**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR**

S.B. Civil Writ Petition No. 13513 / 2017

Gopi Chand S/o. Shri Jai Singh, Aged about 43 years, R/o. Village Bhamasi, Post Dokara, Tehsil Rajgarh, District Churu, Rajasthan.

----Petitioner

Versus

1. The State of Rajasthan through the Secretary, Department of Cooperative, Secretariat, Jaipur, Rajasthan.
2. The Registrar, Cooperative Societies, Nehru Sehkar Bhawan, Bhawani Singh Road, Jaipur.
3. The Deputy Registrar, Cooperative Societies, Churu.
4. Gram Seva Sahakari Samiti Ltd., Bhamasi (Churu), through its President.

----Respondents

(alongwith other 104 writ petitions as per Schedule attached)

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For Petitioner(s) : Mr. Kuldeep Mathur.
Mr. A.K. Choudhary.
Mr. Vinod Choudhary.

For Respondent(s) : Ms. Kusum Rao, AGC.
Mr. Dilip Kumar Sharma.

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**HON'BLE MR. JUSTICE ARUN BHANSALI**

**Reportable** **Order**

**22/03/2018**

This writ petition and several other writ petitions, as indicated in the annexed schedule, have been filed by the petitioners aggrieved against the order dated 20.12.2016 (Annex.-6) passed by the Rajasthan State Cooperative Societies Tribunal, Jaipur (‘the Tribunal’), whereby on account of amendment introduced in Section 125 of the Rajasthan Cooperative Societies Act, 2001 (‘the Act’), the matters pending before it have been referred to the Registrar to hear the matters in accordance with

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the provisions as amended by the Rajasthan Cooperative Societies (Amendment) Act, 2016.

Another set of writ petitions have been filed against the notices issued by the Sub-Registrar, Cooperative Societies under the amended Section 125 of the Act pertaining to the matters, wherein the proceedings had already been commenced under unamended provisions of Section 125 of the Act.

The petitioners are Managers (*Vyavasthapak*) of the Gram Seva Sahakari Samiti. In the meetings of the respondent-Societies held in the year 2011 (different dates for different Societies), it was resolved that the persons working on the post of Manager in the Societies shall be credited with enhanced pay-scale in terms of salary of Rs.5200-20200/- with grade pay of Rs.1,900/- instead of Rs.3050-4050/-.

The said resolutions of the Societies were stayed by the respective Registrars under Section 125 of the Act in the year 2011/2012 and the matters were referred to the Tribunal for determination.

Feeling aggrieved, the petitioners filed writ petitions led by SBCW No.10356/2011 questioning the validity of the powers exercised by the respective Registrars under Section 125 of the Act. The writ petitions, came to be decided by order dated 21.10.2011, wherein the following direction was given:-

> "Hence, this writ petition is disposed of with direction that the petitioner may appear before the Tribunal and raise all his grounds before the Tribunal and the Tribunal is directed to grant opportunity of hearing to the petitioner in accordance with law and consider his arguments. It is expected of the Tribunal that after providing opportunity of hearing to the petitioner as

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> well as the co-operative society the matter will be decided expeditiously, preferably within a period of six months from the date of filing certified copy of this order and till adjudication is made by the Tribunal, if the petitioner is getting salary in pursuance of the resolution dated 01.05.2011, then, it shall not be disturbed till adjudication by the Tribunal."

While, the matters were pending with the Tribunal, by the Rajasthan Cooperative Societies (Amendment) Act, 2016, provisions of Section 125 of the Act were amended and the power to rescind resolution, which hitherto vested with the Tribunal, was conferred on the Registrar.

On the amendment coming into force w.e.f. 25.04.2016, the Tribunal by the impugned order, after considering the submissions of the parties, wherein the petitioners insisted that despite amendment, the matters were required to be heard by the Tribunal and the Societies as well as the other respondents insisted that as by way of amendment, the forum has been changed, the matters must be sent to the Registrar for consideration.

The Tribunal, by the impugned order, after referring to the observations of Hon'ble Supreme Court in *Hitendra Vishnu Thakur v. State of Maharashtra : (1994) 4 SCC 602*, came to the following conclusion:-

> "उपरोक्त विधिक स्थिति जो माननीय सर्वोच्च न्यायालय द्वारा प्रतिपादित की गई है उनके अनुसार जहां फोरम (forum) से संबंधित विधि है अथवा मियाद की विधि है वे प्रक्रियात्मक विधि है जबकि अपील का अधिकार तात्विक विधि (Substantive Law) हैं। ऐसी विधि जो केवल प्रक्रिया को ही प्रभावित करती है उनको भूतलक्षी प्रभाव से लागू किया जाना चाहिए।
>
> उपरोक्त विधिक स्थिति की रोषनी में राजस्थान सहकारी सोसायटी (संशोधन) अधिनियम, 2016 के द्वारा संशोधित धारा 125 व 105 को देखा जावें तो धारा 125 में प्रकरणों की सुनवाई के फोरम (forum) को परिवर्तित किया गया है एवं संशोधन से पूर्व के फोरम

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(forum) इस अधिकरण के स्थान पर रजिस्ट्रार को विनिश्चय की शक्ति प्रदान की गई है जो निष्चित रूप से प्रक्रियात्मक विधि है।

जहॉ तक धारा 105 में किये गए संशोधन का प्रश्न है उपरोक्त न्यायिक दृष्टांत में प्रतिपादित विधिक स्थिति की रोशनी में तात्विक विधि है एवं ऐसी विधि भविष्यलक्षी प्रभाव से (prospective effect) लागू होगी।

जबकि धारा 125 में फोरम (forum) बदलने के कारण प्रक्रियात्मक विधि होने से विधि में किये गए संषोधन भूतलक्षी प्रभाव (Retrospective effect) से लागू होंगी।

इस दृष्टि से देखा जाये तो धारा 125 के प्रकरण जो संशोधन से पूर्व इस अधिकरण में संस्थित हुए थे व वर्तमान में लम्बित हैं की सुनवाई की क्षेत्राधिकारिता अब इस अधिकरण को नहीं रह जाती है एवं केवल रजिस्ट्रार ही इन प्रकरणों की सुनवाई कर सकता है। क्योंकि यदि ऐसा नहीं किया जाता है तो इन प्रकरणों के निर्णय के पश्चात् संषोधित अधिनियम के द्वारा पक्षकारों को जो अपील का अधिकार धारा 105 में दिया गया है वह उनसे छिन जावेगा जो संषोधित अधिनियम की भावना नहीं है। विधि का सुस्थापित सिद्धान्त है कि कानून का निर्वचन इस प्रकार से नहीं किया जा सकता जिससे किसी पक्षकार के अधिकार खत्म होते हैं।

इस प्रकार उपरोक्त विवेचन से धारा 125 राजस्थान सहकारी सोसायटी अधिनियम में संषोधन के पष्चात् सुनवाई का फोरम (forum) इस अधिकरण से परिवर्तित कर रजिस्ट्रार को प्रदत्त करने व धारा 105 राजस्थान सहकारी सोसायटी अधिनियम में इस संषोधन के पष्चात् रजिस्ट्रार द्वारा 125 के प्रकरणों का विनिश्चिय करने के पष्चात् उसकी अपील की सुनवाई का अधिकार इस अधिकरण को प्रदत्त किये जाने के कारण हमारे विनम्र मतानुसर संषोधन पूर्व के धारा 125 के इस अधिकरण में संस्थित व लम्बित प्रकरण अधिकरण में सुनवाई योग्य नहीं रह जाते है। अतः धारा 125 राजस्थान सहकारी सोसायटी अधिनियम का यह प्रकरण रजिस्ट्रार के न्यायालय में राजस्थान सहकारी सोसायटी (संशोधन) अधिनियम, 2016 के नवीन प्रावधानानुसार सुनवाई हेतु प्रेषित किये जाने का आदेश दिया जाता है। आदेष सुनाया गया।"

It was submitted by learned counsel for the petitioners that the provisions of Section 125 of the Act are substantive in nature and, therefore, the Registrar could not have rescinded the resolutions passed by the Societies and when the petitioners questioned the validity of exercise of powers under Section 125 of the Act by the Registrar/his delegatee, the writ petitions were disposed of on account of the then provision requiring consideration of the proposal of rescinding the resolution and power to pass final orders with the Tribunal, directed the parties to appear before the Tribunal and agitate all the issues before it and

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when under the directions of the Court, the matter was under consideration of the Tribunal, based on the amendments made in the provision, the forum cannot be changed. Further submissions were made that the provisions as they existed at the relevant time, have been materially altered by the (Amendment) Act of 2016, wherein besides Section 125, provisions of Section 30B have also been amended and, therefore, as the amendment took away the substantive rights, which had accrued in favour of the petitioners, amendment could not be applied retrospectively and affect the pending proceedings and, therefore, the order passed by the Tribunal deserves to be quashed and set aside.

Further submissions were made that the Registrar had already framed his opinion under the unamended provision while staying the execution of the resolutions, the matters were sent to the Tribunal for consideration and, therefore, the matters now cannot be permitted to be decided by the same authority, which has already expressed its opinion in this regard, which would result in grave prejudice to the petitioners. Submissions were made that reference have been made only to the judgment in the case of Hitendra Vishnu Thakur (supra) and by taking few lines of the judgment out of context without considering the facts of the present case, the same has been applied, which has led to passing of a wrong order and, therefore, the order impugned deserves to be quashed and set aside.

Reliance was placed on judgment of Hon'ble Supreme Court in *Videocon International Ltd. v. Securities & Exchange Board of India : (2015) 4 SCC 33*.

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Learned counsel for the respondents vehemently opposed the submissions made by learned counsel for the petitioners. It was submitted that the amendment to the Act made in the year 2016, has not been challenged and, therefore, the petitioners can't be heard to question the applicability of the provisions. It was submitted that the entire action of the Societies in conferring benefits on its Managers was contrary to the NABARD Circular filed as Annex-R/1/1 and, therefore, the Registrar/his delegatee at the relevant time was justified in staying the execution of the resolution and referring the matter to the Tribunal. With regard to the order passed by the Tribunal in sending the matter to the Registrar on account of the amendment in Section 125 of the Act, it was submitted that right of the petitioners in no manner has been taken away, with reference to the amended provisions of Section 105 of the Act, it was submitted that now in fact against the order passed by the Registrar, an appeal has also been provided and, therefore, the petitioners cannot have any grievance. Again with reference to the provisions of amended Section 125 of the Act, it was submitted that the petitioners would be afforded opportunity of hearing and, therefore, they have no reason to have any grievance against the said orders. It was emphasized that the petitioners have no vested right to make submissions before a particular forum and none of their rights have been infringed so as to require interference in the present matter. It was also sought to be emphasized that the procedural law like providing for a forum is retrospective and would always apply to the pending proceedings and as such the petitioners

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cannot claim to have any right to continue to agitate the issue before the Tribunal only. The writ petitions deserve dismissal.

Reliance was placed on judgment of Hon'ble Supreme Court in *Securities and Exchange Board of India v. Classic Credit Ltd.: 2017 (6) Supreme 449*.

I have considered the submissions made by learned counsel for the parties and have perused the material available on record.

To appreciate the submissions made by learned counsel for the parties, it would be appropriate to notice the pre-amendment and post-amendment position of Sections 125 and 30B of the Act, as under:-

| **Section 125 before 25.04.2016** | **Section 125 after 25.04.2016** |
|---|---|
| 125. Power of Registrar to rescind certain resolutions:-<br>(1)If in the opinion of the Registrar, any resolution passed at the meeting of any cooperative society or committee thereof is opposed to the objects of the society or is prejudicial to the interests of the society or its members at large, or is in excess of the powers of the society, the Registrar may, staying execution of the resolution interimly, propose to rescind the resolution.<br><br>[Provided that the Government or the Registrar shall not do anything or take action or issue any order or directive which has effect of curtailing any of the freedom or powers given under this Act to any short term cooperative credit structure society or adversely effect the provision of this Act].<br><br>(2)In case, where the Registrar has interimly stayed execution of any resolution under sub-section (1), he shall, within a period of | 125. Powers of Registrar to rescind certain resolutions.- If in the opinion of Registrar, any resolution passed at the meeting of any co-operative society or committee thereof is opposed to the objects of the society or is prejudicial to the interests of the society or its members at large, or is against the provisions of the Act, the rules or the bye-laws of the society or is otherwise in excess of the powers of the society, the Registrar, may, after giving the society an opportunity of being heard, rescind the resolution. |

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| forty five days, send the proposal of rescinding the resolution to the Tribunal for consideration.<br><br>(3)The Tribunal shall, after giving the society an opportunity of being heard, decide upon the proposal of the Registrar and pass its final orders. | |

| Section 30B before 25.04.2016 | Section 30B after 25.04.2016 |
|---|---|
| 30B- Autonomy in all financial and internal administrative matters.- Notwithstanding anything contained in this Act or any other law for the time being in force, a short term cooperative credit structure society shall have autonomy in all it financial and internal administrative matters including the following areas, namely- | 30B- Autonomy in all financial and internal administrative matters.- A short term cooperative credit structure society shall, subject to the general conditions and norms laid down by the Registrar in this regard, have autonomy in its financial and internal administrative matters including the following areas, namely- |
| (a)personal policy, staffing, recruitment, posting and compensation to staff; | (a)personal policy, staffing, recruitment, posting and compensation to staff; |
| (b) issues relating to affiliation and disaffiliation with any federal structure of its choice including entry and exit at any level; | (b) issues relating to affiliation and disaffiliation with any federal structure of its choice including entry and exit at any level; |
| (c) area of operation according to its business requirements; and | (c) area of operation according to its business requirements; and |
| (d) internal control systems. | (d) internal control systems. |

A bare perusal of the provisions of unamended Section 125 of the Act would indicate that the Registrar on forming the opinion that any resolution passed at the meeting of the cooperative society was opposed to the objects of the society or prejudicial to the interest of the society or its members, while staying execution of the resolution interimly propose to rescind the resolution and within 45 days send the proposal of rescinding the resolution to the Tribunal for consideration and the Tribunal after giving the society, an opportunity of hearing could decide upon the proposal of the Registrar and pass final orders. The proviso to sub-section

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(1) of Section 125 of the Act provided that the Registrar shall not take action or issue a directive curtaining any of the freedom or powers given to any short terms cooperative credit structure society.

The provision post-amendment now provides that the Registrar on forming the opinion about any resolution passed at meeting of any cooperative society that the same is opposed to the objects of the society or is prejudicial to the interest of the society or its members or is against the provisions of the Act, Rules or Bye-laws of the society after giving opportunity of hearing to the society himself can rescind the resolution.

It would be noticed that while earlier the Registrar after forming the opinion, interimly staying the resolution was required to send the proposal for consideration of the Tribunal and even said power was subject to the proviso pertaining to the exercise of power under the Act in relation to any short term cooperative credit structure society, however, post-amendment while the requirement of sending the proposal to the Tribunal has been done away, even the proviso pertaining to the short term cooperative credit structure society has also been deleted and the grounds for rescinding the resolution have been widened with introduction of grounds of resolution being against the provisions of the Act, Rules or Bye-laws of the society, and to top it all now on forming the opinion, the Registrar himself has been empowered to rescind the resolution after providing opportunity of hearing.

The provisions of Section 30B of the Act at the relevant time as noticed hereinbefore provided for a complete autonomy to the

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short term cooperative credit structure society in all the financial and internal administrative matters including compensation to staff, the said provision also has undergone major changes, wherein the same has been made subject to the general conditions and norms laid down by the Registrar in this regard.

Amendments have been made in Section 105 of the Act, wherein any decision passed by the Registrar under Section 125 of the Act has been made appealable, which hitherto was not appealable.

The Registrar/his delegatee at the relevant time, pertaining to the resolutions had recorded the following opinion while sending the proposal to the Tribunal:-

> "समिति संचालक मण्डल द्वारा पारित उक्त प्रस्ताव में कर्मचारियों को उक्त वेतन स्थिरीकरण के अनुसार परिलाभ देने संबंधित निर्णय भी पारित किया गया हैं।
>
> अधिषाषी अधिकारी दी चूरू सैन्ट्रल को–ऑपरेटिव बैंक लि. चूरू ने अपने पत्र क्रमांक 4791 दिनांक 12.7.12 में उक्त समितियों द्वारा पारित प्रस्ताव रजिस्ट्रार महोदय द्वारा जारी कृषि ऋणदात्री सहकारी समितियां/वृहद् कृषि बहुउद्देशीय सहकारी समितियों के कर्मचारियों की सेवा नियुक्ति व सेवा शर्तें 2008 के प्रावधानों के विपरित होने के साथ–साथ समिति के हितों के विरूद्ध होने तथा साथ ही राष्ट्रीय कृषि ग्रामीण विकास बैंक (नाबार्ड) द्वारा जारी दिषा निर्देषों के भी विपरीत होने के संबंध में उल्लेख करते हुए अवगत कराया गया है कि शर्ते 2008 के प्रावधानानुसार समिति जिला स्तरीय चयन कमेटी द्वारा परीक्षणोपरान्त आवश्यक प्रमाण पत्र जारी किये जाने पर नवीन वेतनमान की पात्रता होने की स्थिति में ही नया वेतनमान लागू करने की क्षमता रखती है। इस प्रकार समिति संचालक मण्डल द्वारा पारित उक्त प्रस्ताव विभागीय निर्देशों एवं नाबार्ड के निर्देशों के साथ ही साथ सदस्यों के हितों के भी प्रतिकूल है।
>
> अतः मैं रामावतार चौधरी सहायक रजिस्ट्रार सहकारी समितियां चूरू मुझको प्रदत्त राजस्थान सहकारी सोसायटी अधिनियम 2001 की धारा 125 (1) के अन्तर्गत शक्तियों का प्रयोग करते हुए भामासी ग्राम सेवा सहकारी समिति लि. भामासी संचालक मण्डल की बैठक दिनांक 21.4.11 में पारित प्रस्ताव संख्या 01 की क्रियान्विति को आन्तरिक रूप से स्थगित करते हुए उक्त प्रस्ताव को अपखण्डन किया जाना प्रस्तावित करता हूँ।"

The said proposal at the relevant time categorically indicated the opinion of the Registrar regarding the resolution being

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contrary to the provisions of Service Conditions, 2008, against the directions of NABARD and against the interest of the society and its members and, thereafter, the proposal was send to the Tribunal for rescinding the resolution.

From the above state of legal & factual position, it is apparent that at the relevant time when powers were exercised by the Registrar in 2011/2012 in rescinding the resolutions passed by the societies, the provisions were quite different conferring limited power, subject to the proviso and the final order could only be passed by the Tribunal, which is an independent body from the Registrar himself. However, now the amendment besides providing for wider powers has done away with the proviso and has also vested the power to rescind the resolution with the Registrar himself, as such it cannot be said that the amendments made in 2016 only pertain to change of forum as held by the Tribunal and as sought to be projected by the respondents.

The Tribunal by the impugned order as noticed hereinbefore, simply referred to the judgment of Hon'ble Supreme Court in the case of Hitendra Vishu Thakur (supra), and noticing the observation that 'law relating to form and limitation is procedural in nature' held that the provision would apply retrospectively and ordered for referring the matters to the Registrar for decision in accordance with the amended provisions of Section 125 of the Act.

Without consideration of the material amendments, affecting the rights of the parties, the issue could not have been decided by merely indicating that only the forum has been changed.

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As noticed hereinbefore, the nature of powers, which were exercised under Section 125 of the Act on passing of the resolutions by the respective societies at the relevant time in 2011/2012, the provisions were substantially different from what has been provided by the Amendment Act and, therefore, the amendment cannot be termed as a mere change of forum.

Several judgments on the said aspect including the judgment in the case of Hitendra Vishnu Thakur (supra) and Videocon International Ltd. (supra) as cited by the Tribunal and learned counsel for the petitioners, have been considered in the case of Classic Credit Ltd. (supra) as cited by learned counsel for the respondents, wherein Hon'ble Supreme Court after holding that the alteration of forum as such is procedural and the same would operate retrospectively, went on to carve out exceptions and observe as under:-

> "35. We have also no doubt, that alteration of 'forum' has been considered to be procedural, and that, we have no hesitation in accepting the contention advanced on behalf of the SEBI, that change of 'forum' being procedural, the amendment of the 'forum' would operate retrospectively, irrespective of whether the offence allegedly committed by the accused, was committed prior to the amendment.
>
> 36. Whilst accepting the contentions advanced on behalf of learned counsel for SEBI pertaining to 'forum' (with reference to which inferences have been drawn in the foregoing paragraph), it is not possible for us to outrightly reject the contentions advanced by Mr. C.A. Sundaram, learned Senior Advocate, while projecting the claim of the accused. We are not oblivious of the conclusions recorded by this Court in Commissioner of Income Tax, Orissa v. Dhadi Sahu, 1994 Supp (1) SCC 257, wherein it was held that <u>a law which brings about a change in the 'forum' does not affect pending actions, unless an intention to the contrary is clearly shown. One of the modes in which such intentions can be shown is, by making a provision for change for a proceeding from the court or the tribunal where it was pending, to the court or tribunal under which the new law gets jurisdiction</u>. In the said judgment, this Court also observed, that it was true that no litigant had any

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vested right in the matter of procedural law, but where the question is of the change of 'forum', it ceases to be a question of procedure only, with reference to pending matter. The 'forum' of appeal or proceedings, it was held, was a vested right as opposed to pure procedure to be followed before a particular 'forum'. It was therefore concluded, that a right becomes vested when the proceedings are initiated, in spite of change of jurisdiction/forum by way of amendment thereafter. So also, in Manujendra Dutt v. Purnedu Prosad Roy Chowsdhury, AIR 1967 SC 1419, wherein a question arose, as to whether, by the deletion of Section 29 of the Thikka Tenancy Act, 1949, the jurisdiction of the Controller over a pending suit was taken away. It was held by this Court, that the deletion of Section 29 did not deprive the Controller of his jurisdiction to try the pending suit, on the date when the Amending Act came into force. It was pointed out, that though the amending Act did not contain a saving clause, the saving contained in Section 8 of the Bengal General Clauses Act, 1899, which corresponded with Section 6 of the Central Act, fully applied to the issue. And as such, the transfer of a suit having been lawfully filed under Section 29 of the Act could not be affected by its deletion or by its amendment. Similarly, in Mohd. Idris v. Sat Narain, AIR 1966 SC 1499, the question which arose was, whether a Munsif who was trying a suit under the U.P. Agriculturist Relief Act ceased to have jurisdiction, after the passing of the U.P. Zamindari Abolition and Amendment Act, 1953, which conferred jurisdiction on an Assistant Collector. This Court held that the jurisdiction of the Assistant Collector was itself created by the Abolition Act, and as there was no provision in that Act, that the pending case were to stand transferred to the Assistant Collector for disposal, the Munsif continued to have jurisdiction to try the suit. It was also observed in the above judgment, that the provisions for change over of proceedings from one court to another, are only found in a statute, which takes away the jurisdiction of one court, and confers it on another, in pending actions. Since the amending Act did not show the pending proceedings before the court would abate, it was felt, that the court before which proceedings were filed, continued to have the jurisdiction to adjudicate the same. The above position has been considered affirmatively by this Court also in Nani Gopal Mittal v. State of Bihar, AIR 1970 SC 1636; Ambalal Sarabhai Enterprises v. Amrit Lal and Co., (2001) 8 SCC 397; R. Kapilnath v. Krishna, (2003) 1 SCC 444; Ramesh Kumar Soni v. State of Madhya Pradesh, (2013) 14 SCC 696; and Videocon International Limited v. Securities and Exchange Board of India, (2015) 4 SCC 33. From a perusal of the conclusions drawn in the above judgments, we are inclined to accept the contention, that change of 'forum' could be substantive or procedural. It may well be procedural when the remedy was yet to be availed of, but where the remedy had already been availed of (under an existing statutory provision), the right may be treated as having crystallized into a vested substantive right.

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37. In the latter situation referred to (and debated) in the preceding paragraph, where the remedy had been availed of prior to the amendment, even according to learned counsel for the private parties, unless the amending provision by express words, or by necessary implication, mandates the transfer of proceedings to the 'forum' introduced by the amendment, the 'forum' postulated by the unamended provision, would continue to have the jurisdiction to adjudicate upon pending matters (matters filed before amendment). In view of the above, we are of the considered view, that no vested right can be claimed with reference to 'forum', where the concerned court, had not taken cognizance and commenced trial proceedings, in consonance with the unamended provision.

38. Insofar as the matters where proceedings had already commenced before the amendment, change of 'forum' for trial came into effect, it is apparent from the judgments referred to in the preceding paragraph, that the general principle is that a law which brings about a change in the 'forum', does not affect pending actions, unless intention to the contrary is clearly shown. What needs to be determined with reference to 'the 2002 Amendment Act', as well as, with reference to 'the 2014 Amendment Act' is, whether an intention to the contrary was expressed therein, so as to alter the 'forum', where proceedings were pending. And to bring such proceedings to the 'forum' contemplated by the amendment.

44. It was the emphatic contention of learned counsel for the accused, that irrespective of the submissions advanced on behalf of the accused, as have been canvassed by other learned counsel, if it could be shown that the change of 'forum' of trial, was discriminatory or prejudicial or created a disability or disadvantage or fastened an obligation, not arising in the 'forum' of trial prior to the amendment, the change of 'forum' would have to be prospective. In this behalf, reliance was placed on Union of India v. Sukumar Pyne, AIR 1966 SC 1206; Nani Gopal Mitra v. State of Bihar, AIR 1970 SC 1636; New India Insurance Co. Ltd. v. Shanti Misra (1975) 2 SCC 840; Hitendra Vishnu Thakur v. State of Maharashtra (1994) 4 SCC 602; Ranbir Yadav v. State of Bihar (1995) 4 SCC 392, and Kamlesh Kumar v. State of Jharkhand, (2013) 15 SCC 460. We are of the view, that the legal proposition canvassed, has been correctly advanced."

(Emphasis Supplied)

A comprehensive reading of the law laid down by Hon'ble Supreme Court would reveal that it was laid down in the case *Commissioner of Income Tax, Orissa v. Dhadi Sahu : (1994) Supp (1) SCC 257*, that a law, which brings about a change in the forum does not effect pending action unless an intention to the contrary

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is clearly drawn, and after referring to the judgment in the case of Videocon International Ltd. (supra) and other judgments, it was held that change of forum could be substantive or procedural, it would be procedural when the remedy was yet to be availed of, where the remedy had already been availed of, the right may be treated as having crystallized into a vested substantive right and that a law, which brings about the change in the forum does not effect pending action unless intention to the contrary is clearly shown.

Further, it was concluded that if change of forum created a disability or disadvantage, not arising in the forum prior to amendment, the change of forum would be prospective.

In the present case, despite introducing wholesale amendments by Amendment Act of 2016, the said Amendment Act nowhere provided for transfer of pending proceedings from the Tribunal to the Registrar under Section 125 of the Act and as noticed hereinbefore, once the provision conferring jurisdiction has been substantially amended, whereby while the scope for interference has been increased and the restrictions existing have been done away with, which clearly create disadvantage to the petitioners, it cannot be said that the amendment is a mere change of forum and, therefore in view of the law laid down by Hon'ble Supreme Court, as discussed, the amended Section 125 of the Act would operate prospectively.

Besides the above, the most outstanding aspect is that in the present cases, the Registrar/his delegatee has already expressed his opinion by way of passing interim orders and referring the

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matters to the Tribunal and now the said authority itself has been conferred with power to decide the same aspect, the submissions made by learned counsel for the petitioners prima facie appears to be justified that the same could be in violation of principles of natural justice as even if now the said Registrar would issue/has issued show cause notices and hear the parties before passing the order, the opinion already expressed while passing the orders earlier cannot be wiped out.

In view of the above legal and factual discussion, the orders passed by the Tribunal holding that the amendment has brought about only a change in the forum, being procedural would apply retrospectively and the pending matters were required to be decided by the Registrar, cannot be sustained.

Consequently, the writ petitions filed by the petitioners are allowed. The order/s dated 20.12.2016 passed by the Tribunal transferring the matters to the Registrar are quashed and set aside.

Notices issued by the Registrar/his delegatee to the petitioners pursuant to the amended Section 125 of the Act, in cases where the power by the Registrar/his delegatee had already been exercised under the unamended provision, are also quashed and set aside. The matters shall be finally heard and decided by the Rajasthan State Cooperative Societies Tribunal, Jaipur.

Looking to the fact that the issue is pending for last over 6/7 years, the Tribunal is directed to decide the matters most expeditiously.

(ARUN BHANSALI)J.

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**SCHEDULE**

**(Attached with S.B. Civil Writ Petition No. 13513/2017 decided on 22.03.2018).**

| | | |
|---|---|---|
| 1. | C.W.6086/2017 | Shiv Ram Singh v. State & Ors. |
| 2. | C.W.8959/2017 | Pawan Kumar v. State & Ors. |
| 3. | C.W.8960/2017 | Panna Lal v. State & Ors. |
| 4. | C.W.8962/2017 | Bhanwar Lal Dhaka v. State & Ors. |
| 5. | C.W.8964/2017 | Nand Lal Sharma v. State & Ors. |
| 6. | C.W.8966/2017 | Devendra Kumar v. State & Ors. |
| 7. | C.W.8971/2017 | Hema Ram Poonia v. State & Ors. |
| 8. | C.W.9108/2017 | Fula Ram Kaswan v. State & Ors. |
| 9. | C.W.9113/2017 | Jaipal Singh v. State & Ors. |
| 10. | C.W.9119/2017 | Sanwat Ram v. State & Ors. |
| 11. | C.W.9120/2017 | Mohar Singh v. State & Ors. |
| 12. | C.W.9121/2017 | Umaid Singh v. State & Ors. |
| 13. | C.W.9122/2017 | Jitendra Kumar Sharma v. State & Ors. |
| 14. | C.W.9126/2017 | Virendra Singh v. State & Ors. |
| 15. | C.W.9133/2017 | Bheem Singh v. State & Ors. |
| 16. | C.W.9137/2017 | Ranveer Singh v. State & Ors. |
| 17. | C.W.9138/2017 | Vinod Kumar v. State & Ors. |
| 18. | C.W.9140/2017 | Banshidhar v. State & Ors. |
| 19. | C.W.9181/2017 | Durga Ram v. State & Ors. |
| 20. | C.W.9202/2017 | Daya Chand Saini v. State & Ors. |
| 21. | C.W.9209/2017 | Shishram v. State & Ors. |
| 22. | C.W.9355/2017 | Begraj Dhaka v. State & Ors. |
| 23. | C.W.9357/2017 | Rohitash Singh v. State & Ors. |
| 24. | C.W.9406/2017 | Rajesh Kumar v. State & Ors. |
| 25. | C.W.9551/2017 | Gopi Chand v. State & Ors. |
| 26. | C.W.9566/2017 | Ramesh Kumar Swami v. State & Ors. |
| 27. | C.W.9567/2017 | Mahendra Singh v. State & Ors. |
| 28. | C.W.9568/2017 | Surendra Kumar Joshi v. State & Ors. |
| 29. | C.W.9577/2017 | Nand Ram v. State & Ors. |
| 30. | C.W.9578/2017 | Mool Chand v. State & Ors. |
| 31. | C.W.9741/2017 | Surendra Kumar Joshi v. State & Ors. |
| 32. | C.W.9766/2017 | Krashan Lal v. State & Ors. |
| 33. | C.W.9778/2017 | Pawan Kumar v. State & Ors. |
| 34. | C.W.9781/2017 | Subhash Chandra v. State & Ors. |
| 35. | C.W.9847/2017 | Ram Chandra Chabarwal v. State & Ors. |
| 36. | C.W.9848/2017 | Jaiveer Singh v. State & Ors. |
| 37. | C.W.9849/2017 | Ramkaran Kaswan v. State & Ors. |
| 38. | C.W.9850/2017 | Vikas v. State & Ors. |
| 39. | C.W.9851/2017 | Balveer Singh Nanwala v. State & Ors. |
| 40. | C.W.9862/2017 | Raju Ram Godara v. State & Ors. |
| 41. | C.W.9865/2017 | Baldeo Singh v. State & Ors. |

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| 42. | C.W.9867/2017 | Sumer Singh v. State & Ors. |
| 43. | C.W.9868/2017 | Suresh Kumar v. State & Ors. |
| 44. | C.W.9932/2017 | Vela Ram v. State & Ors. |
| 45. | C.W.10143/2017 | Gokal Ram v. State & Ors. |
| 46. | C.W.10144/2017 | Surendra Kumar v. State & Ors. |
| 47. | C.W.10145/2017 | Dev Karan Saran v. State & Ors. |
| 48. | C.W.10146/2017 | Nand Lal Sharma v. State & Ors. |
| 49. | C.W.10309/2017 | Asgar Ali v. State & Ors. |
| 50. | C.W.10310/2017 | Sita Ram v. State & Ors. |
| 51. | C.W.10614/2017 | Bharat Singh v. State & Ors. |
| 52. | C.W.10615/2017 | Hoshiyar Singh v. State & Ors. |
| 53. | C.W.10616/2017 | Balwan Singh v. State & Ors. |
| 54. | C.W.10846/2017 | Raj Kumar v. State & Ors. |
| 55. | C.W.10847/2017 | Raj Kumar Sharma v. State & Ors. |
| 56. | C.W.10871/2017 | Prem Raj Sharma v. State & Ors. |
| 57. | C.W.10872/2017 | Lichma Ram v. State & Ors. |
| 58. | C.W.10975/2017 | Chandrabhan Sharma v. State & Ors. |
| 59. | C.W.11071/2017 | Ramesh Kumar v. State & Ors. |
| 60. | C.W.11107/2017 | Inder Raj v. State & Ors. |
| 61. | C.W.11108/2017 | Bajrang Lal Pareek v. State & Ors. |
| 62. | C.W.11109/2017 | Shreenath Siddh v. State & Ors. |
| 63. | C.W.13790/2017 | Mahendra Singh v. State & Ors. |
| 64. | C.W.14735/2017 | Sandeep Kumar v. State & Ors. |
| 65. | C.W.14736/2017 | Mool Chand Saini v. State & Ors. |
| 66. | C.W.15671/2017 | KailashChandra Sharma v. State & Ors |
| 67. | C.W.15770/2017 | Bundi Lal Sharma v. State & Ors. |
| 68. | C.W.15778/2017 | Vishnu Kumar Sharma v. State & Ors |
| 69. | C.W. 15779/2017 | Suresh Chand Sharma v. State & Ors |
| 70. | C.W.16710/2017 | Mani Ram v. State & Ors. |
| 71. | C.W.16712/2017 | Mana Ram v. State & Ors. |
| 72. | C.W.16743/2017 | Rati Ram v. State & Ors. |
| 73. | C.W.16744/2017 | Ram Niwas Khichi v. State & Ors. |
| 74. | C.W.16745/2017 | Basant Singh v. State & Ors. |
| 75. | C.W.16747/2017 | Man Singh v. State & Ors. |
| 76. | C.W.17024/2017 | Narayan Singh v. State & Ors. |
| 77. | C.W.17036/2017 | Mahesh Chand Gupta v. State & Ors. |
| 78. | C.W.283/2018 | Bhanwal Lal Vyas v. State & Ors. |
| 79. | C.W.285/2018 | Vidhya Shanker Joshi v. State & Ors. |
| 80. | C.W.287/2018 | Ram Niwas Joshi v. State & Ors. |
| 81. | C.W.290/2018 | Rajendra Singh v. State & Ors. |
| 82. | C.W.316/2018 | Tara Chand v. State & Ors. |
| 83. | C.W.648/2018 | Birbal Singh v. State & Ors. |
| 84. | C.W.649/2018 | Ratna Ram v. State & Ors. |
| 85. | C.W.911/2018 | Net Ram v. State & Ors. |
| 86. | C.W.927/2018 | Bhanwar Singh v. State & Ors. |

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| 87. | C.W.933/2018 | Chotu Singh v. State & Ors. |
| 88. | C.W.956/2018 | Dev Kishan v. State & Ors. |
| 89. | C.W.1240/2018 | Shambhu Dan Mehdu v. State & Ors. |
| 90. | C.W.1242/2018 | Radha Kishan Paliwal v. State & Ors. |
| 91. | C.W.1243/2018 | Hari Gopal Godara v. State & Ors. |
| 92. | C.W.1405/2018 | Manjoor Singh v. State & Ors. |
| 93. | C.W.1504/2018 | Parmod Kumar v. State & Ors |
| 94. | C.W.1505/2018 | Kuldeep Sharma v. State & Ors. |
| 95. | C.W.1528/2018 | Gopal Parsad Sharma v. State & Ors. |
| 96. | C.W.1574/2018 | Ramdev Khatik v. State & Ors. |
| 97. | C.W.1579/2018 | Bala Ram v. State & Ors. |
| 98. | C.W.1581/2018 | Kumbha Ram Jat v. State & Ors. |
| 99. | C.W.1647/2018 | Nakhat Singh v. State & Ors. |
| 100. | C.W.1661/2018 | Pradeep Kumar v. State & Ors. |
| 101. | C.W.1662/2018 | Gopal Das v. State & Ors. |
| 102. | C.W.2044/2018 | Aalok Kumar v. State & Ors. |
| 103. | C.W.2057/2018 | Bhargu Narayan v. State & Ors. |
| 104. | C.W.2073/2018 | Mahendra Pal Singh v. State & Ors. |

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