IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 934 OF 2017

1. Shri P. K. Anna Patil Janta
Sahakari Bank Ltd., Nandurbar,
Tal. and Dist. Nandurbar
(Under Liquidation),
Through, its Branch Manager
Shri Kashinat s/o Vanji Patil
Age: 58 years, Occu.: Service
R/o.: 26, Trimbak Nagar, Deopur,
Dhule, District Dhule

2. Shri P. K. Anna Patil Janta
Sahakari Bank Ltd., Nandurbar,
Tal. and Dist. Nandurbar
Through its Liquidator
Manoj s/o Madhukar Choudhari
Age: 35 years, Occu.: Service
Assistant Registrar, Co-operative Societies
Shripur, Tq. Shripur, District – Dhule
R/o. Shripur, Tq. Shripur
District – Dhule. … **Petitioners**

VERSUS

1. The State of Maharashtra
Through the Principal Secretary for
Co-operation Department
Mantralaya, Mumbai.

2. The Deposit Insurance Credit
Guarantee Corporation,
C/o. Reserve Bank of India, Building
2nd Floor, Opp. Mumbai Central
Railway Station, P.B. No.4571,
Mumbai Central, Mumbai – 400 008
Through its Chief Officer.

3. Smt. Ratnakour Bhikesingh Rajput
Age: 57 years, Occu.: Household

4. Bhatesingg Bhikesingh Rajput

Age: 35 years, Occu.: Service

5. Narendrasingh Bhikesingh Rajput
Age: 33 years, Occu.: Service

6. Sau. Gayatri w/o Bhatesingh Rajput
Age: 35 years, Occu.: Household

7. Rohini w/o Narendrsingh Rajput
Age: 35 years, Occu.: Household

R. Nos. 3 to 7 residents of Devhala,
(Devale), Post Sarwala, Tq. Nizhar,
District – Tapi (Gujarat) … **Respondents**

Mr. V.D. Hon Senior Advocate i/b Hon Ashwin V., Advocate for the Petitioners.
Mr. V.M. Kagne, APP for Respondent-State.
Mr. P.B. Patil, Advocate for the Respondent Nos. 3 to 7.

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with
CRIMINAL WRIT PETITION NO. 1406 OF 2017

1. Shri P. K. Anna Patil Janta
Sahakari Bank Ltd., Nandurbar,
Tal. and Dist. Nandurbar
Through its Liquidator
Manoj s/o Madhukar Choudhari
Age: 35 years, Occu.: Service
Assistant Registrar, Co-operative Societies
Shripur, Tq. Shripur, District – Dhule
R/o. Shripur, Tq. Shripur
District - Dhule

2. Shri P. K. Anna Patil Janta
Sahakari Bank Ltd., Nandurbar,
Tal. and Dist. Nandurbar
Through, its General Manager
Yashwant Sena Mohite
Age: 55 years, Occu.: Service
R/o.: Nandurbar
Tq. and District Nandurbar … **Petitioners**

VERSUS

1. The State of Maharashtra
   Through the Secretary for
   Co-operation Department
   Mantralaya, Mumbai.

2. Shri Punabhai Hari Patil
   Age: 84 years, Occu.: Agriculture

3. Bharatbhai Punaji Patil
   Age: 62 years, Occu.: Agriculture

   Both R/o. Kalamsare (Mohinda),
   Tq. Taloda, District Nandurbar … **Respondent**

Mr. V.D. Hon Senior Advocate i/b Hon Ashwin V., Advocate for the Petitioners.
Mr. V.M. Kagne, APP for Respondent-State.
Mr. S.P. Shah, Advocate for the Respondent Nos. 2 & 3.

CORAM : MANGESH S. PATIL, J.

DATE OF RESERVING THE JUDGMENT : 04.07.2018
DATE OF PRONOUNCING THE JUDGMENT : 01.08.2018

JUDGMENT :

Heard. Rule. The Rule is made returnable forthwith. With the consent of both the sides the matters are heard finally.

2. A common question of fact and law which calls for decision in these writ petitions under Section 107 of the Maharashtra Co-operative Societies Act,1960 is as to whether even a criminal proceeding against a society under winding up or under liquidation is barred. The facts which are common in both the writ petitions are to the effect that the petitioner no.1 is a co-operative society duly registered under the

provisions of the Maharashtra Co-operative Societies Act. It had obtained the licence to carry on banking businesses under the provisions of Banking Regulations Act, 1949. In the year 2008, the Reserve Bank of India had arrived at a conclusion that there was no likelihood of any improvement in the financial condition the petitioner no. 1-society. It decided to cancel the licence granted to it for conducting banking business in exercise of the powers under Section 22 of the Banking Regulation Act. This order of the Reserve Bank of India was passed on 29.12.2008. Pursuant to such order, the Commissioner of Co-operative and Registrar of Co-operative Societies, Maharashtra by the order dated 03.01.2009 ordered winding up of the activities of the petitioner no. 1. By that order even the petitioner no. 2 was appointed as a Liquidator.

3. It appears that the respondent nos. 3 to 7 in Writ Petition No. 934 of 2017 and respondent nos. 2 and 3 in Writ Petition No. 1406 of 2017 had deposited money with the petitioner Society. They filed complaints in the District Consumer Forum under Section 12 of the Consumer Protection Act, 1986. The District Consumer Forum by the order dated 09.01.2015 allowed the claims and *inter alia* issued a direction to the petitioner no. 1 Society to refund the amounts deposited with interest. In due course even these respondents submitted an execution proceeding before the District Consumer Forum. Since the petitioners failed to pay money as awarded by the District Consumer Forum, these respondents initiated a proceeding under Section 27 of the

Consumer Protection Act invoking the penal provision. The forum issued summons / notices and called upon the petitioners to furnish bail. Being aggrieved and dissatisfied by such orders the petitioners have approached this Court. The petitioners are seeking to quash the summons and notices issued by the District Consumer Disputes Reddressal Forum, by invoking the powers under Section 482 of the Code of Criminal Procedure and under Article 226 and 227 of the Constitution of India.

4. The learned senior advocate for the petitioners vehemently submitted that by virtue of Section 107 of the Co-operative Societies Act, once a Co-operative Society goes under winding up and liquidation proceeding, no proceeding can be initiated except with the leave of the Registrar and subject to such terms as he may impose. When admittedly the petitioner no. 1 is a Co-operative Society and when admittedly the Registrar has directed it to be wound up and it is undergoing liquidation process wherein the petitioner no. 2 is appointed as a Liquidator, in the absence of any permission under Section 107, the District Consumer Redressal Forum could not have taken cognizance of the complaint under Section 27 of the Consumer Protection Act and ought not to have directed summons / notice is to be issued. The impugned direction is clearly in violation of such statutory bar. It was pointed out to the forum by the petitioner no. 2 when he had appeared pursuant to the impugned summons / notice and therefore it may be quashed and set aside by

allowing the writ petitions.

5. The learned senior advocate for the petitioners also submitted that the very fact that the petitioner no.1 is undergoing a liquidation process on account of its poor financial condition, it is not only the present respondents but even the other depositors and creditors also have an equal right to have a share in the proceeds which would be generated at the end of the liquidation process, may be on pro reta basis. The whole purpose and object of imposing a bar to a proceeding to be initiated against a co-operative society under winding up or liquidation by providing for Section 107 of the Co-operative Societies Act is to regulate such a process. It only regulates such a process and does not create a absolute bar. A depositor or a Creditor only has to seek necessary permission from the Registrar and can thereafter approach the liquidator staking his claim in the proceeds. The respondents ought to have approached the Registrar and solicited necessary permission but instead have straight away taken recourse to the remedy provided under Consumer Protection Act and are now bent upon to compel the petitioner no.2-liquidator to shell of money to the deprivation of the other rightful claimants. It cannot be allowed and the summons / notices may be quashed and set aside.

6. The learned advocates for the respective respondents vehemently submitted that the writ petitions are not tenable. They

would submit that in fact already an objection was lodged with the District Consumer forum for the very same reasons i.e. want of permission under Section 107 of the Co-operative Societies Act. Since the objections were rejected, the petitioners filed Civil Writ Petition Nos. 7021 of 2015 and 7084 of 2015 which are pending in this Court. Having failed to secure any interim relief, a circuitous attempt is being made to stall the proceeding initiated by the respondents under Section 27 of the Consumer Protection Act. When those writ petitions are still pending, no such second attempt can be allowed to be made by the petitioners by ingeniously making a prayer which would appear to be different than the reliefs being claimed in these two writ petitions. They would further point out that even the petitioners have not been approaching this Court in these writ petitions by making a true and honest disclosure by pointing the fact of filing these two writ petitions. It is an important fact by suppressing which the petitioners have attempted to solicit some favorable orders. Nowhere in the writ petitions have they even referred to the fact of pendency of these two writ petitions and therefore for this reason alone the writ petitions are liable to be dismissed.

7. The learned advocates for the respondents would further submit that even otherwise, the bar contained in Section 107 of the Co-operative Societies Act only bars a Civil Court from taking cognizance of a proceeding and does not bar any criminal action against the co-

operative society which is under winding up or liquidation. They would point out that a proceeding initiated under Section 27 of the Consumer Protection Act for all the purposes is governed by the provisions of Code of Criminal Procedure and even the District Forum discharges the powers under the provisions as that of a Judicial Magistrate First Class. If that be so, the remedy invoked by the respondents pursuant to which the summons / notices have been issued which are impugned in the present writ petitions cannot be said to be without jurisdiction for want of permission of the Registrar under Section 107 of the Cooperative Societies Act.

8. The learned advocate for the respondents in Criminal Writ Petition No. 1406 of 2017 would further point out that even on facts, the claim of the respondents in that proceeding was allowed by the District Consumer Forum on 06.08.2018 and the petitioner no. 2 was appointed as the Liquidator of the petitioner no. 1-Society by the order dated 03.01.2009. Therefore, it cannot be said that even that proceeding was barred by Section 107 of the Co-operative Societies Act.

9. I have carefully gone through the record. Since the dispute pertains to the scope and ambit of Section 107 of the Cooperative Societies Act one need to refer to the provision itself, which reads thus:

> *“**107. Bar of Suit in Winding up and dissolution matters***
> *Save as expressly provided in this Act, no Civil Court shall take cognizance of any matter connected with the winding up or dissolution of a society under this Act; and when a winding up order has been made no suit or other legal proceedings shall lie or be proceeded with against the society or the Liquidator, except by leave of the Registrar, and subject to such terms as he may impose:*
> *Provided that, where the winding up order is cancelled the provisions of this section shall cease to operate so far as the liability of the society and of the members thereof to be sued is concerned but they shall continue to apply to the person who acted as Liquidator.”*

Perusal of the provision carefully clearly shows that though the heading only refers to bar of suit the body of the provision also mentions 'no suit or other legal proceeding'. The learned advocate for the petitioners laid much emphasis on the use of these words 'other legal proceedings' and submitted that it covers all legal proceedings and does not distinguish between a civil and a criminal proceeding. However, a provision has to be read in its entirety in order to understand its true purport and if so read, the words 'other legal proceeding' can be interpreted *ejusdem generis*, with the word 'suit' preceding thereto. These subsequent words would certainly take colour from the earlier word. If so interpreted, it cannot be allowed to be interpreted to mean a criminal proceeding as well. Besides, the provision itself begins with title 'bar of suit' and also further uses the words 'no Civil Court can take cognizance'. The use of words civil Courts further puts the controversy as to the interpretation at rest. A complete reading of the provision of Section 107 makes it abundantly clear that the legislature had only provided for regulating civil proceedings to be instituted against Co-operative Societies which are under winding up or liquidation process. If the legislature had really intended to even bar a criminal proceeding from being initiated, it would not have used the words 'suit' and 'civil Courts'. This being the position the submission of the learned advocate for the petitioners that this provision also governs a criminal action is not acceptable and is not legally tenable.

10. There is no dispute that the proceeding initiated under Section 27 of the Consumer Protection Act is a criminal action. The provision specifically lays down that while exercising the powers under that provision, the District Consumer Forum shall have a power of the Judicial Magistrate First Class for the trial of the offences under that Act and would be exercising those powers under the Code of Criminal Procedure. The proceeding would clearly have all the drapings of a criminal case and the forum would be exercising the powers of a Magistrate. If that be so, a proceeding initiated under that provisions cannot be said to be barred by Section 107 of the Co-operative Societies Act. As a result, the present writ petitions which seek to quash and set aside the summons / notices issued by the District Forum in a proceeding under Section 27 of the Consumer Protection Act are not

tenable.

11. With this, one could have easily disposed of these writ petitions. However it is necessary to bring on record even the conduct of the petitioners. Being aggrieved and dissatisfied by the orders passed by the District Forum approving the claims preferred by the respondents under Section 12 of the Consumer Protection Act, they have preferred Writ Petition Nos. 7082 of 2015 and 7021 of 2015 which are pending in this Court. The relief claimed in those petitions are to the effect that the complaints filed by the respondents herein before the District Forum be quashed and set aside. Conspicuously, even the bar contained under Section 107 of the Co-operative Societies Act, has been raised therein to question the jurisdiction of the District Forum to entertain the complaints and to decide the claims in favour of the respondents. Admittedly, the summons and the notices impugned in the present proceedings filed under Section 27 of the Consumer Protection Act arise out of the decision of the District Forum which the petitioner have already challenged independently in those two writ petitions. Therefore, when those petitions are already pending before this Court, it would have been appropriate for the petitioners to have pursued that remedy. Interestingly without making a whisper about such pending writ petitions, the present writ petitions have been filed and another attempt has been made to stall a criminal proceeding which has been initiated under Section 27 of the Consumer protection Act on petitioners

failure to obey the directions.

12. Be that as it may, for the reasons mentioned herein-above, the Writ Petitions do not have merit and are liable to be dismissed.

13. The Writ Petitions are dismissed.

14. The Rule is discharged.

[MANGESH S. PATIL, J.]

KAKADE