IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2660 OF 2018

Hiraman Damodar Dhikle & 8 Others. … Petitioners.

V/s.

The Divisional Joint Registrar, C.S.,
Nashik, Division Nashik & Others. … Respondents.

WITH
WRIT PETITION NO. 7150 OF 2017

H.A.L. (N.D.) Employees Co-operative
Credit Society Ltd.,Ojhar, & Others. … Petitioners.

V/s.

State of Maharashtra and 12 Others. … Respondents.

Mr. Vijay Patil, Advocate, i/by Mr.Sandeep A. Kochare for the Petitioners in WP No. 2660/2018 and for Respondent Nos.5 to 13 in WP No. 7150/2017.
Mr. Jayendra D. Khairnar, Advocate for the Respondent No. 4 in WP No. 2660/2018 and for Petitioners in WP No. 7150/2017.
Mr. Sachin Kankal, AGP for the State in both the petitions.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATE : JANUARY 09, 2019.

PC :

1 With consent, the petitions are heard finally at the stage of admission.

2 The Petitioners, in both these Petitions, have challenged the order dated 22nd March, 2017 passed by the learned Minister for Co-operation, Marketing and Textile in Revision Application No. 292 of 2016.

3 The Petitioners in WP No.2660 of 2018 are the members/ erstwhile directors of the Respondent No.4 – Co-operative Credit Society Ltd., Ojhar. Respondent No. 3 was authorized to conduct and hold enquiry under section 88 of the Societies Act against the Petitioners and to assess the loss or damages caused to the respondent no. 4 society and to fix the liability on the concerned.

4 Five charges were framed against the petitioner members/erstwhile directors. By order dated 16.12.2014, the respondent no. 3 held the petitioners/ erstwhile directors guilty of first four charges and exonerated them in respect of the fifth charge.

5 The Petitioners/ members filed an Appeal before the Divisional Joint Registrar, Nashik, challenging the order dated 16.12.2014. By order dated 30.11.2015, the Divisional Joint Registrar, Nashik, set aside the enquiry report of the respondent no.3 and remanded the matter to the respondent no. 4 for de-novo enquiry. Being aggrieved by the said order

of the remand, the petitioners filed a revision application before the respondent no.5.

6 The Respondent No. 5, the learned Minister, Co-operation and Textiles, after hearing the parties, by order dated 22.03.2017 exonerated the petitioners/erstwhile directors of the charge nos. 2 to 4 and remanded the matter to the respondent no. 2 for fresh enquiry only to the extent of charge no. 1. The Petitioners/erstwhile directors (in writ petition no. 2660 of 2018) have challenged the order of remand and directions for enquiry in respect of charge no.1. Whereas, the petitioner-Society (in writ petition no. 7150 of 2017) have challenged the part of the order, whereby the learned Minister has exonerated the erstwhile directors of charge nos.2 to 4. Hence, these petitions.

7 Mr. Vijay Patil, the learned counsel for the Petitioners in writ petition no. 2660 of 2018 has submitted the bye-laws permitted the petitioners/ erstwhile directors to deposit the amount in a nationalized bank. He submitted that there is sufficient material on record to show that the petitioners had deposited the money by way of cheques. He has submitted that the Manager and other officers of the Bank of Maharashtra, who are responsible for mis-appropriation of the said amount. He submitted that the petitioners have already filed a writ petition against the said Bank for recovery

of the said amount. He claims that the petitioners are not liable for the acts of the officials of the Bank of Maharashtra. He further contends that no enquiry can be held in respect of charge no. 1 during the pendency of the said writ petition. As regards charge nos.2 to 4, he submits that the petitioners/erstwhile directors had acted as per the resolution taken by the society in its General Body Meeting and that the petitioners cannot be individually held responsible for the acts committed by them or the acts committed in pursuance of the said resolution.

8 Mr. Jayendra D. Khairnar, learned counsel for the Petitioner-Society (in wp no. 7150 of 2017) contends that charge no. 2 relates to the period, prior to five years from the date of the re-audit. He, however, contends that the erstwhile directors have distributed the fund towards the dividend to the tune of Rs. 11,56,80,752/- even when the society was in loss. He further contends that the petitioners/ erstwhile directors have also paid an amount of Rs. 14,21,10,588/- crores as per the face value of shares to its members when the society was in loss and the value of the shares had diminished. He submitted that the material on record, prima facie indicates that due to the acts of the erstwhile directors, the society was in loss. He urges that there is sufficient material to hold enquiry under section 88 against the erstwhile directors in respect of the charges no. 3 and 4.

9 I have perused the record and considered the submissions advanced by the learned counsel for the respective parties. The records indicate that the petitioners/ erstwhile directors had deposited sum of Rs. 26.25 crores in the Bank of Maharashtra, Mahim Branch. It is alleged that the said amount was invested under the fixed deposit receipts in the Bank of Maharashtra. The amount deposited in the Bank of Maharashtra, Mahim Branch, was transferred to the accounts of FD services and the said amount has been mis-appropriated and this has caused loss to the society to the tune of Rs. 14,21,10,588/-.

10 The records reveal that the police complaint was lodged and a chargesheet had been filed against the concerned officials of the Bank of Maharashtra as well as the petitioners/ erstwhile directors of the co-operative society for offence of cheating, criminal breach of trust etc.. In this backdrop, the mere fact that the petitioners / erstwhile directors have filed a writ petition against the Bank of Maharashtra, would not be a ground to quash the enquiry in respect of the charge no. 1.

11 Furthermore, the challenge to the order is mainly on the premise that the petitioner/erstwhile directors are not involved in mis-appropriating the amount. This issue cannot be decided in the writ jurisdiction. Suffice it to say, the

Petitioners will have ample opportunity to substantiate their case before the inquiry officer. Hence, the petition filed by the erstwhile directors (w.p. no. 2660 of 2018) has no merit and is liable to be dismissed.

12 Now coming to the challenge raised in writ petition no. 7150 of 2017, the learned counsel for the Respondent No. 2 concedes that the amount of Rs. 1.18/- was distributed as ex-gratia in the year 2001 and that no inquiry can be conducted in respect of charge no. 2, which relates to the acts committed 5 years prior to the re-audit.

13 As regards the charge no. 3, it is seen that general body of Respondent No. 4 society had taken a resolution to distribute funds towards dividend to the shareholders. In terms of the said resolution, the erstwhile directors have distributed dividend to the shareholders including the petitioners in the present petition (i.e. writ petition no. 7150 of 2017). The learned Minister has held that the erstwhile directors had acted in accordance with the general body resolution and that the distribution was pursuant to the directions issued by the Divisional Joint Registrar and hence, no inquiry can be ordered against them in respect of charge no. 3.

14 Charge No. 4 was for paying the share amount to the members as per face value when the society was in loss and value of share had diminished. The society had received letter dated 26.11.2002 from the District Deputy Registrar, with direction to consider the value of share at Rs.69.28/-. The Credit Society challenged the letter before the Divisional Joint Registrar and the same was quashed by order dated 15.03.2003. During the interregnum period, the Society had made payment to five shareholders, as per the letter of the District Deputy Registrar. The learned Minister has considered these aspects and has held that the said charges are outside the purview of section 88 of the Act.

15 The order passed by the learned Minister is neither illegal nor perverse. Hence, the challenge to the part of the order, as raised in writ petition no. 7150 of 2017 is also not maintainable.

16 In the circumstances and in view of the above discussion, both the petitions stand dismissed.

(SMT. ANUJA PRABHUDESSAI, J.)

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