IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

**MISC. CIVIL APPLICATION (MCA) NO.997 OF 2018**
**IN**
**WRIT PETITION NO.629 OF 2007 (D)**

The Vidarbha Central Weavers Cooperative Society Ltd. Nagpur Thr. Its Official Liquidator, Gandhibag, Nagpur
-vs-
Maharashtra State Cooperative Bank Ltd, Thr. Its Manager, Nagpur and ors.

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| Office notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders. | Court's or Judge's Orders. |
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Shri P. D. Meghe, Advocate for applicant.
Shri M. V. Samarth, Advocate for respondent No.1.
Shri Girish Kunte, Special Counsel for respondent No.2/State.
Smt U. R. Tanna, Advocate for respondent No.11.
Shri P. R. Agrawal, Advocate for respondent Nos.4 to 24.

**CORAM : A.S.CHANDURKAR, J.**
**DATE : November 02, 2018**

This application has been filed for seeking review of the judgment dated 05/05/2018 passed in Writ Petition No.629/2007. While deciding Writ Petition No.629/2007 various directions were issued in the light of report submitted by the Adjudicator dated 02/11/2017.

In the application filed by the original respondent No.3 in the Writ Petition it is stated that pursuant to that report of the Adjudicator dated 02/11/2017, Civil Application No.606/2018 had been filed raising certain objections to that report. One of the objections raised was that the entire claim of the original petitioner-Bank came to be granted along with interest at the rate of 14.5 % per annum even after the date of liquidation. Grant of interest after the date of liquidation was not permissible in view of provisions of Rule 91 of the Maharashtra Cooperative Societies Rules, 1961 (for short, the said Rules). Reference is made to Government Resolution dated 29/03/1994 in that regard to indicate that the loan was granted at the rate of 13% per annum. Similarly, no interest was paid with regard to the loan granted by the State Government. Reference is also made to the Circular dated 07/01/2005 in that regard. There is also no provision made for the expenses of liquidation and an amount of Rs.30,00,000/- towards that head was liable to be granted. It is thus submitted that while issuing various directions passed on the report of the Adjudicator, these aspects had not been taken into consideration. It is thus prayed that the aforesaid judgment be reviewed to that extent.

2. Reply has been filed on behalf of the original petitioner opposing the prayer as made. It is stated that all parties submitted their claim statements before the Adjudicator who thereafter decided those claims and granted various amounts. It is further stated that there are further substantial properties with the Liquidator which

have not been sold and if those properties are sold the entire controversy would be resolved.

Affidavit has also been filed on behalf of the respondent No.1 in the Writ Petition. It has been stated that the various claims as submitted are required to be adjudicated in the light of provisions of Rule 91 of the said Rules. Similarly, no interest was payable on the earnest money deposited towards the claim of the auction purchaser as there was no such condition mentioned in the relevant tender document.

3. I have heard the learned counsel for the parties. While deciding the said Writ Petition this Court accepted the amounts as awarded by the Adjudicator and directed disbursement of those amounts in terms of that report. It is however a fact that Civil Application No.606/2018 filed on behalf of the Liquidator raised objections with regard to certain amounts awarded by the Adjudicator. In so far as the claim of the petitioner-Bank is concerned an amount of Rs.8,27,19,848.58 has been granted. This amount includes interest at the rate of Rs.14.5% per annum. The interest in question has been calculated till 31/12/2017. It is not in dispute that the Society went into liquidation on 26/02/2002. As per the provisions of Rule 91 of the said Rules, a creditor of a

Society that has gone under liquidation is entitled for interest on the debt due up to the date of winding up. The rate of interest in so far as the petitioner-Bank is concerned would be the contract rate. In case any surplus assets remain after clearing the liability, further interest on such debts at the rate to be fixed by Registrar but not exceeding the contract rate may be allowed from the date of winding up till repayment of the principal. As per letter dated 14/01/2016 issued by the Liquidator, till 26/02/2002 the principal amount due was Rs.1,94,98,093.94. The interest due was Rs.2,06,46,125.64. The total therefore was Rs.4,01,44,219.58. From this amount Rs.1,91,00,000/- has been received by the bank. The balance therefore is Rs.2,10,44,219.58. On the other hand the petitioner-Bank has calculated its dues till 31/12/2017 at Rs.8,27,19,848.58. The interest claimed is at the rate of Rs.14.50% per annum.

It is seen that the provisions of Rule 91 of the said Rules in this regard required consideration and application.

4. The amount of Rs.11,67,28,192.77 claimed by the respondent No.1 does not include any interest thereon. The Circular dated 07/01/2005 in that regard requires consideration.

6. In so far as Heads (c,d and e) of the claims as granted, the same have been rightly granted. The Adjudicator in paragraph 3 of the report has given reasons for awarding those amounts and I do not find any error apparent in that regard in so far as the claims at Items (c),(d) and (e) are concerned. It has been found that though the auction purchaser deposited the entire amount on 22/01/2016 and the sale-deed was to be executed within a period of three months, it was executed only on 25/07/2017. The Adjudicator has referred to the order dated 14/02/2017 passed by this Court permitting the Intervenor to withdraw the amount of accrued interest on the amount as deposited. It is on that basis that further interest was granted to the auction purchaser till the date of execution of sale-deed. It is therefore not necessary to re-open that aspect.

7. It is thus found that the petitioner-Bank would have to be heard afresh on the aspect of grant of interest to it under Rule 91 of the said Rules with regard to Item (a). Similarly, the question of granting interest to the respondent No.1 on the amount granted under Item (b) would also have to be considered. The third aspect is with regard to grant of Liquidator's expenses. Thus except Items at Sr. Nos. (a) and (b) of the report of the Adjudicator, rest of the report already stands accepted in view of the judgment dated

05/05/2018.

8. Hence only with a view to hear the petitioner-Bank in the context of Rule 91 of the said Rules and grant of interest at the contractual rate as regards Item (a), grant of interest to the respondent No.1 as per the Circular dated 07/01/2005 on the amount mentioned at Sr No.(b) and grant of expenses to the Liquidator, the present application is adjourned for being heard on 30/11/2018. It would be open for said parties to file necessary calculations in that regard. It is clarified that there is no error apparent found in the grant of amounts at Item Nos.(c) to (e) and the Registrar (Judicial) is free to disburse said amounts as specified in Item Nos.(c) to (d) as directed by order dated 05/05/2018.

Put up on **30/11/2018.**

In the meanwhile an amount of Rs.2,10,33,219.58 which is undisputedly payable to the petitioner-Bank shall be released in its favour in terms of order dated 05/05/2018.

**Civil Application No.1538 of 2018**

Perused the contents of the application. The amount of Rs.5,74,53,570/- which has been granted to the respondent Nos.4 to 24 alongwith other employees shall be transferred by the Registrar

(Judicial) to the respondent No.3-Liquidator. The respondent No.3-Liquidator shall thereafter distribute those amounts to the concerned employees expeditiously.

Civil Application is disposed of.

**JUDGE**

Asmita