

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO.248 OF 2017

Shri Ramanuj Co-op. Hsg.Soc.Ltd.

.. Petitioner

vs.

The Deputy Registrar,
Co-operative Society, Mumbai/E City and Ors.

.. Respondents

Mr.S.R.Phanse i/b M/s.TJS Legal for the petitioner

Ms.Sukanta Karmakar, A.G.P for the State

CORAM : K. K. TATED, J.
DATE : FEBRUARY 1, 2017

PC.:

1 Not on board. At the request of Advocate for the petitioner, matter is taken on board for urgent orders.

2 Heard the learned counsel for the parties.

3 By this petition under Article 227 of the Constitution of India, the Petitioner challenges the order dated 13.1.2017 passed by Deputy Registrar K East Ward, Mumbai under section 102 (1) of the Maharashtra Cooperative Societies Act, 1960 calling upon petitioner to appear before him on 2.2.2017 at 3 p.m. to show cause why action should not be taken against them to appoint C.M.Ratambe as Liquidator.

4 It is to be noted that authority has not passed any final order. Authority has issued show cause notice to the petitioner. The learned counsel for the petitioner submits that the authority has passed ad-interim order against them. He submits that by this order the authority has directed the petitioner society to remain present before him to show cause as to why Liquidator should not be appointed. He submits that there is no question of passing such type of ad interim order without hearing the petitioner. In support of this contention he relies on the judgment of this court in the matter of ***Chandrapur Zilla Sahakari Krushi and Gramin Bahuudeshiya Development Bank Ltd. and others, reported in AIR 2003 Bombay 502.*** He relies on paragraph 15 and 16 and portion of paragraph 17 which reads thus:

“15. We will begin from beginning of the issue under consideration Section 102(1) of the Act provides for issue of "interim order" directing the Society to be wound up. There is no specific provision of opportunity of hearing to be granted to the society before passing of the interim order under Section 102(1) of the Act. Thereafter under Section 102(1), there is a specific provision to hear the Society before passing of the final order, vacating or confirming the interim order. Section 104 provides for appeal against the final order only. There is no provision for appeal against any interim order passed by the Registrar under Section 102(1) of the Act. In effect, it is clear that there is no specific provision of hearing before the interim order and there is no provision for appeal against the interim order. The Registrar is, however, obliged to communicate the interim order to the Society calling upon the Society to explain before the final order would be passed and such final order confirming the interim order is made appealable.”

“16. It is, therefore, obvious that there is neither pre-decisional hearing before the interim order is passed nor such order is allowed to be appealed against. There is only post-

interim decisional hearing before the final order is passed to vacate or confirm the interim order. Section 103 further empowers the Registrar to appoint a Liquidator of the Society, even after the interim order of winding up of the Society. It further mandates that after the interim order is passed the Society shall hand over to the Liquidator the custody and control of all the property, effects and actionable claims to which the Society is entitled and the whole record pertaining to the business of the society and thereafter the Society will have no access to the same. Such is the drastic and draconian provision empowering the Registrar to issue an interim order to the Society to be wound up. There is no appeal also against the interim order. Can it be legitimately inferred that there is no implicit provision of hearing and compliance of the principles of natural justice before passing of such a very harsh and drastic action of ordering the winding up of the very running existing society? The consequence of such an interim order to hand over to the Liquidator virtually the entire Society. Can it be construed that the Legislature intended to put such a draconian power to wind up or wipe out any Society in the hands of a Registrar without hearing before passing an interim order, the consequence and effect of which is not less injurious or harmful than a final order? We do not think so.”

“17. It is, therefore, crystal clear that before passing an interim order affecting the crystallised and vested rights, pre-decisional hearing would be necessary as such orders would have "immediate and grave prejudicial repercussion on the person concerned" and, therefore, it would be desirable to hear him before the order of suspension is passed. It would further reflect the fact situations where pre-decisional hearing could be straightway rule out. The Supreme Court has very pertinently observed that there is "no tape measure" of the extent of natural justice and that it must vary from statute to statute and situation to situation and case to case. There is no straight-jacket formula to be applied. The ratio of the Liberty Oil Mills" case: (AIR 1984 SC 1271) is that the pre-decisional hearing is required if the decision would be of grave prejudicial nature affecting adversely the crystallised rights of a party. In other case, post-decisional hearing would suffice to satisfy the principles of natural justice. In fact, the ratio of this case fortifies our view that Section 102(1) contemplates

a pre-decisional hearing before interim order as the effect of such interim order is of immediate and grave prejudicial nature of virtually threatening extinction of the very Society which is legally functioning. Can we say that the interim order ex parte passed to order to wind up a Society is not truly disastrous and imminently harmful? In our opinion, any interim order to wind up an existing and running establishment or undertaking would amount to sounding a death bell and nothing less. The entire business and the affairs of the Society on the door of which the Registrar would hang an Interim of winding up would come to standstill and complete halt as the consequent steps would be to hand over the Society including its property and the record to a Liquidator. All the business transactions and relations would be snapped by the customers and the depositors/creditors would queue up to knock the doors to demand their deposits and the debts. Every such order would take half of the life out of the Society and even if finally it succeeds in getting the interim order vacated, it would perhaps, be too late for the Society to revive. The interim order would perhaps prove to be its "final terminator". Besides, if the Society can convince the Registrar finally why cannot it do the same exercise at the outset at the time of interim order ? We are, therefore, of the considered opinion that unless there is a danger to be averted or the act to be prevented is imminent or where the action to be taken can brook no delay such as war like conditions or devastating flood or outbreak of an epidemic, a pre-decisional hearing or show cause to the parties would be necessary as is implicit in the provisions of the Act. Under the Act, when the affairs of the Society are subject to full control and supervision of the Authorities and when the accounts are annually audited, It cannot be said that an emergency situation abruptly arose to warrant an action of ex parte interim order to seize and freeze the Society overnight like a surprise raid. The Societies do not become sick overnight though under the constant vigil of the Authorities under the Act. We, therefore, are of the firm opinion that the principles of natural justice cannot be dispensed with for the action under Section 102(1)(c) of the Act. The Registrar is duty bound to grant hearing to the concerned Society against which an interim order of winding up is proposed or contemplated."

5 The learned Counsel for the petitioner submits that in view of the authority in the matter of ***Chandrapur Zilla Sahakari Krushi and Gramin Bahuudeshiya Development Bank Ltd. and others***, (Supra) impugned order passed by the authority is required to be set aside.

6 It is to be noted that the authority cited by the petitioner is not applicable in the facts and circumstances of the case. In that authority, The authority had passed interim order directing the winding up of the Society itself. That is not the case in the present matter. In the present matter, authority has directed petitioner to remain present before him on 2.2.2017 and satisfy why Liquidator should not be appointed.

7 Considering these facts, I do not find any substance in the present Writ Petition.

8 Hence, Writ Petition is rejected.

JUDGE