

VPH

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

NOTICE OF MOTION (L) No. 158 OF 2016  
IN  
WRIT PETITION No. 1892 OF 2013  
WITH  
CHAMBER SUMMONS (L) No. 79 OF 2014  
WITH  
NOTICE OF MOTION (L) No. 110 OF 2015  
WITH  
NOTICE OF MOTION No. 180 OF 2017

The Veershaiva Co-operative  
Bank Ltd. & Anr. ... Petitioner  
Vs.  
The Reserve Bank of India & Ors. ... Respondents  
And  
Mr. Manohar M. Kori & Ors. ... Applicants  
(in NMWL. 158/2016)

\*\*\*

Mr. Vikram Chavan, for the Applicants in the NMWL. 158/2016.  
Mr. Vaibhav Achwal i/b Udwadia & Co. for Respondent No. 1 – RBI.  
Mr. Abhay Patki, Additional Govt. Pleader, for the Respondent – State.  
Mr. P. S. Gujar, for Respondent No. 8.  
Dr. D. S. Hatle a/w Deepak Jamsandekar, for Respondent No. 9.  
Mr. Dhaval Patil i/b M/s. K. Ashar & Co. for Respondent – DIGC.  
Mr. Avinash H. Fatangare a/w Vishakha Pandit, for the Intervenor.  
Mr. Mahendra Mhaske, Designated Inquiry Officer (Section 88) cum  
Dy. Registrar, Cooperative Societies, K East Ward, Mumbai – Present.

\*\*\*

CORAM : V. M. KANADE, &  
A. M. BADAR, JJ.

DATE : JUNE 14, 2017

PC.

1. Heard the learned counsel appearing on behalf of the Applicant and the learned counsel appearing on behalf of Respondents. The Applicants have filed this motion seeking an order for vacating the injunction granted by us by an order dated 11.2.2016. The Applicants are seeking following reliefs:

- “(a) That this Hon'ble High Court be pleased to vacate and / or recall the order of injunction dated 11<sup>th</sup> February, 2016 passed in Writ Petition No. 1892 of 2013 pending adjudication before this Hon'ble High Court;
- (b) that this Hon'ble Court be further pleased to permit the kith and kin of Applicant No. 1 to furnish collateral security in court for and on behalf of Applicant No. 1, equitable to that of the proportionate liability fixed upon Applicant No. 1 under the charge-sheet vis-a`-vis as per interim order of attachment dated 17.9.2012 for protecting the interest of the Bank, against the release of their respective properties from interim attachment in accordance with Order 38, Rule 9 of the Code of Civil Procedure, 1908;
- (c) For such further and other relief as the nature and circumstance of the case may require.”

2. It is not in dispute that the Applicant was an Ex-Chairman

of the bank. There was a large scale scam which had taken place and various amounts belonging to the Bank were frittered away and as a result the Reserve Bank of India had to cancel licence of the Bank to carry on the business. The said order of cancellation is still in force. An inquiry under Section 88 MCS Act has commenced. An FIR is lodged against the present Applicant and other directors and the charge-sheet has been filed.

3. The learned counsel appearing on behalf of the Applicant submits that the Applicant is not a defaulter and as such, the observation made by this Court in our order dated 11.2.2016 is incorrect and incorrect submission was made by the Petitioner.

4. Mr. Abhay Patki, learned Additional Government Pleader appearing for the State has submitted that in a criminal complaint an inquiry is being made and a charge-sheet is filed in which it is specifically mentioned that the Applicant is jointly and severally liable alongwith the other accused. The learned counsel appearing on behalf of the Applicant invited our attention to the chart. He submitted that the proportionate liability fixed upon the Applicant M. M. Kori by the Cooperative Society is Rs. 6.48 crores. He further submitted that the

property which is sought to be sold was not attached and some of the properties are joint family properties in which the Applicant has 25% share. It is submitted that the Applicant has already deposited an amount of Rs. 6.5 crores in this Court and the property worth Rs. 40 crores is also attached. He submitted that since the properties proposed to be sold by public notice given in Free Press Journal dated 20.1.2016, were not attached, and as such, the injunction order which is granted by this Court is liable to be set aside.

5. We are afraid that though the said submission appears to be quite attractive, at the first blush, on the closer scrutiny we find that at this stage it will not be possible to vacate the said order. Mr. Patki, learned Additional Government Pleader has invited our attention to the order dated 12<sup>th</sup> March, 2013 passed in Writ Petition No. 2154 of 2013. The said petition was filed by one of the employee and he contended before the learned Single Judge that since he is a paid employee, inquiry cannot be proceeded against him under section 88 of the Maharashtra Cooperative Societies Act, 1960. Under these circumstances therefore, so far as the said Petitioner is concerned, the learned Single Judge made following observation in para 5 of the said

order:

“5. Learned Counsel for the Petitioner seeks stay of the proceedings. The learned counsel for Respondent No. 3 states that no such stay is required as the proceedings will not be substantially proceeded with before the next date in any case. Statement is accepted.”

6. Thereafter another order was passed in a group of petitions, lead petition being Writ Petition No. 6774 of 2015 on 11<sup>th</sup> August, 2015 by the learned Single Judge, which reads as under:

“Stand over to 24.08.2015 for directions. Ad-interim relief granted earlier to continue until then. To be placed alongwith W. P. No. 8128 of 2013, W. P. 9548 of 2013 and W. P. No. 1325 of 2013.”

7. In our view, on a proper interpretation of the said order, it is apparent that the inquiry under section 88 is not stayed. We therefore direct the Designated Inquiry Officer (Section 88) cum Dy. Registrar, Cooperative Societies, K East Ward, Mumbai to continue the inquiry and complete it expeditiously within a period of six months. So far as the order passed by the learned Single Judge (Shri Justice N. M. Jamdar) on 12.3.2013 in Writ Petition No. 2154 of 2013 is concerned, perusal of para 5 of the said order clearly indicates that

no stay was granted and only the statement was accepted. Perusal or order dated 20.7.2015 passed in Writ Petition No. 6774 of 2015 by Shri Justice R. M. Sawant indicates that there would be ad-interim relief in terms of prayer clause (b). It is clarified that the stay is only in respect of petitioner therein – Basagonda Sayappa Kadoli and not in respect of other persons. The Inquiry Officer shall examine all the aspects on record and submit his report to this Court within six months.

8. Liberty is granted to the Applicants to apply after vacating the interim order and after the report is submitted. Even otherwise, it is to be noted that in the charge-sheet the investigating officer mentioned that liability of all the accused is joint and several and as such therefore, though it is mentioned that proportionate liability of the Applicant is Rs. 6.48 crores, their joint liability is mentioned in the FIR. At this stage therefore, it is advisable not to vacate the injunction. It is true that in para 1 of the impugned order it is recorded that Ex-Chairman of the Bank is also one of the defaulters. Though he is not one of the defaulters, he is one of the accused in the charge-sheet, and therefore, it is clarified that though he is not

defaulter, yet on account of charge-sheet which is being filed, at this stage no stay can be granted to the impugned order and therefore, order of injunction need not be vacated. Notice of motion No. 158 of 2016 is accordingly disposed of.

9. The learned counsel Mr. Shriram Kulkarni appearing for the Union submits that the liquidator should expedite the process of attachment and sale of the properties. The Union is permitted to assist the Liquidator and if no progress is made, liberty is granted to the Union to apply for changing the Liquidator. The Liquidator may consider taking the help of the retrenched employees so that the matter can be expedited for recovery of the amount. Other matters be placed on board on 12<sup>th</sup> July, 2017.

Sd/-  
[A. M. BADAR, J.]

Sd/-  
[V. M. KANADE, J.]

Vinayak Halemath