

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

**CIVIL APPLICATION NO. 1017 OF 2015
IN WP/6455/2008**

**THE OSMANABAD DISTRICT CENTRAL CO OPERATIVE BANK
LTD, OSMANABAD
VERSUS
ARUN JIVANRAO DESHPANDE, LRS USHA AND OTHERS**

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Advocate for Applicant : Salunke V.D.
AGP for Respondents 2, 3 and 4 : Tele D.V.
Advocate for Respondents : Hon V.D. h/f Mr.PPMore

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CORAM :- RAVINDRA V. GHUGE, J.

DATE :- 29th January, 2016

Per Court:

1 The Applicant/ Bank has moved this Civil Application setting out the following two prayers:-

“B. The applicants may kindly be permitted to continue attachment of account and F.D.R. with bank as security against siphoned public amount in crores.

C. Pending the hearing and final disposal of this writ petition, petitioner through inquiry office may be allowed to attach immoveable property of the respondent No.1 i.e. land survey / Gat No.486 and 559 of village Dhoki Tq. And Dist. Osmanabad by putting encumbrances on this survey numbers so also attach the bank account and F.D.R. in the name of the deceased respondent No.1 to secure public money in the interest of justice.”

2 The contention is that the judgment and order dated 11.12.2006 delivered by the learned State Minister for Cooperation in the revision petition has been challenged by the Applicant Bank in Writ Petition No.6455/2008. An enquiry was conducted under Section 88 of the Maharashtra Cooperative Societies Act, 1960 (herein after referred to as “the MCS Act”) against the erstwhile Board of Directors of the Bank and also against the erstwhile employee Shri Arun Deshpande, who has subsequently passed away. Non Applicant No.1A is his legal representative.

3 The Divisional Joint Registrar, Cooperative Societies, issued the order under Section 88 of the MCS Act on 09.05.2002 for holding an enquiry. A practicing Advocate Shri Vilas Humbe filed Criminal Writ Petition No.232/2002 before this Court. By the order dated 26.07.2002, this Court directed to attach and freeze the movable and immovable properties of the Board of Directors and some Officers. This Court also directed the Respondents in the said matter to attach the movable and immovable properties and freeze the bank accounts of the following persons :-

- (i) Om Jai Trading Company, Osmanabad,
- (ii) Anandi Manufacturing Company, Osmanabad,
- (iii) Sai Engineering Company, Osmanabad,

- (iv) Om Trading Company Private Limited, Osmanabad,
- (v) Heramb Infrastructure Private Limited company, Osmanabad
and
- (vi) Om Jai Sai Infrastructure Private Limited, Osmanabad.

4 The Applicant further contends that the District Deputy Registrar, Cooperative Societies exercised its powers under Section 95 of the MCS Act and implemented the order of this Court dated 26.07.2002. Subsequently, Section 88 enquiry was conducted and liability was fixed on the Board of Directors. However, by the judgment of the learned State Minister for Cooperation, the enquiry under Section 88 to the extent of the deceased Arun Deshpande was quashed and set aside by the judgment dated 11.12.2006. The same has been challenged in Writ Petition No.6455/2008.

5 Shri Salunke, learned Advocate for the Applicant / Bank, has strenuously submitted that if the FDR amounts and the properties mentioned in prayer clause (C) are disposed of or third party interests are created during the pendency of the Writ Petition, the Applicant Bank would not be able to salvage / recover any amount or property from Non Applicant No.1A even if the Applicant finally succeeds in Writ Petition No.6455/2008.

6 He submits that the said Non Applicant has moved the District Consumer Redressal Forum at Osmanabad for seeking an order of releasing her FDR held by the Applicant Bank. Since there are no injunctory orders passed by this Court till today, there is a possibility that the Consumer Forum may direct releasing of FDR in favour of Non Applicant No.1A. He further submits that, the Writ Petition would be rendered infructuous against Non Applicant No.1A if no injunctory orders are issued against her.

7 Shri Hon, learned Senior Advocate has appeared on behalf of Non Applicant No.1A, who is the legal representative of the deceased original Respondent No.1 in the Writ Petition. He submits that the deceased was the General Manager with the Applicant Bank. He retired on 28.02.2002. He expired on 06.08.2010. Non Applicant No.1A is his legal representative.

8 Shri Hon further submits that an enquiry under Section 88 of the MCS Act could not have been conducted against the deceased Arun Deshpande since he was not covered by the definition of “officer” within the meaning of Section 2(20) of the MCS Act. The enquiry has, therefore, been rightly set aside by the learned State Minister.

9 He further makes a serious grievance of the fact that though the learned State Minister had delivered the judgment on 11.12.2006, the Applicant Bank preferred Writ Petition No.6455/2008 on 28.08.2008, which is practically after about 20 months from the date of the passing of the impugned order.

10 He then submits that the Applicant Bank was heard and it's prayer clauses were considered. By the order dated 23.07.2009, this Court admitted the petition and expedited the hearing. Interim relief in terms of the prayers were not granted in favour of the Applicant Bank. What was not granted directly by this Court in the Writ Petition, is being sought to be acquired indirectly through this Civil Application.

11 He further submits that an amount of Rs.29,99,34,591/- has already been attached and the said amount is lying with the Nagpur District Central Cooperative Bank Limited in Crime No.106/2002 as per Section 102 of the Code of Criminal Procedure. There is no order of attachment passed against the deceased or legal heir of the deceased in all these last eight years. No interim relief can be claimed after passage of about eight years. When a major amount out of the alleged amount to be recovered has been secured, the Applicant Bank cannot be permitted to seek injunctory orders against the widow who is surviving only on the

funds which are invested in FDR by her husband. He, therefore, submits that the petition itself can be heard on merits and no injunctory orders need to be passed at this stage.

12 I have considered the submissions of the learned Advocates as have been recorded herein above.

13 The impugned order in favour of the deceased is dated 11.12.2006. The petition is filed after about 20 months. Despite the prayer clauses set out in the petition, this Court has not granted any interim relief to the Applicant Bank. Rule has been expedited. It is after a passage of almost eight years that the Applicant is now praying for interim relief inasmuch as this Court had declined to grant any stay to the impugned judgment dated 11.12.2006 which is about nine years old.

14 The Applicant has contended that if the Non Applicant No.1A creates third party interest in the landed properties mentioned in the prayer clauses and takes away the entire amount of FDR, the Applicant would be unable to recover any amount from Non Applicant No.1A even if the Applicant succeeds in the petition.

15 I have considered the fact situation as set out herein above. In

my view, the following order would meet the ends of justice:-

- (a) This Civil Application is partly allowed.
- (b) There shall be no order of attachment of the FDR amount and land Gat No.486 and 559 of village Dhoki, Taluka and District Osmanabad against Non Applicant No.1A.
- (c) However, Non Applicant No.1A, if withdraws the FDR amount, shall file an affidavit-cum-undertaking that if in the event she is unsuccessful in Writ Petition No.6455/2008, she shall return the entire amount which she has withdrawn with accrued interest within a period of three months from the date of the judgment in the said Writ Petition.
- (d) Similarly, in the event Non Applicant No.1A desires to create any third party interests in the land Gat Nos.486 and 559 of village Dhoki, Taluka and District Osmanabad, she shall appraise such parties, who are desirous of acquiring the interest in the said land, that Writ Petition No.6455/2008 is pending in this Court and any third party interest so created in the said land during the pendency of the petition shall be subject to the result of the said Writ Petition.