercial Court No.1, Jaipur Metropolitan-II, Jaipur by which the objection application under section 34 of the Act of 1996 filed by the respondent has been allowed and the award dated 11.12.2016 passed by arbitrator has been set aside.

2. The brief facts giving rise to the present miscellaneous appeal are that the appellant Bank which is a multi-state cooperative Bank sanctioned a home renovation loan to the tune of Rs.91,000/- to the respondent Prem Singh Vaidya on 07.11.2007.
3. A term loan agreement dated 12.11.2017 was also executed between the parties and the loan was to be paid in sixty installments at the prevalent interest rates. The respondent defaulted in the payment of loan and the last installment was paid on 09.09.2009 and thereafter, the account was declared as non performing asset (NPA). Since, the appellant Bank is a cooperative bank and the respondent is the member of the bank therefore, in view of the terms of section 84 of the multi-state cooperative societies Act, 2002 (hereinafter referred to as the 'Act of 2002'), the appellant invoked the statutory mechanism for arbitration provided under the section, which states that if any dispute arises between the cooperative society and the members there of, such disputes shall be referred to the arbitration to be appointed by the central registrar. The dispute was raised and the same was

referred to the sole arbitrator by the central registrar on 01.09.2015, while exercising the power under section 84 of the Act of 2002. The appellant Bank also served a final notice on 04.09.2015, informing the reference of the dispute and appointment of the sole arbitrator by the central registrar. The respondent chose to remain absent and an ex-party order was passed by the sole arbitrator on 11.03.2016 and an award of Rs.5,20,870/- was passed against the respondent with an interest at the prevalent rate for the period from 09.09.2015 till the date of recovery and expenses of Rs.11,000/- to be paid to the Bank.

4. Nearly 5 years thereafter, the respondent approached the commercial Court under Section 34 of the Act of 1996 stating that proceedings initiated by the appellant were null and void since there was no arbitration agreement between the parties and it was further stated that the arbitration proceedings are also hit by Section 12(5) of the Act of 1996 as per the new amendment and therefore the appointment of the sole arbitrator was not justified and the arbitrator was ineligible to be appointed as an arbitrator. The objection was further raised that the limitation for raising the claim was only 3 years and hence, as the claim was raised after a span of almost 6 years from 09.09.2009 therefore, the same was barred by limitation. The learned commercial Court while condoning the delay set aside the award vide order dated 12.10.2023, on the ground that the claim was time barred

and the same being contrary to the provisions of 12(5) of the Act of 1996.

5. Hence, aggrieved by the order dated 12.10.2023, the present appeal under section 37 of the Act of 1996 has been filed by the appellant Bank.
6. It is argued by the learned counsel for the appellant that the commercial Court has traveled beyond the scope of Section 34 (a) while setting aside the award. The learned commercial Court applied the general law of limitation instead of Section 85 of the Act of 2022 which specifically provides for a limitation of 6 years from the date the dispute arose under Section 85(1)(c). Further, the commercial Court misunderstood the nature of statutory arbitration under Section 84 of the Act of 2002 and wrongly applied the Section 12(5) treating it to be a dispute arising out of contractual arbitration between the parties.
7. Learned counsel for the respondent has argued that the learned commercial Court has not committed any error in setting aside the arbitral award which was directly hit by the provisions of Section 12(5) of the Act of 1996. It is also stated that there being no arbitration agreement between the parties, the arbitration initiated was null void and hence, there is no case of interference in the present appeal.
8. Heard learned counsels for the parties at length and perused the record.

9. Before proceeding further, it would be appropriate to reproduce **Section 84 and 85 of the Multi-state cooperative society Act, 2002.**

"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 cooperative 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 cooperative society arises-

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

(b) between a member, past members and persons claiming through a member, past member or deceased member and the multi-state cooperative society, its board or any officer, agent or employee of the multi-state cooperative society or liquidator, past or present, or

(c) between the multi-state cooperative 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 cooperative society, or

(d) between the multi-state cooperative society and any other multistate cooperative society, between a multi-state cooperative society and liquidator of another multi-state cooperative society or between the liquidator of one multi-state cooperative society and the liquidator of another multi-state cooperative 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 cooperative society, namely:-

(a) a claim by the multi-state cooperative 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 multistate cooperative 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 cooperative 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 cooperative 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.

85. Limitation

(1) Notwithstanding anything contained in the Limitation Act, 1963, but subject to the specific provisions made in this Act, the period of limitation in the case of a dispute referred to arbitration shall,-

(a) when the dispute relates to the recovery of any sum including interest thereon due to a multi-state cooperative society by a member thereof, be computed from the date on which such member dies or ceases to be a member of the society;

(b) save as otherwise provided in clause (c), when the dispute relates to any act or omission on the part of any of the parties referred to in clause (b) or clause (c) or clause (d) of subsection (1) of section 84, be six years from the date on which the act or omission, with reference to which the dispute arose, took place;

(c) when the dispute is in respect of an election of an officer of a multi-state cooperative society, be one month from the date of the declaration of the result of the election.

(2) The period of limitation in the case of any dispute, except those mentioned in sub-section (1), which are required to be referred to arbitration shall be regulated by the provisions of the Limitation Act, 1963 (36 of 1963), as if the dispute were a suit and the arbitrator a civil court. (3) Notwithstanding anything contained in sub-sections (1) and (2), the arbitrator may admit a dispute after the expiry of the period of limitation, if the applicant satisfies the arbitrator that he had sufficient cause for not referring the dispute within such period.

10. The parliament has enacted the multi-state cooperative Act, 2002 to consolidate the law relating to cooperative societies serving interest of the members in more than one state, to facilitate the voluntary frame and demonstrate functioning of cooperatives as people's institution based on self help and country aid and to enable to promote their economic and social department and to provide functional autonomy and for matters connected therewith or incidental thereto. The

Act of 2002 is a complete code in itself providing for the registration of the cooperative societies, their constitution, rights and liabilities, management and settlement of disputes and winding up. It further provides for the execution of the decrees and the remedies of appeals and reviews under the Act of 2002. The Act of 2002 therefore, governs the entire functioning of the cooperative societies which is formed for the persons for serving their interest. It clearly governs the relationship of the member and the society and also provides for settlement of disputes under Chapter 9. Section 84 clearly provides reference of disputes *inter se* between the members as well as the society, and it provides that any such dispute shall be referred to the arbitration and the powers to appoint the arbitrator has being vested with the Central Registrar. Hence, the Central Registrar is statutory authority constituted under the Act of 2002 for appointment of the arbitrator and is not any private party or member under the Act of 2002 to have been given the powers to appoint the arbitrator. Therefore, the arbitration under the Act of 2002 is a nature of a statutory arbitration and is not a contractual arbitration where the parties are at liberty to choose an arbitrator among themselves. Section 84 itself provides for referring such disputes to the arbitration which are touching the constitution, management and business of multi-state cooperative society arising between the member and the multi-state cooperative society.

11. Section 84(1)(b) clearly makes the provision in this regard. Further, sub-section 2 of sub-section (a) clearly defines that a claim by the multi-state cooperative society for any debt or demand due to it, from a member would be deemed to be a dispute touching the constitution, management or business of multi-state cooperative society. Hence, the loan taken by the respondent from the appellant Bank having remained unpaid and was a debt due to the society and was recoverable from the respondent and in view of the provisions of Section 84 of the Act of 2002, the same constituted a dispute to be referred to arbitration.
12. The Act of 2002 governs the relationship of the member of the multi-state cooperative society, and also provides for a mode of settlement under the statute itself and it does not require any other independent agreement to be entered into between the member and the multi-state cooperative society.
13. In such circumstances, the objections raised by the respondent in application under section 34 as well as before this Court that there was no arbitration agreement between the parties is bereft of any force and does not survive in view of the provisions of Section 84.
14. Section 85 of the Act of 2002 provides for the period of limitation in case of dispute referred to the arbitration. The same starts with the non-obstante clause and it overrides the provisions of limitation Act, 1963. Clause (b) of sub-section 1 of Section 85 clearly provides for the limitation of 6

years from the date of act or omission in the cases referred to in clause (b), (c) & (d) of sub-section 1 of Section 84. Therefore, in terms of Section 85, the limitation to raise the dispute in cases of dispute between the member and the cooperative society relating to the claim by the society against the member is 6 years from the date of act of remission/omission.

15. In the present case, admittedly, the last installment was paid on 09.09.2009 and the arbitral proceedings were initiated on 01.09.2015, which was within the limitation provided under Section 85 of the Act of 2002. The learned commercial Court has erred in taking the period of limitation to be 3 years in clear ignorance of provisions of 85 of the Act of 2002 which clearly has an overriding effect to the limitation Act, 1963.
16. The commercial Court has absolutely failed to consider that it was in statutory arbitration under the Act of 2002 and hence, the provisions of Section 84 and 85 would have an overriding effect as both the Sections start with non-obstante clause and provisions of the Act of 1996 have been made applicable for saving the provisions of the Act of 2002. Therefore, the finding of the commercial Court treating the claim of the appellant to be time barred is not sustainable.
17. The second ground on which the learned commercial Court has set aside the award is that the arbitral award was held to be against the provisions of Section 12(5) and Schedule 7 of the Act of 1996 as the same had come into force on 30.05.2015 before the award was passed. Although, this

ground was not raised in the application preferred by the respondent under Section 34 but however, the learned commercial Court on its own proceeded to decide the same. Learned commercial Court relied upon the provisions of Section 12(5) for the Act of 1996 which provides that if any person whose relationship falls under any of the category specified in the 7th schedule shall be ineligible to be appointed as an arbitrator. The 7th schedule provides arbitrator's relationship with the parties or counsel, to the disputes and direct or indirect interest in the dispute, which makes the arbitrator ineligible under the provisions of Section 12(5).

18. The learned Commercial Court, by directly relying upon the judgment of the Hon'ble Supreme Court in ***Ellora Paper Mills Limited v. State of Madhya Pradesh, (2022) 3 SCC 1***, has held the arbitral award to be in violation of Section 12(5). However, the said judgment lays down the principle that where an arbitrator is appointed by a party who is itself ineligible under the Seventh Schedule, particularly when the arbitrator is an employee or officer of one of the parties, the bar under Section 12(5) squarely applies. The Supreme Court further held, following ***Perkins Eastman Architects DPC v. HSCC (India) Ltd., (2020) 20 SCC 760***, that a party or its officer cannot unilaterally appoint a sole arbitrator. These principles are clearly distinguishable from the present case, where the arbitrator was not appointed by a party to the dispute, but

by the statutory Authority under the Act of 2002, and thus Section 12(5) has no application.

19. Apparently, the learned commercial Court has failed to examine the provisions of Section 84 and 85 of the Act of 2002 which, provide for the settlement of the disputes under the cooperative society and reference of the same to the arbitration. The provisions of Chapter 9 of the Act of 2002 provides a complete mechanism of the resolution of the disputes between the member of a society and the society.
20. Admittedly, in the present case, the loan was taken by the respondent who is a member of the society and loan agreement was executed on 12.07.2007 between both of them and their relationship is being governed by the provisions of the Act of 2002 which, itself provides for a reference of the dispute to the arbitration and hence, it is a statutory arbitration which is distinguished from a contractual arbitration. The right of appointment rest only on the statutory Authority i.e. the Central Registrar and the arbitration contemplated under the Act of 2002 is distinguished from the contractual arbitration where the parties choose an arbitrator among themselves. It is not the case where the person appointing the arbitrator was himself ineligible so as to result in a violation of the principles of natural justice or the right to a fair and impartial adjudicatory process. Here, the Central Registrar appointed an independent arbitrator, and the arbitrator was not appointed by any party to the dispute or by an affiliate of the

disputing parties. Therefore, the embargo contained in Section 12(5) has no application to the present case.

21. Our view is supported by the decision of the Division Bench of the Hon'ble Bombay High Court which considered the provision of Section 84 in the case of **Kalpesh Shantikumar Mehta v. NKGSB Coop. BankLtd., 2023 SCC OnLine Bom 3215** and held as under-

"25. The MSCS Act contemplate appointment of an arbitrator by the Central Registrar/Commissioner of Co-operative Societies, who is empowered to exercise his power and there is no appointment by any party or an affiliate i.e. either by the disputant bank/borrowers/guarantors. The right of appointment vest only in the statutory authority i.e. Central Registrar and the Arbitration contemplated under the MSCS Act is distinct from the contractual arbitration, where the parties to the lis are at liberty to choose an Arbitrator amongst themselves, it being a chosen forum or if they fail to make the appointment in certain circumstances, they can seek an appointment of Arbitrator from the Court.

In contrast, under the MSCS Act, what is necessarily contemplated is a statutory arbitration, with the power of appointment of Arbitrator being reposed in an authority created under the statute itself i.e. 'Central Registrar' appointed under sub-section (1) of Section (4) of the Act, which would include any Officer empowered to exercise the power of Central Registrar. Hence, there is no appointment of Arbitrator by any party and the petitioners are under the misconception, that the appointment is made by the Bank, who is the disputant, aggrieved by non-payment of the dues..."

"28. The axe of impediment or the embargo would not fall upon an Arbitrator appointed by the respondent no. 3, i.e. Commissioner of Co-operation and Registrar, Co-operative Society, M.S. as he is not appointed by any of the parties to the dispute or by an affiliate of the disputant and therefore, he having more than two arbitrations assigned to him, would not create any legal impediment on his part...."

"...Hence, I am not persuaded to accept the argument advanced by the counsel for the petitioners that the Arbitrator has incurred a disqualification, and therefore has become de jure, unable to perform his functions as an arbitrator, requiring his mandate to be terminated and the prayer for substituting him by a new

Arbitrator, which is the relief prayed in the Petition, deserve to be granted."

22. The Hon'ble Gujarat High court in the case of the ***Konnecting India & Ors. v. Kalupur Commercial Co-operative Bank Ltd. & Anr., 2024 LiveLaw (Guj) 167*** also held that Arbitration under Section 84(5) of MSCS act is a statutory arbitration and not a commercial arbitration-

"7. Having heard the learned advocate for the appellants and perused the material on record, we may note that the first and foremost objection taken by the learned counsel for the appellants is with regard to the breach of Section 21 of the Act. The basic foundation in the contention made by the appellant is fallacious, inasmuch as, the arbitration proceedings under consideration is not a commercial arbitration, but a statutory arbitration. The Arbitrator is appointed pursuant to the provisions of Section 84(5) of the Multi State Co-operative Societies Act. The appointment of the Arbitrator is made by the State Government on behalf of the Central Government. The argument canvassed by the learned counsel for the appellants about the applicability of provisions of Section 21, in a statutory arbitration, is absolutely meritless. 8. Further, it is not in dispute that in the loan agreement, the appellants have agreed for appointment of an Arbitrator and referring to any dispute to arbitration under the provisions of Multi State Cooperatives Act. It is also not in dispute that the appellant is a defaulter and he has taken the facilities as per the loan agreement which specifically refers to the dispute being conducted by an Arbitrator appointed under Section 84(5) of the Multi State Co-operatives Act. The judgment of Perkins Eastman Architects DPC v. HSCC Ltd (Supra) as relied by the appellant cannot be applied in the above noted facts and circumstances of the case. Further, the arguments on the independence and impartiality of the statutory arbitrator solely on the ground that he is doing the cases of the bank for a long time is liable to be rejected being wholly misconceived. The arbitrator is a Judicial officer and has been appointed in accordance with the statute. No exception can be taken to his independence at all."

23. Similar view was taken by the Hon'ble Delhi High Court in the case of ***Purvanchal Hathkargha Sahakari Sangh Ltd. Vs. All India Handloom Fabrics Society And Anr, 2024 : DHC : 3781*** and it was held as under-

"11. This case primarily involves two questions that are required to be answered i.e., (1) Whether section 84 of the 2002 act provides any power to the Central Registrar i.e., respondent no. 2 to appoint an arbitrator or not. (2) What would be the other remedy or process of appointment in case the Central Registrar fails to appoint an Arbitrator.

13. A cursory reading of Section 84 of the 2002 Act reveals that arbitration is to settle any disagreement between a member and the multi-state cooperative society, its board, or any officer, agent, or employee that relates to the organization's management, operations, or constitution. The current disagreement, which involves the Petitioner and all Respondents, also has to do with Respondent No. 1's management, charter, and operations. The Petitioner's submissions center on the Board of Directors of Respondent No. 1's multiple instances of alleged corruption, poor management, and non-payment of dues, which have caused the Petitioner and other member societies of Respondent No. 1 to suffer significant financial losses. Therefore, respondent no. 2 has the power to appoint an arbitral tribunal to resolve the dispute between the parties."

24. Upon examining the order of the learned Commercial Court, it is evident that no reasons have been recorded as to how the appointment of the arbitrator was in violation of Section 12(5) or the Seventh Schedule. The learned commercial Court has failed to show any applicability of section 12(5) of the Act of 1996 in the present case. Furthermore, no such contention was raised by the respondents in their application under Section 34 so as to bring the case within any of the categories specified in the Seventh Schedule.
25. Therefore, in view of the observations made above it is clear that the learned commercial Court while setting aside the award, has clearly ignored and misread the provisions of Sections 84 and 85 of the Act of 2002, and conclusions arrived at regarding the limitation and the applicability of

section 12(5) of the Act of 1996 are absolutely perverse, illegal and deserve to be set aside.

26. Consequently, the appeal filed by the appellant is allowed and the order passed by the learned commercial Court dated 12.10.2013 is set aside.
27. No orders as to cost.

(BALJINDER SINGH SANDHU),J (SANJEEV PRAKASH SHARMA),ACTING CJ

DANISH USMANI /50