

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**CHAMBER SUMMONS NO. 70 OF 2014
IN
SUMMARY SUIT NO. 1774 OF 2004**

The Board of Trustees of the Port
of Bombay .. Applicant

In the matter between :

The Board of Trustees of the Port
of Bombay .. Plaintiff

Vs.

1. U.P. Co-operative Spinning Mills
Federation Ltd. & Ors. .. Defendants

And

The Registrar,
Handloom and Textile Co-op.
Societies of U.P., Kanpur, (U.P.) .. Respondent

Mr.U.J. Makhija with Mr.Roshan Pinto i/b Mulla and Mulla for plaintiff.

Ms.Jaishree Surati i/b M/s. S.Ashwinkumar & Co. for defendant.

**CORAM : K.R.SHRIRAM, J.
DATE : 13TH JULY, 2015**

P.C.

1 This chamber summons is filed on behalf of the plaintiff seeking leave to proceed with the hearing of the suit against the 1st defendant (in liquidation) without joining the Liquidator appointed under the Uttar Pradesh Co-operative Societies Act, 1965 (hereinafter called "the Act").

2 Section 75 of the Act, provides that the Civil Court shall take cognizance of any matter connected within the winding up or dissolution of co-operative societies under this Act and when a winding up order has been made, no suit or legal proceedings shall lie or be proceeded with against the society except by leave of the Registrar and subject to such terms as he may impose.

3 The applicant is the the board of trustees of the Port of Mumbai, a body corporate constituted under the provisions of the Major Port Trusts Act, 1963. Defendant no.1 is a co-operative society that was set up by the Government of Uttar Pradesh under the Act sometime around June 1998. Defendant no.1 had come out with an issue of Rs.55 crores Bonds of Rs.5,000/- each on private placement basis and the said issue of Bonds was guaranteed by the Government of U.P. The plaintiff subscribed and invested in the Bonds for the aggregate value of Rs.9 crores in the year 1998-99. As defendant no.1, at the time of redemption did not make the payments due under the said Bonds, the plaintiff has filed the present suit.

4 By an order dated 3.12.2001, the Court Receiver of this Court was appointed as a Receiver of some of the properties of defendant no.1 in Suit No.2792/2000. Therefore, the Court Receiver was joined as defendant no.3

in the present suit. The Registrar of the Uttar Pradesh Co-operative Societies was permitted, by an order dated 27.06.2006 in Suit No.2792/2000, to initiate and complete winding up proceedings and appointment of Liquidator with respect to defendant no.1 and its 11 co-operative spinning mills. Thereafter, the Registrar, by an order dated 19.08.2006 appointed a Liquidator as per the provisions of Section 73 of the Act to initiate the proceedings of liquidation.

5 It appears that the liquidation proceedings are on. The plaintiff, by its application dated 29.11.2011, requested the Registrar for leave to proceed with the present suit and also to direct the Liquidator to appear and defend defendant no.1 in the present suit. The said application came to be rejected by an order dated 7.11.2012. An English translation, as supplied by the plaintiff, of the order dated 26.03.2012 is as under :

*“To,
Registrar,
Handloom and Textile,
Co-operative Society,
U.P. Kanpur.*

*From
Sushri Mira Jain,
Advocate, 133/64, Juhi Hamipur Road,
Near Sonelal Patel School,
Kanpur, Pin Code – 208014*

Letter No.10557/for reference 20-11-12

Kanpur

26th March 2012

Sir,

With reference to your request letter you have asked under Section 75 of the U.P. Co-operative Societies Act, 1965 for permission to file Suit before the Registrar of Handloom and Textile Co-operative Society, Uttar Pradesh, Kanpur.

With reference to above subject, you are informed that in above case, the opinion was sought from District Government Pleader, Kanpur. The copy is annexed herewith. As per the legal opinion as the liquidation proceedings are pending the permission to file suit under Section 75 of the U.P. Co-operative societies Act, 1965, to the debtor is not appropriate to grant. Accordingly, you are requested to file your application.

*Sd/-
Vijay Kant Dubey
Registrar
Handloom & Textile, U.P.”*

6 I have considered the order of the Registrar and it is quite obvious that the Registrar has rejected the application of the plaintiff under Section 75 of the said Act without a speaking order. The order is also ambiguous and it appears that the Registrar himself has not applied his own mind. The Registrar has not disclosed any reason for rejection. The entire basis for rejecting the application is that the District Government Pleader has opined that it is not appropriate to grant the permission to the debtor to file suit

under Section 75 of the U.P. Co-operative societies Act, 1965 during the pendency of the liquidation proceeding. Even the opinion is totally silent as to why it is not proper.

7 It also appears that the Liquidator has not taken any steps to take charge of the assets of defendant no.1 which were in the custody and possession of the Court Receiver of this Court. Counsel Shri Makhija, on instructions, states that the plaintiff has no problem if the Official Liquidator is brought on record. In fact, the counsel very fairly states that it will help in proceeding with the matter as also give a chance to the Liquidator to assist in the matter.

8 In the circumstances, having heard the counsels for the opposing parties and considered the affidavit in support and the affidavit in reply of defendant no.1 and the orders passed by the Registrar, I am inclined to grant the plaintiff leave to add the Official Liquidator of defendant no.1 as party defendant to the suit.

9 The plaintiff to amend the plaint to implead the Official Liquidator of defendant no.1 as a defendant. The counsel for defendant no.1 states that she will check with defendant no.1 as to who the Official Liquidator is, and

address and other details and provide the same to the advocate for the plaintiff within two weeks from today. Upon receiving the details from the advocate of defendant no.1, the plaintiff to amend the plaint together with consequential amendment within one week thereafter.

10 The chamber summons stands disposed accordingly.

(K.R. SHRIRAM, J.)