

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11214 of 2017

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1. Awadesh Singh S/o Sri Jagdish Singh Vill Fateha, P.O. Karsaoi, P.S. Obra, District Aurangabad.

.... Petitioner/s

Versus

1. The State of Bihar through its Principal Secretary, Co-operative Department, Govt. of Bihar, Patna.
2. The Registrar, Co-operative Society, Bihar, Patna.
3. The Joint Registrar, PANAN Patna.
4. The Joint Registrar Magadh Division, Gaya.
5. The District Co-operative Officer, Aurangabad.
6. The Block Co-operative Extension Officer Obra Aurangabad.
7. Raju Kumar S/o Kamta Singh Vill Jagaya P.O. Karsao P.S. Obra District Aurangabad.
8. Nikhat Pravin w/o Raji Ahmad Vill Dingraha P.O. Bel District Obra District Aurangabad.
9. Kasida Devi w/o Binay Singh Vill Fateha, P.O. Karsaoi, P.S. Obra, District Aurangabad.
10. Vinay Ram S/o Judagir Ram Vill Parsa, Post Bel P.S. Obra District Aurangabad.
11. Mohd. Nazin S/o Fakruddin Vill Dingroha, P.O. Bel P.S. Obra, District Aurangabad.
12. Superintendent of Police, Aurangabad.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shashi Kant Kumar
For the State : Mr. Dinesh Maharaj, A.C. to AAG-11
For Respondent Nos.8 to 11 : Mr. Kishore Kumar Sinha, Adv.
Mr. Shashi Shekhar, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date: 02-01-2018

This writ petition has been preferred by the petitioner seeking indulgence of this Court for quashing the order dated 22.02.2017 passed in Misc. Case No. 315 of 2015 whereby stay granted by the respondent no.2, vide order dated 01.03.2016, has been vacated by the respondent no.3. The petitioner has also prayed for



quashing the Memo No.82 dated 13.02.2017 issued by the respondent nos.4 and 5 and also to issue notice to the respondent nos.2 to 5 as to why the stay granted by the respondent no.2 has not been implemented even after one year.

2. The facts of the case, in brief, are that the petitioner claims to be the member of the BEL Primary Agricultural Credit Co-operative Society (for short 'PACCS'), which is a cooperative society registered under the Co-operative Societies Act, 1935 (for short 'the Act'). He has filed Misc. Case No. 315 of 2015 for declaring the membership of respondent nos.7 to 11 as co-member and, therefore, they are not eligible to hold the post of office bearer of the Society. Upon preliminary hearing, the Registrar, Co-operative Society passed an order of stay on the functioning of respondent nos.7 to 11 as office bearer of the Society of BEL PACCS. The Registrar, Co-operative Society also directed to the petitioner to serve a copy of the petition to the respondents of Misc. Case No. 315 of 2015 by registered post with acknowledgement. Subsequently, Misc. Case No. 315 of 2015 was transferred to the court of Joint Registrar, Co-operative Societies (Marketing), Bihar, Patna under Section 48(2) of the Act for hearing and disposal of the matter.

3. The respondent nos. 7 to 11 came to know about pending adjudication before the court of the Joint Registrar, Co-operative



Societies (Marketing), Bihar, Patna. They appeared through their advocate before the court and requested to vacate the ex-parte stay order. They also apprised the court that despite the order of the Registrar, Co-operative Societies, the petitioner intentionally did not serve the copy of the petition to the respondents.

4. The Joint Registrar, Co-operative Societies (Marketing), Bihar, Patna having noticed that, vide order dated 01.03.2016, the functioning of the respondent nos.7 to 11 was stayed and in the same order directions were given to the learned advocate of the petitioner to serve copy of the petition to the respondents through registered post and submit the original copy of the receipt in the court, but the learned Advocate of the petitioner did not comply the order and, vide order dated 23.09.2016, the petitioner's advocate was given the last chance to comply the said order, which also was not complied and on 25.01.2017 the petitioner provided a copy of the petition to the learned Advocate of the respondents and, thus, the delay on the part of the learned Advocate of the petitioner to serve a copy of the petition to the respondents for such a long period since 01.03.2016 was considered as an attempt to restrain the respondents from appearing before the court. Therefore, the learned Joint Registrar, Co-operative Societies (Marketing), Bihar, Patna vacated the stay and fixed the matter for hearing on 24.03.2017. Subsequently, during



pendency of the said proceeding, this writ petition has been filed before this Court on 04.08.2017.

5. Having regard to the facts and circumstances of the case, as the main issue raised by the petitioner is itself pending before the statutory authority, in the opinion of this Court, this writ petition is totally misconceived. As the Misc. case itself is pending before the Joint Registrar, Co-operative Societies (Marketing), Bihar, Patna, entertaining a writ petition before this Court in respect of an interlocutory order would lead to undesirable scattering of litigation. Article 226 of the Constitution of India has not been made to be used by the parties for such purposes. A petition under Article 226 cannot be entertained unless the statutory remedy has been fully exhausted. Therefore, this type of writ petition is not maintainable. Accordingly, it is dismissed.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	04-01-2018
Transmission Date	

