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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8975 OF 2014

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| 1. | Jamilkhan Karimkhan
Age - 47 years, Occ - Business
R/o Khadakpura, Nanded,
Taluka and District - Nanded | PETITIONERS |
| 2. | Arun s/o Babarao Mane,
Age - 53 years, Occ - Business,
R/o Somesh Colony, Mill Road,
Nanded, Taluka and District - Nanded | |
| 3. | Nazir Beg s/o Yusuf Beg
Age - 68 years, Occ - Business,
R/o Somesh Colony, Mill Road,
Nanded, Taluka and District - Nanded | |
| 4. | Abdul Razzak s/o Imamuddin
Age - 74 years, Occ - Business,
R/o Khadakpur, Nanded
Taluka and District - Nanded | |
| 5. | Mohd. Ismail s/o Mohd. Farid,
Age - 52 years, Occ - Businesss,
R/o Somesh Colony, Mill Road,
Nanded, Taluka and District - Nanded | |

VERSUS

- | | | |
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| 1. | The Worker's Co-operative Society Ltd.,
Through its Liquidator,
Udhav M. Basvde,
Age - Major, Occ - Service
R/o C/o Nanded District Central
Co-operative Bank Ltd.,
Nanded | RESPONDENTS |
| 2. | The District Deputy Registrar,
Co-operative Societies,
Nanded | |

3. The Divisional Joint Registrar,
Co-operative Societies, Latur

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Mr. Mrigesh D. Narwdkar, Advocate for the petitioners
Mr. S. P. Daund, AGP for respondent State
Mr. K. J. Suryawanshi, Advocate for respondent No.1

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 14th JULY, 2015

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally with consent of learned advocates for the parties.
2. The petitioners are applicants in proceedings before respondent No.2, - District Deputy Registrar, Co-operative Societies, Nanded seeking permission to sue / prosecute liquidator in respect of events as had occurred after appointment of the liquidator.
3. Before dealing with the main controversy, it would be worthwhile to refer to section 107 of the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as "MCA Act") in verbatim -

"107. Bar of suit in winding up and dissolution matters.

Save as expressly provided-in this Act, no Civil Court shall take cognizance of any matter connected with the winding up or dissolution of a society, under this Act; and when a winding up order has been made no suit or other legal proceedings shall lie or be proceeded with against the society or the liquidator, except by

leave of the Registrar, and subject to such terms as he may impose ;

Provided that, where the winding up order is cancelled, the provisions of this section shall cease to operate so far as the liability of the society and of the members thereof to be sued is concerned, but they shall continue to apply to the person who acted as Liquidator.

4. In the present matter, the petitioners claim to be tenants over the disputed property and refer to that the liquidator had issued notices in 2011, directing the petitioners to deposit rent and that the agreement with them stands terminated with effect from 1999.

5. In the applications it is contended that around December, 2014, they were sought to be evicted from the disputed property and as such, Regular Civil Suits No. 20 of 2014, 49 of 2014, 51 of 2014, 52 of 2014 and 53 of 2014 are instituted in the court of Civil Judge, Junior Division, Nanded wherein interim relief had also been granted.

6. After appearance, the defendant-liquidator had submitted its written statement questioning maintainability of the proceedings *vis-a-vis*, aforesaid section 107 of the Maharashtra Co-operative Societies Act. It is thereafter, the present proceedings are being prosecuted.

7. Respondent No.2, in its order dated 23rd January, 2014,

purported to reject the request, predominantly for the reason that since the same is being sought after institution of the suits and after obtaining interim relief and as such, the applications are rendered redundant (*'infructuous'* in the order).

8. The matter was taken up in revision before respondent No.3, who dismissed the same. However, while dismissing the revision, he disagreed with the reasons given by respondent No.2 and considered that purported action of the liquidator is referable to section 105 of the Maharashtra Co-operative Societies Act and Rule 98 of the Maharashtra Co-operative Societies Rules and that if a person is aggrieved by such an action, a remedy is available under section 152 of the Maharashtra Co-operative Societies Act, for which no permission may be necessary. He, therefore, went on to reject the request under the revision.

9. Mr. Narwadkar, learned advocate appearing for the petitioners submits that the suits have been instituted seeking injunction against defendant, taking into account the events that had occurred in quick succession and as an urgent measure. They had been in continuous possession and had not been put under any threat up to December, 2014 from 2011 and as the

emergency had arisen, they had no equally efficacious alternate remedy available in the exigent situation and as such, suits have been instituted and hardly had any opportunity to seek leave referable to section 107 of MCA Act, before institution. It was thereafter permission is being applied for. He submits that permission sought in the facts of the present case ought to have been granted, as a matter of course and more often than not, the courts have treated such requests for permission generally being formal in nature and would be granted as a matter of course.

10. Mr. Narwadkar refers to a clutch of decisions in support of aforesaid submissions namely - 2002 (12) LJSOFT 54 "*Waman Vyankatesh Ruikar V. Registrar, Co-operative Societies, Maharashtra State, Pune*"; 2004 (4) LJSOFT 82 "*State Bank of India V. Amravati Zilla Krishi Audyogik Sahakari Sangh Maryadit*"; 2011 (11) LJSOFT 36 "*Akol Municipal Corporation V. Vidarbha Urban Co-operative Bank Ltd.*," and an order of learned single judge of this court dated 10th February, 2009 in writ petition No.1318 of 2008. He, therefore, urges this court to allow the writ petition and grant permission to prosecute the suits.

11. Mr. Suryawanshi, learned advocate appearing for respondent No.1 - defendant, however, with quite some

vehemence defends the impugned order. He submits that for the reasons as are appearing while declining permission, are legal and proper, for, in the face of alternate remedy, suit may not be a proper remedy. He submits that citations being relied upon on behalf of the petitioners are different on facts, in the sense that almost all the permissions were sought before institution of proceedings. He makes reference to various other aspects, which according to him are involved in the matter and thus tries to persuade this court not to interfere with the impugned order.

12. In the present case, perusal of section 107 of the Maharashtra Co-operative Societies Act shows that proceedings before civil court would not be cognizable in respect of winding up or dissolution of society and that after winding order has been made, suit or other legal proceedings would not lie or can be proceeded with against the society or the liquidator except by leave of the Registrar.

13. Wordings plainly do not indicate that a *post facto* sanction is precluded. In exigent situation, if a party feels that its civil rights need to be ascertained, preserved and protected, depending on the situation, it should not be / cannot be said that such an application requesting permission would not lie. An

argument with reference to section 105 of the Maharashtra Co-operative Societies Act or for that matter other provision of the Maharashtra Co-operative Societies Act, by which according to respondents, civil suit cannot be maintainable, would be a matter to be considered while considering defence of the respondents. At the stage of granting permission, these aspects may not be relevant, as those would be matters of defence while the action before the court is being questioned.

14. In any case, a person under exigent situation shall not be blocked by this procedural aspect. Learned single judge of this court in the order dated 10th February, 2009, has observed that *'leave as contemplated by section 107 to present dispute shall be accorded as a matter of course'*.

15. In the instant matter, looking at the circumstances, which are being contended on behalf of the petitioners, the permission and access to redressal of grievance shall not be impeded by technical considerations, as appearing in resistance to the applications. It may be a matter to be considered when the proceedings would be proceeded with.

16. I, therefore, deem it appropriate to set aside the impugned order and direct the respondents to allow applications seeking

permission to prosecute civil suits. Accordingly, impugned orders dated 23rd January, 2014 passed by District Deputy Registrar, Co-operative Societies, Nanded and dated 1st September, 2014 passed by Joint Registrar, Co-operative Societies, Latur in Revision No. 8 of 2014 are set aside. Respondents to consider the request of the petitioners with reference to above and pass orders.

17. Observations appearing hereinbefore in this order are not the observations on merits at all and shall not be construed as such. It is open for the defendants to take up all such defence as would be available in facts and in law while defending / resisting the suit.

18. Writ petition, as such, stands allowed. Rule is made absolute in aforesaid terms. No costs.

19. In view of disposal of writ petition, pending civil application stands disposed of.

[SUNIL P. DESHMUKH, J.]