

Bombay High Court Shri Gajanan Pandurang Shet . . . vs L.D. Authorised Person Of The . . . on 17 March, 1998 Equivalent citations: 1998 (3) BomCR 850, 1998 (2) MhLj 483 Author: R Khandeparkar Bench: R Khandeparkar ORDER R.M.S. Khandeparkar, J. 1. The basic point which is raised for consideration in all these three petitions is that whether failure on the part of the members of the Managing Committee of the Co-operative Society in performing their duties as prescribed by the provisions of certain Bye-laws of the Society would amount to misfeasance under section 88 of the Maharashtra Co-operative Societies Act, 1960 as applicable to the State of Goa. Simultaneously yet another question is sought to be raised herein is whether the decision in a disputed case under section 91 of the said Maharashtra Cooperative Societies Act as applicable to Goa at the instance of the management of the Society would bar the jurisdiction of the Registrar to proceed under section 88 of the said Act against the Managing Committee of the Society or its members. Since common questions of law are sought to be raised in all these three petitions, they are heard together and are being disposed of together by this common judgment. 2. The facts in brief relevant for decision are that the Mapusa Consumer Co-op. Society Limited hereinafter called as “the said Society” is the Co-operative Society registered under Maharashtra Co-operative Societies Act, 1960 as applicable to the State of Goa, hereinafter referred to as “the said Act”. The said Society has framed Bye-Laws which make various provisions relating to the management of the said Society and Bye-law No. 46 therein provides for the duties of the Managing Committee. The petitioner in Writ Petition No. 188/96 is the respondent No. 3 in Writ Petition No. 490/96 and he was the Chairman of the said society for the years 1972-73 and is hereinafter referred to as Gajanan. The petitioner in Writ Petition No. 192/96 is the respondent No. 4 in Writ Petition No. 490/96 and he was a member of the Managing Committee of the said Society for the said period and is hereinafter referred to as Lavchandra. It appears that the said Society suffered a loss of Rs. 40,850.21 during the year 1972-73 and out of the said amount a sum of Rs. 38,432.57 was towards the shortage of stock of fertiliser and a sum of Rs. 2,417.64 was towards the shortage of cash. The Managing Committee of the said Society decided to file criminal as well as dispute case under section 91 of the said Act against the Secretary of the said Society by name of Shri Narayan L. Bhobe and accordingly filed the application in the prescribed form under section 91 of the said Act on 24th February, 1973 before the Registrar of Co-operative Societies. The said Narayan L. Bhobe denied the claim of the said Society. The Registrar’s Nominee by its order dated 25th July, 1978 held Shri Narayan Bhobe to be responsible for an amount of Rs. 40,850.21 plus interest thereon, as also for costs. The appeal preferred by the said Narayan L. Bhobe against the order of the Registrar’s Nominee was dismissed by the Co-operative Tribunal by order dated 11th March, 1980. Meanwhile, one Shri M.J. Khorate, the Senior Auditor who conducted the audit of the said Society for the period 1st July, 1972 to 30th July, 1973 in terms of section 81 of the said Act held in his report that the Managing Committee of the said Society was responsible for the misappropriation of Rs. 45,751,20p. The Auditor observed there was no proof from the said records that the said Secretary was solely responsi-

ble for the same and the Managing Committee could not avoid its responsibility for misappropriation of funds and that the Managing Committee had failed to take proper steps for compliance of its obligations under Bye-law No. 61. The Auditor's report further observed that in respect of transactions pertaining to the fertilisers and loss caused to the Society should engulf not only the loss actually suffered but also the profit which the Society could have received had the Managing committee acted in pursuance of Bye-law No. 46. On the basis of the said report, the Registrar of the Co-operative Societies issued notice to the Members of the Managing Committee including Gajanan and Lavchandra and thereafter proceeded to frame charge against them in Misfeasance Case No. ADT/CONS/6/27/79 on 11th December, 1980 in terms of section 88 of the said Act. In the course of inquiry before the authorised Officer in the said case under section 88, the said Auditor Shri. M.J. Khorale deposed in support of charge and produced his audit report. The said case was sought to be defended by the petitioners Gajanan and Lavchandra alongwith others mainly on three grounds. Firstly, it was contended that in view of the proceedings already initiated under section 91 of the said Act by the said Society against the Secretary of the said Society, no proceedings can be taken by the Registrar under section 88 for the same cause of action. Secondly, it was contended that the Secretary of the said Society having already been held solely responsible by the competent Authority for the alleged acts in the dispute case under section 91 of the said Act, second proceedings for recovery of the same amount against the Managing Committee or its Members does not lie. Thirdly, it was contended that the materials do not establish the charge of misfeasance. The Authority acting under section 88, however, held that the charge of misfeasance owing to the non-performance and negligence of duties causing loss of Rs. 45,751.29 has been proved pursuant to the materials placed before it by Auditor Shri. M.J. Khorate. The said decision was sought to be challenged by Gajanan and Lavchandra alongwith one more member of the Managing Committee by name Tukaram Mangaonkar by filing appeals before the Co-operative Tribunal being Co-operative Appeal Nos. 2/95, 4/95 and 3/95 respectively. The Co-operative Tribunal by its judgment dated 13th January, 1996 dismissed the appeal filed by said Tukaram for default. The appeals preferred by Gajanan and Lavchandra were, however, partly allowed and the Award of the authorised officer under section 88 of the said Act was modified to the extent that Gajanan and Lavchandra and other members of the Managing Committee were held liable to pay to the said Society only the sum of Rs. 4901.08 representing the fertiliser trading loss caused to the said Society with interest at the rate of 6% from the date of the notice under section 88. The tribunal, however, simultaneously held that once the Secretary was saddled with the liability as a person solely responsible to pay the amount of Rs. 40,850.21, the said matter could not have been reopened in different proceedings under section 88 of the said Act. 3. In Writ Petition Nos. 188/96 and 192/96 filed by Gajanan and Lavchandra respectively the impugned order of the Co-operative Tribunal is sought to be challenged mainly on the ground that the materials on record do not disclose any act of misfeasance by Gajanan or Lavchandra and secondly, on the ground that the Registrar could not have initiated any proceed-

ings under section 88 of the said Act for an offence of misfeasance in respect of trading loss to the said Society once the said Society itself had taken action for recovery of such loss suffered by it by initiating proceedings under section 91 of the said Act. The impugned order is sought to be challenged by the said Society in Writ Petition No. 490/96 mainly on the ground that there is root deep difference between the proceedings under section 88 of the said Act and those under section 91 of the said Act and the nature of jurisdiction exercised under two sections is totally different as well as the issues involved in either of the proceedings are also different. Besides, it is the contention of the Society therein that there is enough unchallenged material on record to establish the charge against Gajanan and Lavchandra alongwith the other members of the Managing Committee and lastly that section 88 of the said Act not only covers cases of misfeasance but also malfeasance and nonfeasance. 4. Shri Sudin M. Usgaonkar, learned Advocate appearing for Gajanan and Lavchandra, while assailing the impugned order submitted that the Registrar is no doubt entitled to initiate proceedings under section 88 of the said Act against a person who takes part in organisation and management of a Co-operative Society and to order him to repay or restore the money due to such Society by way of compensation. However, such proceedings can be initiated only when the act or omission on the part of the members amount to misapplication or retention of money or property of the Society or there is a case of misfeasance or there is a case of breach of trust. According to the learned advocate, such proceedings cannot be initiated against a member of Society in respect of the amount which has already been subject matter of the proceedings under section 91 of the said Act initiated by the Society itself against some other persons and that too, when it had resulted in an order in favour of the Society. Drawing my attention to the order of the Registrar's Nominee confirmed by the Co-operative Tribunal against Ex-Secretary of the said Society Shri. Narayan L. Bhole in respect of the sum of Rs. 40,850.21, the learned advocate submitted that the Society had already taken proceedings for recovery of the amount in question and, therefore, there was no question of initiating any proceedings for any lapse as such on the part of the Management for the loss to the Society by invoking powers under section 88 of the said Act. He further submitted that the said act of misfeasance applies to the performance of some lawful act in improper manner and it does not mean or include failure to perform certain act which a person is compelled to perform. The failure to perform an act which a person is obliged to perform can amount to nonfeasance but not misfeasance. He further submitted that the term misfeasance has not been defined under the said Act and perusal of its definition in Black's Law Dictionary discloses that there is a marked difference between the term misfeasance and nonfeasance. Misfeasance does not include nonfeasance. Therefore considering the materials on record there was absolutely nothing to show any improper performance of some lawful acts by the petitioners Gajanan and Lavchandra so as to hold them responsible for the acts of misfeasance. Taking me to the Award, charges framed against the petitioners Gajanan and Lavchandra and the judgment of the Authorised Officer as well as of the Co-operative Tribunal, the learned advocate submitted that both the authori-

ties have failed to apply their mind to the basic aspect of the case that Gajanan and Lavchandra were never charged for any improper performance of any lawful act and the charge was regarding non-performance of certain acts and, therefore there was absolutely no case of misfeasance as such. Drawing my attention to section 88 of the said Act he further submitted that section 88 clearly specified 5 different offences, one of them being misfeasance. He further submitted that considering the scheme of the Act and the provisions contained in sections 88 and 91 it cannot be said that the same permits two proceedings in respect of the same subject matter. The records also disclose that the Ex-Secretary of the said Society was held responsible for the loss suffered by the said Society and, therefore, there could not have been second proceedings against the petitioners Gajanan and Lavchandra for the same subject matter. Even otherwise, section 88(3) of the said Act clearly provides that the proceedings under said section would not debar initiation of criminal proceedings for the same offence but it does not save any proceedings under section 91 of the said Act. According to the learned advocate, nothing prevented the Legislature in its wisdom to save the proceedings under section 91 alongwith the criminal proceedings by providing so in the said sub- section (3) of section 88. There cannot be second proceedings for the same cause of action under section 88 of the said Act. 5. Smt. A.A. Agni, appearing for the said Society on the other hand, submitted that the nature of jurisdiction exercised by the authority under section 91 of the said Act and the authority acting under section 88 of the said Act is totally different and the jurisdiction of Registrar acting under section 88 is in no way curtailed merely because the Managing Committee chose to fix the liability on a single person for the loss suffered by the Society by initiating proceedings under section 91 of the said Act. According to the learned advocate, evidence of Senior Auditor Shri. Khorate clearly discloses that the Managing Committee was responsible for the loss caused to the society. Section 88 has very wide amplitude and it covers the cases of misfeasance, breach of trust, misappropriation and retention of money and accountability of any money or property of a Co-operative Society. The Auditor's report clearly demonstrate that there is violation of Bye-law 46 by the Managing Committee of the Society and they are responsible for the total negligence of their duties as a result of which the Society suffered loss. According to the learned advocate, the Co-operative Tribunal erred in holding that since Ex-Secretary has been held responsible and liable for the amount of Rs. 40,850.21 by the Registrar's Nominee in proceedings under section 91 of the said Act, the liability for the said amount could not be fixed on the Managing Committee under section 88 thereby totally ignoring that section 88 operates in totally different field from section 91. The said Act nowhere provides any bar for proceedings against the same person under two different sections of the same Act, namely, section 88 and section 91 and there is no scope for interpreting section 88 in the manner sought to be interpreted by the petitioners Gajanan and Lavchandra. The learned advocate further submitted that the proceedings under section 91 are basically for recovery of money due to the Society whereas the proceedings under section 88 are for misconduct of the members of the Managing Committee of the Society. 6. Upon hearing the

learned advocates for the parties and on perusal of the entire records, it is seen that section 88 of the said Act forms part of Chapter VIII which deals with Audit, Inquiry, Inspection and Supervision, Section 81 therein deals with the matters relating to Audit and provides that the Registrar shall audit or cause to audit by a person authorised by him by general or special order in writing in that behalf, the accounts of every Society atleast once in the year. Section 82 deals with matters pertaining to rectification of defects in the accounts and section 83 empowers the Registrar or the person duly authorised by him to deal with the management and financial conditions of the Society. Section 84 deals with the matters pertaining to inspection of books of the Society and the provision relating to costs of inquiry and inspection are incorporated in section 85 of the said Act. Section 87 deals with the matters pertaining to power of the Registrar to bring defects disclosed in an inquiry or inspection to the notice of the Society and to make such orders as may be necessary directing such Society to remedy the defects. Section 88 in the said Chapter, which is the subject matter of the proceedings in hand, provides for power to the Registrar to assess damages against delinquent promoters, members of Managing Committee etc., and it reads thus :- “88. Power of Registrar to assess damages against delinquent promoters, etc.—1) Where, in the course of or as a result of an audit under section 81 or an inquiry under section 83 or an inspection under section 84 or the winding up of a Society, the Registrar is satisfied on the basis of the report made by the auditor or the person authorised to make inquiry under section 83 or the person authorised to inspect the books under section 84 or the Liquidator under section 105 or otherwise that any person who has taken any part in the organisation or management of the Society or any deceased, or past or present officer of the Society has, within a period of five years period to the date of such audit, inquiry, inspection or order for winding up, misapplied or retained, or become liable or accountable for, any money or property of the Society, or has been guilty of misfeasance or breach of trust in relation to the Society, the Registrar or a person authorised by him in that behalf may frame charge against such person or persons, and after giving a reasonable opportunity to the person concerned and in the case of a deceased person to his representative who inherits his estate, to answer the charges, make an order requiring him to repay or restore the money or property or any part thereof, with interest at such rate as the Registrar or the person authorised under this section may determine, or to contribute such sum to assets of the Society by way of compensation in regard to the misapplication, retention, misfeasance or breach of trust, as he may determine. (2) The Registrar or the person authorised under sub-section (1) in making any order under this section, may provide therein for the payment of the cost or any part thereof, as he thinks just and he may direct that such costs or any part thereof shall be recovered from the person against whom the order has been issued. (3) This section shall apply, notwithstanding that the act is one for which the person concerned may be criminally responsible”. Yet another section of the said Act which is often referred to in the course of submission by the parties is section 91, which is comprised in Chapter IX of the Act which deals with Disputes and Arbitration. Section 91 of the said Act provides that

a dispute relating to conduct of general meetings, management or business of the Society to be referred to the Registrar if the parties thereto are one or other specified in the said section. Such parties include a Society, its Committee, any person who has been granted loan by the Society or with whom the Society has or had transactions under the provisions of section 45, a surety of a member or grantee for a loan etc. etc. It also provides that when a question arises as to whether the matter referred to for decision is a dispute or not, the same question shall be decided by the Registrar and that no Court shall have jurisdiction to entertain any suit or other proceedings which is required to be referred for decision to the Registrar under section 91. 7. Plain reading of section 88 of the said Act discloses that the Registrar is empowered to frame charges against any person who has taken part in the organisation or management of the Society and who has been prima facie found guilty of misapplication or retention of any money or property of the Society, or has been guilty of misfeasance or breach of trust in relation to the Society and further provides that after giving reasonable opportunity to the person to answer the charges and, if same are found proved, then to make an order requiring him to repay or restore the money as the case may be to the Society. There cannot be any dispute as rightly submitted by the learned advocate for the petitioners Gajanan and Lavchandra that section 88 certainly makes difference between the misapplication of funds or misfeasance or being liable or accountable for money to the Society. On plain reading of said section 88, therefore, it cannot be said that the term 'misfeasance' in the said section would apply to any and every sort of offence which can be taken note of for initiating proceedings under section 88 of the said Act. The expression 'misfeasance' has specific and distinct meaning and the said term has not been used in the said section so as to include all types of offences for which a person in the management of the Society can be proceeded against under said section. Otherwise the Legislature would not have used different expressions for different types of acts and omissions in the said section. Indeed the said section refers to six types of offences, namely, misapplication or retention of money (sic money) or liability or accountability for money or property of the Society as well as misfeasance and breach of trust. Some of those offences would require performance of certain positive acts, whereas certain offences can be said to have been committed on account of non-performance of some other acts. The offence of misapplication or retention of money would necessarily result from performance of certain acts may be in contravention of certain duties and obligations whereas liability or accountability for money may arise either from performance of certain other acts or an account of omission to perform certain duties. Besides, undoubtedly the term 'misfeasance' has not been defined in the said Act. According to the learned advocate for Gajanan and Lavchandra, therefore, one has to fall back on dictionary meaning to understand the term 'misfeasance'. The term 'misfeasance' is defined in the Black's Law Dictionary means the improper performance of some act which a person may lawfully do. Whereas the term 'nonfeasance' means omission of an act which a person ought to do and the term 'malfeasance' is the doing of an act which a person ought not to do at all. In other words the terms 'misfeasance', 'nonfeasance' and

‘malfeasance’ have different meanings and they are not synonymous or similar. On the contrary ‘misfeasance’ requires performance of some act whereas ‘non-feasance’ would mean non-performance of an act. When a person is required to do certain things lawfully but performs it improperly, it cannot be said that he is guilty of nonfeasance. However, certainly he can be accused of an offence of misfeasance. Similarly, if a person is required to do certain acts in terms of the provisions of law and he fails in his obligation, he can be accused of an offence of nonfeasance. In other words, for the proceedings to be initiated for misfeasance under section 88 it is necessary that such person must be guilty of improper performance of some act which he has lawfully done. The contention of advocate Mrs. Agni that section 88 is wide enough to encompass all sorts of offences including misfeasance and nonfeasance is equally true, not because the term ‘misfeasance’ found in the said section would include all such offences but because of inclusion of various other acts and omissions as offences which can warrant action under the said section. Indeed, various other acts and omissions referred to in the said section can certainly be classified as acts of nonfeasance and malfeasance and in that case no fault can be found with the submission of learned advocate for the said Society that section 88 encompass all sorts of offences-misfeasance as well as nonfeasance. But that does not justify grouping of all the offences mentioned in the said section under the single head of ‘misfeasance’ and accordingly persons cannot be accused of offences of ‘misfeasance’ when the allegation against them are of failure to perform their duties. Perusal of the charge framed by the Registrar and tried by the authorised Officer would show that the petitioners Gajanan and Lavchandra were accused of failure to discharge some of their duties under the Bye-laws of the Society. The charge specifically refers to non-performance of certain functions resulting in loss to the Society. The Clause 7 of the charge-sheet speaks of failure to perform the duties laid down in Bye-law 46(8). Clause (8) thereof speaks of non-performance of the functions which are required to be performed. The concluding part of the charge reads thus:- “Thus it is clear that the Managing Committee failed to perform the duties as per the bye-laws due to which the Society suffered a loss of Rs. 45,751.29p.” (underlining supplied). Bye-law 46(8) provides that “the Committee shall arrange to take down account at right time, inspection may be held frequently of the account of the Society, sale of goods, books for account of goods other books of account and cash-balance”. Bye-law 61 provides that the balance amount of Rs. 50/- of the Society can be deposited with the Secretary. More than that amount but upto Rs. 100/- shall be in possession of the Chairman and if more than the said amount is collected, the same shall, within 3 days from the collection (excluding public holidays) be deposited with Central Bank or its nearest branch and the responsibility of deposit shall lie on the Chairman. The charge against Gajanan and Lavchandra, therefore, ex-facie discloses that the same relates to non-performance of certain duties under the Bye-laws and it does not disclose any positive lawful act having been done improperly by the Managing Committee or the members thereof so as to accuse them of commission of the offence of ‘misfeasance’. 8. In this regard Shri. Usgaonkar has relied upon the decision in the matter of *Khairul Bashir v. Thannu Lal and others*, .

The Allahabad High Court there-in was dealing with the provisions relating to Article 36 of the Limitation Act, 1908 pertaining to the limitation for a suit for compensation for any malfeasance or misfeasance or nonfeasance, independent of contract and not specifically provided for in the said Act 1908 and therein it was held that malfeasance would apply to the case where the act prohibited in law is done by a person, nonfeasance would apply to a case where a person failed to do some act prescribed by law and misfeasance would apply to a case where a lawful act is done in improper manner. As against this Mrs. Agni, learned advocate for the Society, has relied on the decision of Calcutta High Court in the matter of Indo Burma Industries Ltd., . The Calcutta High Court therein was dealing with a matter pertaining to proceedings under section 235 of the Indian Companies Act, 1913 and in that regard held that the word 'misfeasance' in section 235 covered every misconduct by an officer of a company. The learned Single Judge of the Calcutta High Court therein was dealing with a matter where two Directors of a company were found guilty of an offence of fraud whereby the funds of the company were sought to be syphoned out to a partnership firm of the same two Directors. In other words the said Directors were proved guilty of commission of an act in improper manner. The act committed was otherwise permissible under the provisions of the law, but it was committed improperly since the funds were allowed to be given to a private firm of the two of the Directors and in that regard certainly there was an offence of misfeasance by those Directors and, therefore the decision in Indo Burma Industries Ltd., case is of no assistance to bring home the charge of misfeasance against Gajanan and Lavchandra in the case in hand. As already observed above section 88 refers to different types of offences and one of them is misfeasance. That apart the rules of interpretation of statute do not permit enlargement of a penal provision in a statute and on the contrary calls for strict interpretation of the such statutes. Considering the same, the term 'misfeasance' under section 88 cannot be construed as sought to be interpreted by the said Society as it will amount to reading down something in the said section which is actually not provided for therein by the legislature in its wisdom. The offence of misfeasance under section 88 restricts to the performance of the act in improper manner by a person in the management of a Co-operative Society. Advocate Mrs. Agni did try to take help of section 3(2) of the General Clauses Act in support of her argument that the term 'misfeasance' would also include 'malfeasance', since section 3(2) defines 'act' to include 'illegal omissions'. However one cannot forget that the act of misfeasance implies improper performance of lawful act and does not imply either failure of performance or non-performance of lawful act or performance of illegal omission. There cannot be performance of omission. Omission itself implies non-performance. Besides section 3(2) of the General Clauses Act itself provides that the definitions therein of various words, as disclosed therein, are to be understood 'unless repugnant to the context'. Considering the provision contained in section 88 and on plain reading thereof it is clear that the term misfeasance therein does not refer to any omission as such but it necessarily refers to an act on the part of the Managing Committee of a Cooperative Society. Mrs. Agni did try to place reliance on the judgment of the Apex Court

in the matter of Amalgamated Electricity Co. (Belgaum) Ltd. v. Municipal Committee, Ajmer, . That was a case where the Apex Court was considering the necessity of service of notice under section 233 of the Ajmer Merwara Municipalities Regulation, 1925 and in that context their Lordships have held that every omission cannot be said to be an illegal omission and failure on the part of the Municipality to discharge its liabilities will not ordinarily become illegal omissions. The decision will not help to decide the connotation and meaning of the term 'misfeasance' and in the manner the said Society wants to interpret the same. The term 'misfeasance' discloses particular mode of action or positive performance of function or act by a person and not inaction or failure to perform any such act or function. 9. Once it is clear that the acts of misfeasance would restrict to improper action on the part of the person in management and would not include non-performance of the duty and charge in the instant case being entirely relating to failure to perform the duty, in my considered opinion there was no scope for proceeding against the petitioners Gajanan and Lavchandra for the offence of misfeasance under section 88 of the said Act, and therefore the proceeding under section 88 for misfeasance against the petitioners Gajanan and Lavchandra are to be held as bad in law. 10. Having held that the action of Registrar in proceeding against the petitioners Gajanan and Lavchandra under section 88 for misfeasance to be bad in law, the entire proceedings against the petitioners Gajanan and Lavchandra are liable to be quashed and set aside for the reasons disclosed hereinabove. In this view of the matter the other points sought to be urged in this matter relating to the jurisdiction of the Registrar to take action under section 88 in spite of the Society itself having decided to take action under section 91 against the persons who are responsible to cause loss to the Society and further regarding failure on the part of the petitioners Gajanan and Lavchandra to discharge the burden of proof relating to the charge of offence of misfeasance are in fact not required to be gone into as it would be merely a matter of academic interest with no consequence as far as the final decision in the matter is concerned. Moreover it would be worth while to refer to a Division Bench judgment of this Court in the matter of Gangadhar Dattatraya Sule v. The C.K.P. Co-operative Credit Bank Ltd., Bombay and others, wherein this Court has held that:- "In considering the liability for misfeasance of any member of the Managing Committee of a Co-operative Society, it must first be remembered that the only substantial and true question would be about the authorised transaction being-injurious and such as a reasonable man would not make for himself. Full and complete evidence must be led on behalf of the prosecuting and/or accusing party to prove that the transaction was injurious and ill-advised and that the offending and/or guilty party had neglected to examine that question in the manner in which a prudent person would in ordinary circumstances do". In the case in hand undisputedly only evidence that was led in support of the alleged charge of misfeasance against petitioners Gajanan and Lavchandra was the deposition of Auditor Khorate whose testimony reads thus;- "I say that I have filed written case of misfeasance against the Society, I am producing the said copy, which is marked as Ex. D.W. 1. I say that total misappropriated amount is Rs. 45,751.20 n.p. The details are in my

misfeasance report which is exhibited as D.W. 1. I pray that the total amount be received from Managing Committee of Society as mentioned in Exh. D.W. 1 plus the then Secretary. I say that all the correspondence are submitted to Dy. Registrar and Dy. Registrar has referred the case before this Court.” So saying the Auditor has produced the report prepared by him. However, neither the said testimony nor the report prepared by the Auditor and placed along with his teslimony before the authorised Officer discloses any charge of misfeasance. The trade loss which can be said to be subject matte/ of proceedings under section 88 requires injurious transaction and not each and every trade transaction can be injurious one. Buying and selling of fertilisers undisputedly was in the course of usual business of the Society. It was not something dehors the usual business transaction that the Managing Committee had done something by purchasing and selling the tertilisers. Merely on perusal of the accounts oi the said Society in such circumstances, it could not have been said that there was failure ot performance of duties by the Managing Committee in that regard. In this respect, as rightly submitted by the learned advocate Shri. Usgaonkar the observations of this High Court in the matter of Gangadhar Dattatraya (supra) are very material and they read as under:- “..... In the present case the authorised officer and the Tribunal have not examined this question at all and even so held the petitioner to be guilty of misfeasance. It appears to us that in the absence oi evidence proving that the transaction of October 3, 1951 by itself was such as a reasonable and prudent man would not have made, it should be impossible for the Tribunal to make the finding that the petitioner was guilty of misfeasance. So far as we can imagine, the transaction suggested by Barve and admitted to be completed by Shringarpure and Khonkar by delivery of securities to Barve on October, 3, 1951, would have resulted in profits to the Bank. It is difficult to imagine as to how in connection with such a transaction the petitioner could be held to be guilty of misfeasance. It is true that by reason of certain circumstances, (of which we have no knowledge) within the few months of October 3, 1951, Barve became defaulter and was ultimately adjudicated an insolvent. There is no evidence whatsoever on the record indicating that Barve’s financial position in October 1951 had shaken or that the petitioner was aware that the financial position had on that date been deteriorating . It is, however, true that the petitioner was aware that without sanction of the Managing Committee, the Secretary and the Chairman were not entitled to make any transaction for conversion of investments. It is also true that the Managing Committee ratified the previous transactions of conversion of investments effected by the Chairman and Secretary. Where the transaction itself is not proved to be inherently injurious negligence of the petitioner in not preventing Shringarpure and Khonkar from delivering securities to Barve on October 3,1951 cannot be held to be sufficient for imposing any liability on him. The facts of delay made by Barve in delivering substituted securities were not sufficient for the petitioner to inform Shringarpure and Khonkar that Barve was a dishonest Broker or that Barve will not complete his liability for substituting the delivery of newly purchased Municipal Bonds with the securities delivered to him on October 3, 1951. The failure of Barve at a subsequent

stage should not have been visited on the petitioner in any event, It appears to us that the Tribunal was completely wrong in not examining the profitability and/or advisability of the transaction of October 3, 1951 and arriving at its finding regarding negligence and misfeasance of the petitioner. Without examining first these questions the Tribunal should not have proceeded to hold that the petitioner was guilty of misfeasance. 11. The matter in hand is fully covered by the judgment of this Court in Gangadhar Datlatraya's case as it is not even the case of the Registrar that the transaction of purchase and sale of fertilisers was injurious transaction nor any material on record even remotely suggest the same. 12. In the result, therefore, the proceedings under section 88 of the said Act against the petitioners Gajanan and Lavchandra are liable to be quashed and are hereby quashed and set aside. Consequently the orders of the authorised Officer as well as of the Co-operative Tribunal in that regard are also set aside. 13. In the result, therefore, the Writ Petition Nos. 188/96 and 192/96 succeed and the Writ Petition No. 490/96 fails. Rule accordingly in Writ Petition Nos. 188/96 and 192/96 is made absolute in above terms. The rule in Writ Petition No. 490/96 is hereby discharged. However, there shall be no order as to costs. 14. Petitions by M.C. Members allowed. 15. Petition by Secretary dismissed.