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

WRIT PETITION NO.6412 OF 2014

1. Shri P.K.Anna Patil Janata
Sahakari Bank Ltd.,
Main Road, Near Railway Flyover,
Nandurbar, Through its Manager,
Shri Kashinath Wanji Patil,
Age : 53 years, Occu : Service,
R/o : Deopur, Dhule, District Dhule.

2. Shri P.K.Anna Patil Janata
Sahakari Bank Ltd.,
Nandurbar, Tq. & District: Nandurbar,
Through its Liquidator,
Manoj S/o Madhukar Choudhari,
Age : 35 years Occu : Service,
Assistant Registrar, Co-operative
Societies, Shirpur, Tq.Shirpur,
District :Dhule, R/o: Shirpur,
Tq.Shirpur, District :Dhule

Petitioners

Versus

The Maharashtra State Co-operative
Bank Ltd.
Apex Co-opertive Society
Registered under
The Maharashtra Co-opertive
Societies Act, 1960 and having
its registered and
Administrative office at
Shri Vithaldas Thackersey
Memorial building,
Maharashtra Chamber
of Commerce Lane,
Fort, Mumbai-01

Repondent

Mr.V.D.Hon,Senior Advocate,instructed by
Mr.A.V. Hon, Advocate for the Petitioners;
Mr.V.S. Kadam, Advocate for the Respondent

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CORAM : NITIN W. SAMBRE, J.

DATE : 20th November, 2017

ORAL ORDER:

Heard Mr Hon, learned Senior Counsel appearing on behalf of petitioners and Mr Kadam, learned Counsel for the respondents.

2. The petitioner is member of the respondent – apex bank, from whom it availed some loan facility.

3. Since the loan amount was not repaid, Dispute No.CC-I/288 of 2008 came to be initiated before the Co-operative Court, Mumbai, on 24th October, 2008. Since the State Government appointed liquidator on 29th October, 2010, an application came to be moved for adding said liquidator as party in the dispute, which came to be allowed on 20th August, 2009. The dispute against the petitioner was allowed on 30th January, 2012 directing the petitioner to pay amount of Rs.2,47,63,269/- with interest at the rate of 10.5% per annum, with effect from 1st August, 2008 till realization. The petitioner preferred an appeal being Appeal No.87 of 2013 before the learned Co-operative Appellate Court, Mumbai, which came to be dismissed on 28th October, 2013. Thus, the present petition.

4. Mr Hon, by invoking the provisions of Sections 107 and 105 of the Maharashtra Co-operative Societies Act (for short “Act”) would urge that

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the language employed in Section 107 of the Act is quite clear. Once a Liquidator is appointed, the dispute ought not to have been permitted to be proceeded with without sanction of the Registrar, specifically permitting the respondent to initiate and continue the dispute for recovery of the amount in question. While harping upon the provisions of the Act, particularly Section 107, he would urge that the permission granted by the Registrar, as reflected in communication dated 13th April, 2010 which is marked as Exh.9-A, is restricted only to the extent of addition of the Liquidator, whereas there is no express permission to pursue the dispute for recovery against the petitioner. According to him, the scheme of the Act contemplates that the permission should always precede the dispute. He would then urge that the Liquidator was added as party to dispute on 20th August, 2009, the dispute was allowed on 30th January, 2012, whereas the permission to implead Liquidator as opponent is granted on 13th April, 2010. As such, in his submission, dispute itself was not maintainable.

5. Per contra, Mr Kadam, learned Counsel appearing on behalf of respondent-original disputant would invite attention of this Court to the document Exh.9-A, copy of which is tendered on record and is not disputed by the learned Senior Counsel appearing on behalf of the petitioner. Mr Kadam would urge that even though the dispute was initiated on 24th October, 2008, the Liquidator was added to dispute appointed on 20th August, 2009, i.e. after initiation of the dispute. According to him, though the permission granting addition of Liquidator is subsequent to the order of the Co-operative Court, the same would not render the proceedings void or

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illegal. According to him, it is only after the permission, the dispute was proceeded with. He sought dismissal of the petition.

6. Perusal of the communication by the Registrar dated 13th April, 2010 for impleading Liquidator as party to dispute provides that the permission was granted in favour of the respondent-disputant, pursuant to prayer made in regard to pendency of present dispute viz. 288 of 2008 initiated under Section 91 of the Act. The Registrar's permission, in specific terms refers to the dispute number and the parties thereto. Not only this, the said permission also makes a reference to language employed in Section 107 of the Act and also the fact that the petitioner society was under liquidation. The communication speaks of a permission to institute a suit and also to implead Liquidator as a party. May be the Liquidator was added as party on 20th August, 2009, still the fact remains that much before the dispute came to be finally decided, there was permission as contemplated under Section 107 of the Act.

7. In the wake of above, in my opinion, no fault could be found *qua* taking recourse to the provisions of Section 107 of the respondent-disputant against the petitioner. Writ Petition thus fails and stands dismissed.

(NITIN W. SAMBRE, J.)

amj