IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4799 OF 2002

The Liquidator, The Gulprabha
Co-operative Credit Society Ltd. … Petitioner.
V/s.
Shri Tabrej Sikander Bagwan and Ors. … Respondents.

None for the Petitioner.
Mr.Siddhesh Pilankar i/b. Mr.Uday P. Warunjikar for Respondent No.1.
Mr.A.R.Metkari, AGP for Respondent No.2.

CORAM : M.S. SONAK, J.

DATE : 22nd APRIL, 2016.

P.C.

1] Neither the petitioner nor the advocates for the petitioner are present. Since, the matter relates to the year 2002, it is not possible to adjourn the matter.

2] Mr.Siddhesh Pilankar i/b. Mr.Uday P. Warunjikar for Respondent No.1 appears for respondent no.1 and Mr.A.R.Metkari, AGP for respondent no.2.

3] The challenge in this petition is to the orders dated 1st June, 1999 and 9th October, 2001 made by the Consumer Dispute Redressal Forum and Consumer Dispute Redressal Commission, respectively. The impugned orders direct the petitioner-society The Gulprabha Co-operative Credit Society Ltd.(in liquidation) to pay to the respondent no.1 an amount of Rs.50,000/- with interest at the rate of 18% per annum from 3rd September, 1998 till the date of payment.

4] Mr.Pilankar, learned counsel for respondent no.1 has objected to the maintainability of this petition on the ground that the petitioner has alternate and efficacious remedy available under Section 21(b) of the Consumer Protection Act, 1986 by way of instituting a Revision Petition before the National Commission.

5] Rule was issued in this petition on 4th September, 2002. At this stage therefore, it will not be appropriate to non suit the petitioner on the ground of availability of any alternate remedy. Accordingly, it is not possible to uphold objection raised by Mr.Pilankar, as to the maintainability of the present petition at this stage.

6] The two main ground urged in the petition, are as follows;

(a) That in view of the special remedies provided under Section 91 of the Maharashtra Co-operative Societies Act, 1960 (MSC Act), no proceedings were maintainable under the Consumer Protection Act, 1986 (said Act).

(b) In any case, now that the petitioner-society has cone into liquidation, the only remedy available to the respondent no.1 was to apply to the liquidator under the provisions of the MSC Act and no further proceedings could have been taken up against the petitioner-society in liquidation.

7] So far as the first contention is concerned, clearly, there is no merit therein. Section 3 of the Consumer Protection

Act, 1986 provides that the provision of the said Act shall be in addition to and not in interrogation of the provision of any other law for the time being in force. That apart the commission, relying upon the decision of the Hon'ble Apex Court in the case of ***Lucknow Developement Authority Vs. M.K. Gupta, reported in 1994 SCC (1) 243*** has held that even a Co-operative Society, when it is engaged in the service of accepting fixed deposits can be included within the meaning of "service provider" under the Consumer Protection Act, 1986. In this case, admittedly the respondent no.1 had kept a fixed deposit of Rs.25,000/- with the petitioner-bank, which amount, the petitioner-society had promised to return alongwith interest upon maturity.

8] Insofar as the second contention is concerned this is not a fit case to decide the same. In this case, the District Forum made the impugned order on 1st June, 1999. The petitioner-society went into the liquidation on 3rd June, 1999, on which date the liquidator came to be appointed. Therefore, at least on the date when the District Forum made the impugned order there was no illegality or jurisdictional error in making of the same. The State Commission, in the aforesaid circumstances, can not be said to have acted in excess of jurisdiction or failed to exercise its jurisdiction in non interfering with the order made by the District Forum in view of such peculiar facts and circumstances.

9] Besides, the interests of justice also do not warrant interference with the impugned orders in their entirety at this point of time. There is no dispute whatsoever that respondent no.1 had invested an amount of Rs.25,000/- with the petitioner-society in a fixed deposit scheme, which was to operate for four years, nine months and fifteen days. Upon such investment, the petitioner had assured the respondent no.1 interest at the rate of 15% per annum. The impugned orders, to the extent, they require the petitioner-society to pay a sum of Rs.50,000/- to respondent no.1, warrant no interference. This is because by now, respondent no.1 would have perhaps been entitled to even a greater amount upon the investment of Rs.25000/- by him more than two decades ago. Although, this petition is held to be maintainable, it is settled position is law that the writ jurisdiction is not to be exercised merely upon the petitioner making out some legal point. The writ jurisdiction is required to be exercised in order to promote justice. Interference with the impugned orders, to the extent, they direct payment of Rs.50,000/- to respondent no.1, at this stage, will not be in the interest of justice in the peculiar facts and circumstances of the present case. The challenge to that extent is therefore, liable to be dismissed and is hereby dismissed. The respondent no.1 is therefore, at liberty to withdraw from this Court the amount of Rs.50,000/- deposited by the petitioner-society alongwith interest that may have accrued upon such amount. The Registrar is directed to permit respondent no.1 to withdraw the said amount together with interest that may have accrued thereon.

10] However, insofar as the impugned orders grant interest upon the amount of Rs.50,000/- at the rate of 18% per annum commencing from 3 September 1998 is concerned, they warrant some modification. There is no dispute that from 3 June 1999 the petitioner -society has gone into liquidation. Therefore, respondent no.1 can recover from the petitioner-society the amount towards interest component of 18% depending upon the fate of liquidation proceedings. For this purpose, respondent no.1. Will be required to apply to liquidator and the liquidator, will have liberty to make appropriate orders with regard to further amounts, if any, payable to respondent no.1. This modification is necessary, in order to protect the interest of other depositors or creditors of the petitioner-society. The impugned orders on the aspect of interest component stand modified accordingly.

11] This petition is therefore, disposed of with the following orders;

(a) Rule is made only partly absolute to the extent indicated herein above;

(b) The award of amount of Rs. 50,000/- is not interfered with. Accordingly, respondent no.1 is permitted to withdraw from this Court an amount of Rs. 50,000/- deposited by the petitioner-society, together with interest that may have accrued thereupon. The Registry is directed to pay the said amount together with interests to respondent no.1 at the earliest;

(c) Insofar as, interest component of 18% per annum commencing from 3 September 1998 is concerned, the same is modified. Therefore, in case, respondent no.1 is desirous of claiming further amounts, respondent no.1 is at liberty to make appropriate application to the Liquidator of the petitioner-society. The Liquidator, if approached, to make appropriate orders upon such application, in accordance with law and without in any manner being hindered by the interest component in the impugned orders. The Liquidator, shall no doubt to make appropriate order by taking into consideration the present financial status of the petitioner-bank (under liquidation);

(d) There shall be no order as to costs;

(e) All concerned to act on the basis of authenticated copy of this order.

(M.S. SONAK, J.)