

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 8885 OF 2016

- 1 Sudhakar Mangesh Patil,
Age : 61 years, Occupation : Nil,
R/o Deopur, Dhule.
- 2 Vitthal Motiram Marathe,
Age : 51 years, Occupation : Nil,
R/o Rajale, Tal. & Dist.Nandurbar.
- 3 Suresh Deoram Marathe,
Age : 58 years, Occupation : Nil,
R/o 43, Akash Mogra Nagar,
Nalwa Road, Nandurbar.
- 4 Nitesh Shrikrishnadas Shah,
Age : 52 years, Occupation : Nil,
R/o Plot No.341, Desaipura,
Nandurbar.
- 5 Keshav Murlidhar Patil,
Age : 60 years, Occupation : Nil,
R/o Tajpuri, Tal.Shirpur,
District Dhule.
- 6 Devasingh Ramsingh Girase,
Age : 62 years, Occupation : Nil,
R/o Osarlai, Post Kuparli,
Tal. and Dist.Nandurbar.
- 7 Ravindra Shivilal Nikam,
Age : 63 years, Occupation : Nil,
R/o Chingavan, Tal.Chalisgaon,
District Jalgaon.

...PETITIONERS

-VERSUS-

- 1 Shri P.K.Anna Patil Janta Sahakari

Bank Ltd. (under liquidation).
Having office at Near Railway Bridge,
Taloba Road, Nandurbar,
District Nandurbar.

- 2 The President,
Liquidator Board,
Shri P.K.Anna Patil Janta Sahakari
Bank Ltd.
Having office at Taloba Road,
Nandurbar, District Nandurbar.

...RESPONDENTS

**WITH
WRIT PETITION NO. 8886 OF 2016**

- 1 Rajan Vishnu Chauk,
Age : 55 years, Occupation : Nil,
R/o House No.1355, Galli No.5,
Nagar Patti, Dhule.
- 2 Chabulal Ramdas Patil,
Age : Major, Occupation : Nil,
R/o Plot No.7, Kedar Nagar,
Deopur, Dhule.
- 3 Sachin Deosingh Jadhav,
Age : 51 years, Occupation : Nil,
R/o Tulshiram Nagar,
Deopur, Dhule.
- 4 Vasant Ghaman Patil,
Age : 53 years, Occupation : Nil,
R/o 94, Sudarshan Nagar, Deopur,
Dhule.
- 5 Sanjay Ramkrushna Kothawade,
Age : 48 yeas, Occupation : Nil,
R/o Rathgalli, Songir,
Taluka and District Dhule.

...PETITIONERS

-VERSUS-

- 1 Shri P.K.Anna Patil Janta Sahakari
Bank Ltd. (under liquidation).
Having office at Near Railway Bridge,
Taloba Road, Nandurbar,
District Nandurbar.
- 2 The President,
Liquidator Board,
Shri P.K.Anna Patil Janta Sahakari
Bank Ltd.
Having office at Taloba Road,
Nandurbar, District Nandurbar.

...RESPONDENTS

...

Advocate for Petitioners : Shri Patil Shrikant S.

Advocate for Respondents : Shri V.D.Hon, Senior Advocate a/w Shri Hon
Ashwin V.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 05th December, 2016

Oral Judgment :

1 Rule. Rule made returnable forthwith and heard finally by the
consent of the parties.

2 In the first Writ Petition No.8885/2016, the Petitioners are
aggrieved by the judgment of the Industrial Court dated 27.04.2015 by
which Complaint (ULP) Nos.43/2010, 33/2011, 48/2011, 50/2011,
77/2011, 79/2011 and 81/2011 filed by the respective Petitioners have

been dismissed for two reasons. Firstly that, the permission of the Registrar of Cooperative Societies was not obtained to lodge the complaints considering the bar of Section 107 of the Maharashtra Cooperative Societies Act, 1960 and secondly, the claim of the Petitioners for unpaid dues is delayed and the complaints are not maintainable.

3 In the second Writ Petition No.8886/2016, the Petitioners are aggrieved by the judgment and order dated 27.04.2015 by which the Industrial Court has dismissed Complaint (ULP) Nos.37/2010, 39/2010, 47/2010, 55/2011 and 57/2011 filed by the respective Petitioners on the ground that the claim for dearness allowances was a stale claim and the complaints were untenable, notwithstanding that the Registrar of Cooperative Societies has accorded permission.

4 I have considered the submissions of Shri Patil, learned Advocate for the Petitioners and Shri Hon, learned Senior Advocate for the Respondents. Considering the fact that all the Petitioners are identically placed and the employees of the same Respondent Establishment, these petitions are heard together by consent of the parties.

5 Shri Hon has strenuously submitted that the bar of Section 107 of the Maharashtra Cooperative Societies Act, 1960 prevents any civil

litigation or any other litigation against an entity which has already gone into liquidation. Unless the Registrar of Cooperative Societies does not accord his permission, no litigant can file a complaint or suit or initiate any litigation against any entity which is in liquidation.

6 Shri Hon has relied upon the judgment of the learned Single Judge of this Court in the matter of *Sadashiv K. Sutar vs. Kolhapur Zilla Janata Sahakari Bank Limited*, **2004(2) BCR 111 : 2004(2) All M.R. 115**, to support his contention that once the bar of Section 107 of the Maharashtra Cooperative Societies Act, 1960 is attracted, the complaints under the MRTU & PULP Act, 1971 would be untenable in law. He has further stated that as the stale disputes have been raised, the complaints were barred by limitation and as such, the Industrial Court has rightly dismissed both the groups of complaints.

7 Shri Patil submits that the order of appointing the Liquidator is dated 06.01.2009. The complaints were lodged in December, 2010. The Petitioners were in service till 14.05.2011 when they were terminated. As such, notwithstanding the appointment of the Liquidator, the business activities of the Respondent Bank continued and it was after about two years and four months that they were terminated. He further submits that it was under the orders of this Court that the retrenchment compensation

of these Petitioners was paid by the Respondent.

8 Section 107 of the Maharashtra Cooperative Societies Act, 1960 reads thus:-

"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."

9 It is trite law that the claims as regards unpaid wages or any component of wages or any such amounts which the employer was under a legal obligation to pay, would amount to a recurring cause of action. The failure to pay such amounts can be rectified by the employer by making the payment even after a passage of time from the date the amount was due and payable. Item 9 of Schedule IV of the MRTU & PULP Act, 1971 can, therefore, be invoked in the matters of such nature.

10 In the light of the above, the impugned judgment by which

Complaint (ULP) Nos.37/2010, 39/2010, 47/2010, 55/2011 and 57/2011 were dismissed by the Industrial Court only for the reason of delay, is an erroneous order. Increments or bonus or dearness allowances or any component of wages will have to be paid by the employer as long as it is due and payable and failure to pay over a considerable period of time, would give the aggrieved employees a cause of action. As such, the second Writ Petition is allowed. The judgment of the Industrial Court dated 27.04.2015 is quashed and set aside and Complaint (ULP) Nos.37/2010, 39/2010, 47/2010, 55/2011 and 57/2011 and others are remitted to the Industrial Court on the conditions which I would set out in the later part of this judgment.

11 Insofar as the first petition in which Complaint (ULP) Nos.43/2010, 33/2011, 48/2011, 50/2011, 77/2011, 79/2011 and 81/2011 and others are concerned, as a recurring cause of action is involved, the complaints would, therefore, be tenable. Insofar as the bar of Section 107 is concerned, an earlier judgment of the learned Division Bench of this Court in the matter of *Waman Vyenkatesh Ruikar vs. Registrar, Cooperative Societies, Maharashtra State, Pune*, **2002 III CLR 981**, was not cited before the learned Single Judge of this Court in Sadashiv Sutar case (supra). The learned Division Bench in Waman Ruikar case (supra) has concluded as under:-

"The petitioner has challenged the order dated 31.08.2000 passed by the Industrial Court, Kolhapur setting aside the order of Labour Court and directing the petitioner to seek permission of respondent No.1 under Section 107 of the Maharashtra Cooperative Societies Act before proceeding with the complaint against the termination under the MRTU & PULP Act, 1971. He has also challenged the order of respondent No.1 dated 29.01.2002 refusing permission under Section 107 of the Maharashtra Cooperative Societies Act.

It is doubtful whether such a permission would be necessary for prosecuting the proceeding under the MRTU & PULP Act, 1971. In any event, it is impossible to sustain the order of respondent No.1 refusing permission to the petitioner to prosecute the complaint against termination under MRTU and PULP Act. No reasons whatsoever are assigned for refusing the permission. We do not see any ground to reject such permission, which ought to have been granted as a matter of course.

Accordingly, we quash and set aside the order of 1st respondent dated 29.01.2002 and direct the 1st respondent to issue the permission to the petitioner under Section 107 of the Maharashtra Cooperative Societies Act within four weeks from today.

The hearing of the complaint before the Labour Court is expedited. The Labour Court is directed to dispose of the complaint as expeditiously as possible and in any event within four months from the date of producing the permission under Section 107.

Parties to act on a copy of this order duly authenticated by the Sheristedar of this Court."

12 It is, therefore, apparent that the learned Division Bench set aside the order of the lower Court as well as the order of the Registrar of Cooperative Societies refusing permission, by concluding that it was doubtful whether, such permission was necessary at all for prosecuting the

proceedings under the MRTU & PULP Act, 1971. It is further held that in any event, the Registrar ought to grant permission.

13 In a subsequent judgment dated 20.01.2004 delivered by the learned Division Bench of this Court in the matter of *Baburao Dadarao Kolhe and others vs. State of Maharashtra and others*, **2004 (2) Mh.L.J. 898**, it was held that it was always desirable that the Industrial Court should decide the claims of arrears of wages so as to crystallize the rights of the claimants. The Liquidator would not be able to do so and the two authorities cannot adjudicate on the same issue. The learned Division Bench was of the view that adjudication by a judicial forum would always be desirable. The view taken in Waman Ruikar case (supra) was followed. The Registrar was directed to be added as a party and the Industrial Court was directed to decide the said proceedings so as to crystallize the rights of the claimants.

14 Paragraph 3 of the judgment of the learned Division Bench in Baburao Kolhe case (supra) reads as under:-

"3. *It is not in dispute that the petitioners were in employment of the respondent No. 3 and were not paid their salaries for quite a long time, as the financial position of the respondent No. 3 was hopelessly bad. The petitioners -workmen were justified in moving the Industrial Court, claiming the*

amount of wages. During pendency of the said proceedings, as an order of winding up came to be passed, the question of seeking leave of the second respondent arose by virtue of provisions of Section 107 of the Maharashtra Co-operative Societies Act, 1960. Perusal of the order impugned reveals that the said order is a very cryptic order and the only ground stated therein for rejecting the application is that, if permission is granted to implead the society through the Liquidator as respondent before the Industrial Court, the same would result in putting in motion two proceedings, one before the Industrial Court and another before the Liquidator. What we find is that, if the proceedings before the Industrial Court wherein the petitioners are claiming arrears of wages, are permitted to be concluded after impleading third respondent, as an opponent before the Industrial Court, the decision of the Industrial Court would crystalise the rights of the present petitioners and in that situation, the Liquidator would not be called upon to make any adjudication in regard to either the period, for which the petitioners have worked and/or in regard to actual amount, which the petitioners are entitled to receive from the third respondent. In this view of the matter in our opinion, there would be no possibility of two authorities, adjudicating on the same issue. An adjudication by a judicial forum, in matters pending prior to the passing of the order of winding up, would be desirable. In our opinion, the reasons put forth by the second respondent for rejecting the application, moved by the petitioners, under Section 107 of the Maharashtra Co-operative Societies Act, 1960, are unsustainable in law. In such a situation, we are of the view that as a matter of course, the Registrar ought to have granted permission, prayed for by the petitioners under Section 107 of the Maharashtra Co-operative Societies Act, 1960. Our attention is invited to a Judgment, reported in 2002 III CLR 981, wherein a Division Bench of this Court has doubted the very need for seeking leave of the Registrar under Section 107 of the Maharashtra Co-operative Societies Act,

1960, for prosecuting complaints under M.R.T.U. and P.U.L.P. Act, 1971. We too voice our doubt about the application of Section 107 to the proceedings pending on the file of the Industrial Court, under the provisions of M.R.T.U. and P.U.L.P. Act, 1971. The Division Bench in the said Judgment, which is rendered in similar situation, held that as a matter of course, the Registrar ought to have granted permission. We are in respectful agreement with the view taken by the Division Bench.

In our opinion, for the reasons set out hereinabove, the Registrar ought to have granted the leave, prayed for by the petitioners, for proceeding against the third respondent through the Liquidator. We make it clear that the proceedings pending on the file of Industrial Court would culminate in crystalising the exact amount to which, each of the petitioners is entitled to receive from the respondent No. 3 - employer. Once that is over, it would be for the Liquidator to satisfy the claims of the petitioners on the basis of the order passed by the Industrial Court. The Liquidator need not and shall not proceed to adjudicate the individual claims of the present petitioners. No doubt, the Liquidator is free to dispose of the assets of the third respondent with a view to wind up the third respondent sugar factory and from the proceeds that he receives, the claims of the petitioners could be satisfied. It is not in dispute that the petitioners claim would stand at the first priority. It is possible that the assets of the society may be disposed of in a phased manner and as such, the entire amount may not be available to satisfy the claims of all the petitioners, in one stroke and hence, it is made clear that if the amount falls short of the total dues of the petitioners, then in that event, Liquidator may proceed to satisfy the claims of the petitioners at pro rata basis. In our view, the cause of justice would advance by setting aside the order impugned in this petition, passed by the second respondent, refusing leave, as prayed for by the petitioners under Section 107 of the Maharashtra Co-operative Societies Act, 1960 and by permitting the

petitioners to implead the third respondent through the Liquidator as a party respondent in the proceedings pending on the file of Industrial Court. Hence, we pass the following order :

The impugned order dt. 1-9-2003, passed by the second respondent, refusing leave, as prayed for by the petitioners, under Section 107 of the Maharashtra Cooperative Societies Act, 1960, is quashed and set aside. The said application stands allowed. The petitioners are permitted to implead the third respondent society through the liquidator, as a party respondent, in the proceedings pending on the file of the Industrial Court.

Rule made absolute in above terms. There shall be no order as to costs."

(Emphasis supplied)

15 It is obvious that neither of the litigating sides have cited the two judgments of the learned Division Bench of this Court in Waman Ruikar case (supra) and Baburao Kolhe case (supra) before the Industrial Court, Dhule. Had these two judgments been cited, the Industrial Court would have been better assisted in deciding the complaints. As proper assistance was not rendered to the Industrial Court, it was deprived of the support of the view taken by the learned Division Bench in the said two judgments.

16 Considering the above, the first Writ Petition is also partly allowed. Complaint (ULP) Nos.43/2010, 33/2011, 48/2011, 50/2011, 77/2011, 79/2011 and 81/2011 and others are remitted to the Industrial Court, Dhule.

17 In the light of the above, both the groups of complaints are remitted to the Industrial Court, Dhule on the following conditions:-

- (a) The litigating sides shall appear before the Industrial Court on 22.12.2016 in the two groups of Complaint (ULP) Nos.37/2010 and 43/2010 and connected complaints.
- (b) Formal notices need not be issued by the Industrial Court.
- (c) Since the permission has already been granted in the group of Complaint (ULP) No.37/2010 and others, by the Registrar of Cooperative Societies, the Petitioners shall array the concerned Liquidator in the group of Complaint (ULP) No.43/2010 and others, if not already added.
- (d) As the Registrar of Cooperative Societies has already accorded permission to one group of Petitioners, the same shall be deemed to have been granted in all the complaints.
- (e) Considering the contention of the Respondent that considerable unpaid amounts have been paid, the Industrial Court shall decide both the groups of Complaints on their own merits by taking into account the claims of the Petitioners and the contention of the Respondent about some amounts having been paid.
- (f) The Industrial Court shall decide both the groups of

complaints and crystallize the claims of the workers.

- (g) After the judgments in both the groups of complaints are delivered by the Industrial Court, the Liquidator shall act upon the said judgments for causing the payment of unpaid dues with interest if granted.

18 Rule is made partly absolute in both these petitions, in the above terms.

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(RAVINDRA V. GHUGE, J.)