

Sequeira

*IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION*

*MISCELLANEOUS CIVIL APPLICATION NO. 203 OF 2017
And
MISCELLANEOUS CIVIL APPLICATION NO. 205 OF 2017
And
MISCELLANEOUS CIVIL APPLICATION NO. 218 OF 2017*

Dileep Balkrishna Nevatia and another.	.. Applicants
Vs	
The Official Liquidator, High Court Bombay and others.	.. Respondents

Mr.Dileep Nevatia, Applicant No.1 in person.

Mr.Ashutosh Kale, for Respondent Nos.5 and 6.

CORAM : DR.MANJULA CHELLUR, C.J.

DATE : NOVEMBER 15, 2017.

P.C.:

Heard party-in person - Applicants and also Respondents.
Considering the issues involved, common order is passed by consent of the parties. It is necessary to narrate certain facts to understand the relief sought in the Miscellaneous Applications.

2. Company Petition No.376 of 2002 initially was filed by M/s Bhansali Engineering Polymers Limited against Sundeep Polymers Private Limited. It is also not in dispute that said Company

Petition came to be allowed in 2014 and Sundeeep Polymers Private Limited has gone into liquidation therefore, the official liquidator, High Court, Bombay is representing Sundeeep Polymers Pvt. Ltd.

3. One Bajaj Auto Limited to whom Sundeeep Polymers Pvt. supplied certain goods was the Defendant in two suits filed by Sundeeep Polymers Private Limited, at Nagpur. It is not in dispute that another suit came to be filed by Bajaj Auto Limited against Sundeeep Polymers Pvt. Ltd. at Pune, for recovery of money. All the three suits i.e. two suits at Nagpur against Bajaj Auto Limited and one suit filed by Bajaj Auto against Sundeeep Polymers, were for recovery of money. Since Company Petition No.376 of 2002 came to be allowed and Sundeeep Polymers has gone into liquidation, all the three suits are pending before the Company Court.

4. So far as the Writ petition No.7330 of 2008, W.P. No.7331 of 2008 and W.P. No.7332 of 2008, are filed against Devgiri Nagari Sahakari Bank Limited, Aurangabad, the other three petitions bearing Writ Petition No.5231 of 2009, W.P. No.5232 of 2009 and W.P. No.5234 of 2009 are filed by Devgiri Nagari Sahakari Bank Limited, Aurangabad against Sundeeep Polymers and the present Applicants. The background for filing of these six Writ Petitions against each other is with regard to three Recovery Certificates issued by Taluka Deputy Registrar Co-operative Societies, Aurangabad which came to be challenged by the present Applicants in proceedings before Divisional Joint Registrar Co-operative

Societies, Aurangabad and said challenge was allowed. In the said appeal fifty percent of the recovery amount in all the three matters amounting to about Rs.73 lakhs came to be deposited. Subsequently, those appeals came to be allowed quashing the Recovery Certificates issued by Taluka Deputy Registrar of Co-operative Societies Aurangabad. Since the Recovery Certificates came to be quashed the Applicants said to have approached the concerned authority for return / refund of Rs.73 lakhs. As there were no laid procedures for the authority to refund, they said to have refused to pay the same for want of procedure. Therefore three Writ petitions mentioned above filed by the Applicants came to be filed before the High Court Bench at Aurangabad and challenging the orders of the Divisional Joint Registrar said Co-operative Bank has filed three Writ Petitions at Aurangabad.

5. According to Applicants since the Company in question has gone into liquidation and recovery proceedings have to be subject to the Company procedure, since the Company is not an individual entity any more it would be just and proper, all the six Writ Petitions pending before the Aurangabad Bench be transferred to this Court, at Bombay to try along with the pending suits in the Company Court. The Respondent Bank Advocate strenuously refutes the Applicants submission on the ground that the registered office of the Respondent Bank is at Aurangabad and initially proceedings are filed at Aurangabad since cause of action arose at Aurangabad.

6. Even the Applicants have filed the three Writ Petitions at Aurangabad since cause of action arose at Aurangabad. But in the light of further development with regard to Company Petition and pendency of the recovery suits pertaining to Bhansali Engineering Polymers, they are seeking transfer of all the Writ Petitions from Aurangabad Bench to this Court, so that at one place all the matters could be disposed of in the Court where the other suits are pending. Apparently, all the Applicants are senior citizens and for their convenience also they are asking the transfer of the suits to the Bench at High Court Bombay. Whether the matter is decided at Bombay or at Aurangabad, it has to be disposed of in accordance with the law applicable depending upon the facts and circumstances. Since the Company in question has gone into liquidation ultimately, if the Respondent – Cooperative Bank is successful they also have to come before the Official Liquidator for the recovery of money. In that view of the matter, for the reasons explained above, I am of the opinion that the three petitions deserve to be allowed and accordingly, allowed.

CHIEF JUSTICE