

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.5215 OF 2012

1. Ashok Kisanrao Hande
Age 54 years, residing at 3,
United House Manmala Tank Road,
Near Star City Cinema,
Mahim - 4500 016.
 2. The Fruit & Vegetable Merchant's
Association, Having office at A.P.M.C. Market,
Central Facility Building, 5th Floor,
Turbhe, Navi Mumbai – 400 705
Through Secretary Sanjayu S. Pimpale
- Petitioners

versus

1. The State of Maharashtra
Department of Co-operation, Marketing
and Textile, Mantralaya, Mumbai 400 032
through the Principal Secretary
2. The Under Secretary,
The Government of Maharashtra
Through Department of Co-operation
Marketing and Textile, Mantralaya,
Mumbai – 400 032.
3. The Commissioner for Co-operation and
Registrar for Co-operative Societies,
Pune.
4. The Liquidator
Maratha Market Peoples Co-operative
Bank Ltd., (In Liquidation)
Room Nos.13 and 14, 1st Floor,
'A' Block, Sitaram Building,
Dr.D.N. Road, Mumbai – 400 001.

5. M/s. Sunrise Lifestyle & Homes Pvt. Ltd.
Having address at C-13B,
Shalimar Estate, Old Dr.D.N. Road,
Bombay - 400 001. ... Respondents

**WITH
WRIT PETITION NO.6107 OF 2012**

Mumbai District Central Co-operative Bank Ltd.
Having its office at Mumbai Bank Bhavan,
207 Dr.D.N. Road, Fort,
Mumbai – 400 001 Petitioners

versus

1. The State of Maharashtra
2. The Under Secretary
The Government of Maharashtra
through Department of Co-operation,
Marketing and Textile, Mantralaya,
Mumbai – 400 032.
3. The Additional Secretary and
Special Executive Officer
Co-operation, Marketing and Textile,
Mantralaya, Mumbai – 400 032.
4. The Commissioner/ The Additional
Commissioner for Co-operation and
Registrar for Co-operative Societies,
Maharashtra State, Central Building,
Pune.
5. The Liquidator
Maratha Market Peoples Co-operative
Bank Ltd., (In Liquidation)
Room Nos.13 and 14, 1st Floor,

'A' Block, Sitaram Building,
Dr.D.N. Road, Mumbai – 400 001.

6. M/s. Sunrise Lifestyle & Homes Pvt. Ltd.
Having address at C-13B,
Shalimar Estate, Old Dr.D.N. Road,
Bombay - 400 001. ... Respondents

**WITH
WRIT PETITION NO.3015 OF 2012**

M/s. Sunrise Lifestyle & Homes Pvt. Ltd.
A company incorporated under the Indian
Companies Act, 1956, having their
address at C-13B, Shalimar Estate,
Old Dr.D.N. Road,
Mumbai - 400 001. ... Petitioner

Versus

1. The Liquidator
Maratha Market Peoples Co-operative
Bank Ltd., (In Liquidation)
Room Nos.13, 14 and 16 on the 1st Floor,
and Room Nos.33, 34 & 35 on the 2nd Floor,
'A' Block, Sitaram Building,
Dr.D.N. Road, Mumbai – 400 001.
2. Additional Commissioner and
Special Registrar of Co-operative Societies
(Finance), State of Maharashtra,
Central Building, Station Road,
Pune – 411 001.
3. State of Maharashtra
Department of Co-operative Societies,
Mantralaya, Mumbai. Respondents

.....

- Mr.V.P. Sawant i/b. Mr.Nikhil Chavan for Petitioners in WP No.5215/12.
- Mr.Chirag Mody & Ms.Raveena Yadav with Ms.Aditi Yadav i/b. Ashok Purohit & Co. for Petitioners in WP No.3015/12, for Respondent No.5 in WP No.5215/12 and for Respondent No.6 in WP No.6107/12.
- Mr.Prabhakar Jadhav for Respondent No.4 in WP No.5215/12 and for Respondent No.1 in WP No.3015/12.
- Mr.S.A. Pawar, Advocate for Petitioners in WP No.6107/12.
- Ms.S.S. Bhende, AGP for State.

CORAM : **INDRAJIT MAHANTY & SARANG V. KOTWAL, JJ.**
RESERVED ON : **08th MARCH, 2019.**
PRONOUNCED ON : **25th MARCH, 2019.**

JUDGMENT : (PER : SARANG V. KOTWAL, J.)

1. Considering the nature of main reliefs sought in all these three Petitions, they are disposed of by this common order.
2. All these Petitions basically pertain to the issue of continuation of liquidation process under the provisions of Maharashtra Co-operative Societies Act, 1960 (for short 'the said Act') beyond the period prescribed under the said Act.
3. Facts of Writ Petition No.5215/12 :-

The issue pertains to liquidation of Maratha Market Peoples Co-operative Bank Ltd. (hereafter referred to as 'the said

bank'). As mentioned in the memo of Writ Petition No.5215/12, the Petitioner No.1 is member of the said bank and is also a member on the liquidation committee being representative of the depositors of the bank. The Petitioner No.2 is a registered association of the Fruit & Vegetable Merchant's Association and it is further mentioned that almost all the members of the Petitioner No.2 are members of the said bank. The said bank is duly registered under the provisions of the said Act. The Respondent No.1 is the State of Maharashtra, Respondent No.2 is the under Secretary, Department of Co-operation, Marketing and Textile, Mantralaya and Respondent No.3 is the Commissioner for Co-operation and Registrar for Co-operative Societies, Pune, Respondent No.4 is the liquidator of the said bank. It is mentioned in the memo of Writ Petition No.5215/12 that the Respondent No.5 M/s. Sunrise Lifestyle & Homes Pvt. Ltd. (hereafter referred to as 'M/s. Sunrise') are allegedly owners of the premises, which is occupied by the said bank. The liquidator came to be appointed for the said bank vide order dated 14/08/2000 passed by the Additional Commissioner and

Special Registrar, Cooperative Societies (Finance), Pune. The interim order dated 14/08/2000 was confirmed by the said authority vide its order dated 08/02/2001. Section 109 of the said Act prescribes the period of six years for completion of the winding up proceeding. The said period can be extended for one year maximum at a time and four years in the aggregate if the liquidation proceeding cannot be completed within the prescribed period of six years. In this case, the extensions for a period of one year each was granted vide orders dated 02/12/2007, 17/03/2008 and 10/12/2009.

4. The last extended period was about to expire on 10/12/2010 and therefore on 06/09/2010, the Liquidator Committee passed a resolution to submit a proposal for getting extension for a period of two years. The liquidator submitted the said proposal on 07/12/2010. It was pointed out that the major work of liquidation was in progress including the recovery proceedings and therefore the extension was sought. Vide order dated 05/02/2011, the Commissioner for Co-operation and

Registrar for Co-operative Societies, Pune, directed the Respondent No.4 to submit a detailed report explaining the progress of liquidation proceedings during the period of 10 years and the actions proposed by the liquidator for the expected period of extension. The liquidator furnished the relevant information vide his reply dated 09/01/2012. Ultimately, the extension was not granted and the proposal for extension was rejected by the Government vide communication dated 07/04/2012. The under Secretary, Department of Co-operation, Marketing and Textile, Mantralaya informed the Commissioner for Co-operation and Registrar for Co-operative Societies, Pune, that the extension as prayed for was rejected. The Petitioners have challenged this letter dated 07/04/2012 bearing No.URB-1811/Matter No.1847/7-C. In response to the Petition, an affidavit-in-reply was filed on behalf of the Respondent No.3. Affidavits in reply were filed on behalf of Respondent Nos.1, 3 and 4. They have stuck to their respective stands which preceded filing of the Petition.

5. Facts in Writ Petition No.6107/12 -:

The Petitioner in this Petition is a Central Bank as contemplated u/s 2(6) of the said Act. The Petitioner is the Mumbai District Central Cooperative Bank Ltd. The Petitioner had advanced loan to the said bank (in liquidation as mentioned earlier). The Respondent No.1 is the State of Maharashtra, Respondent No.2 is Under Secretary, The Government of Maharashtra, Department of Cooperation, Marketing and Textile, Mantralaya, Respondent No.3 is the Additional Secretary and Special Executive Officer Cooperation, Marketing and Textile Department, Mantralaya, Respondent No.4 is the Commissioner for Cooperation and Registrar Cooperative Societies, Respondent No.5 is the liquidator of the said Bank, Respondent No.6 is M/s Sunrise (referred to earlier).

6. It is mentioned in the Petition, that the Petitioner had filed dispute bearing No.CCI-751/92 for recovery of amount of Rs.4,18,06,761.91 as on 31/03/1992 with future interest 18% per annum w.e.f. 01/04/1992. According to Petitioner, it was a

summary suit and leave was granted to contest the matter with condition to deposit Rs.1 Crore with the Petitioner. However, the said bank failed to make such payment and filed Revision Application No.21 of 1996, which was dismissed on 15/03/2002. According to the Petitioner, the Managing Committee of the said bank had mismanaged the affairs of the bank over a long period, which had resulted into the present loss suffered by the depositors.

7. It is mentioned in the Petition that the extension was granted for liquidation proceeding on 10/12/2009 for a period of one year. The Petitioner has made reference to the proceedings in the Small Causes Court, in respect of premises of which M/s. Sunrise was landlord. The premises of the said bank was in the possession of the liquidator. It is prayed in this Petition that the letters dated 07/04/2012 and 19/04/2012 denying further extension be set aside. The letter dated 19/04/2012 is the letter issued by the Government of Maharashtra to the Commissioner for Cooperation and Registrar

Cooperative Societies for approaching the Assistant Government Pleader, High Court to file appropriate affidavit in WP No.315/12 pointing out the rejection of extension for liquidation. In the present proceedings we are only considering the question of extension of liquidation proceedings and we are not deciding any question related to the premises which are in possession of the liquidator.

8. Facts in WP No.3015/12 -:

This Petition is filed by M/s. Sunrise Lifestyle & Homes Pvt. Ltd. against the liquidator of the said bank, Additional Commissioner and Special Registrar of Co-operative Societies (Finance) and the State of Maharashtra. In the Petition, the Petitioner has mentioned that they are landlords and owners of the building known as Sitaram Building, Dr.D.N. Road, Mumbai. According to the Petitioner, the said bank was a tenant in 'A' block of the building in respect of six rooms. The Petitioner wanted these rooms to be vacated and had entered into correspondence by issuing notices in that behalf. The Petition

mentions various proceedings initiated in the Small Causes Court, at Mumbai. It is not necessary to refer to these proceedings in detail because we are only considering the question of continuation of the liquidation in respect of said bank. The prayer (a) in the said Petition reads thus;

(a) That this Hon'ble Court be pleased to issue by way of a Writ of Certiorari or any other Writ and/or orders/directions, calling for the papers and proceedings relating to the application dated February 05, 2011 (made by Respondent No.1 to Respondent No.2 who in turn submitted it to Respondent No.3 for consideration) and after going through the same, this Hon'ble Court be pleased to pass an order quashing and setting aside the application dated February 05, 2011 and order(s), if any, passed therein;

9. The said application referred to in the prayer dated 05/02/2011 for was for extension of the period of liquidation. However, after filing of this Petition in March 2012, the Government of Maharashtra had refused the extension to the liquidator and therefore this particular prayer does not survive.

By prayer clause (b), the Petitioner was seeking directions for declaration that liquidation of the said bank was completed and should be closed. The Petitioner in the said prayer had sought vacant and peaceful possession of the said rooms. In our opinion, such relief of handing over vacant and peaceful possession of the suit rooms cannot be granted in this proceeding and Petitioner is at liberty to pursue such other remedies as are available to him in accordance with law.

10. We have heard learned Counsel Mr.V.P. Sawant for Petitioners in WP No.5215/12, Mr.Chirag Mody for Petitioners in WP No.3015/12. Mr.Mody appears for Respondent No.5 in WP No.5215/12 and for Respondent No.6 in WP No.6107/12. Mr.Prabhakar Jadhav appeared for Respondent No.4 in WP No.5215/12 and for Respondent No.1 in WP No.3015/12. We have also heard Mr.S.A.Pawar for Petitioner in WP No.6107/12. Mrs.Bhende, appeared for the State.

11. Mr.V.P. Sawant submitted that the major steps in recovering the dues of the said bank and distributing them

amongst its members are yet to be taken. Closing of the liquidation proceeding at this stage would cause serious prejudice and financial loss to the creditors of the said bank. He submitted that in the facts of the present case it was imperative that the liquidator was allowed to complete the proceedings as he has been working since past many years. Mr.Pawar for Petitioner in WP No.6107/12 and Mr.Jadhav representing the liquidator supported this submission and sought extension. Mr. Sawant further submitted that even after lapsing of the said period, prescribed under the said Act, the liquidator had continued discharging his function under the interim orders of this Court passed from time to time. Mr.Sawant submitted that the State Government has powers u/s 157 of the said Act to exempt the said bank from the provisions of the said Act and after such exemption, the period for liquidation can be extended.

12. Learned AGP Ms.Bhende submitted that there was no provision under the said Act for such extension and any such extension would be against the provisions of the said Act.

13. Mr.Chirag Modi, learned Counsel for the Petitioner in Petition No.3015/12 submitted that the liquidation proceedings could not continue beyond the prescribed period. He submitted that because of Pendency of this Process, the Petitioner being landlord of the aforementioned premises, was suffering.

14. The interim order referred to by Mr.Sawant was passed by this Court on 18/10/2012 in WP No.5215/12. The order reads thus;

“1. Hearing of these matters is deferred till 20.11.2012. To be taken at 3.00 p.m., as the Counsel appearing for the respective liquidator have agreed to prepare synopsis which may contain details about action taken so far, and about the problems encountered by them respectively with workable solutions to be offered by them, which can be considered by the court on the next date.

2. We make it clear that pendency of this petition does not mean that the liquidator is refrained from taking further action in the matter. Instead, the liquidator should make all possible attempts to recover outstanding dues, respectively by the concerned bank.”

Thus, as on today, the liquidator is functioning pursuant to this order.

15. The relevant provision in this connection is section 109 of the said Act, which reads thus;

109. Termination of liquidation proceedings

(1) The winding up proceedings of a society shall be closed as soon as practicable within six years from the date the Liquidator takes over the custody or control of all the property, effects and actionable claims to which the society is or appears to be entitled, and of all books, records and other documents pertaining to the business of the society, under sub-section (2) of section 103, unless the period is extended by the Registrar:

Provided that the Registrar shall not grant any extension for a period exceeding one year at a time and four years in the aggregate, and shall, immediately after expiry of ten years from the date aforesaid, deem that the liquidation proceedings have been terminated, and pass an order terminating the liquidation proceedings.

[Provided further that, if, due to termination of liquidation proceedings at the end of ten years, the Registrar comes to a conclusion that, the work of liquidation under section 105 could not be completed by the liquidator due to the reasons beyond his control, he shall call upon the liquidator to submit the report. After getting the report, if the Registrar is satisfied that the realisation of assets, properties, sale of properties still remained to be realised, he shall direct the liquidator to complete the entire work and carry out the activities only for the purposes of winding up and submit his report within such period not exceeding one year reckoned from the date of receipt of report from the liquidator.]

[Explanation.-In the case of a society which is under liquidation at the commencement of the Maharashtra Co-operative Societies (Second Amendment) Act, 1985 the period of six years shall be deemed to have commenced from the date on which the Liquidator took over the custody or control as aforesaid].

Sub-section 2.....

Sub-section 3.....

16. Section 157 of the said Act reads thus;

157. Power to exempt societies from provisions of Act -

The State Government may, by general or special order, exempt any society or class of societies from any of the provisions of this Act, or of the rules made thereunder, or may direct that such provisions shall apply to such society or class of societies with such modifications not affecting the substance thereof as may be specified in the order:

Provided that, no order to the prejudice of any society shall be passed, without an opportunity being given to such society to represent its case.

provided further that, the State Government shall not exempt any society or class of societies from the provisions made under sections 26, 73A, 73AAA, 73B, 73C, 73CA, 73CB, 73E, 75, 76, 78, 78A and 81.

17. As can be seen, the said section provides that, including extensions, the winding up proceedings cannot be extended beyond the period of 10 years, from the date on which, the liquidator took over custody of the said bank. The period provided under the said section is mandatory and cannot be extended in any circumstances. This view is expressed by a

Division Bench of this Court at Nagpur in the judgment dated 15/12/2009 in WP No.1625/06 in the case of Dr.Raju @ Ramchandra Narendra Deoghare Vs. Government of India and others.

Paragraph No.46 of the said judgment reads thus;

“In our considered opinion, the ratio laid down in the above referred judgment of the Madhya Pradesh High Court, which was delivered after considering the Apex Court judgment is squarely applicable in the present case. The language of Section 157 of the Act is clear and unambiguous. Section 157 of the Act does not give power to the State Government to validate continuation of Liquidator after his period is over in terms of Section 109 of the Act.....”

18. The Division Bench has given detailed reasons for making such observations and we respectfully agree with these observations. In our view therefore, the extension cannot be given beyond the period prescribed u/s 109 of the said Act and section 157 of the said Act cannot be brought in aid to seek such extension beyond the prescribed period.

19. After filing of this Petition in the year 2014 sub-Rule 17 was introduced in Rule 89 of the Maharashtra Co-operative Societies Rules, 1961. Sub-Rule 17 of the Rule 89 reads thus;

(17) At the conclusion of the liquidation proceedings, unrealized assets and unrealized actionable claims, if any shall vest in the Registrar, who may appoint a custodian or receiver, to realize such remaining assets and actionable claims as above and credit the same to the surplus. A custodian or receiver may sue or defend any disputes arising out of such proceedings thereunder:

Provided that, unrealized actionable claims shall be realized by the Registrar or custodian as the case may be and expenditure incurred for realization if any may be met out of the surplus kept at his disposal.

20. This sub-rule is now applicable to the pending proceedings of winding up in respect of the said bank. In our view, this sub-Rule takes care of the future course of action and also takes care of the apprehension expressed by Mr.Sawant that the creditors and depositors of the said bank would face financial hardship.

21. We are conscious of the fact that as of today, the liquidator is functioning by virtue of the interim order passed by this Court on 18/10/2012 as referred to hereinabove. However, this interim arrangement cannot continue henceforth. The law must take its own course in accordance with the provisions of the said Act and in particular Rule 89 (17) as mentioned hereinabove. We clarify that the said interim order is operating till the date of this order. However, the further action will have to be taken by the authorities strictly in accordance with the Sub-Rule 17 of Rule 89. Hence following order;

ORDER

1. The order of the Government of Maharashtra communicated through letter dated 07/04/2012 bearing No.URB-1811/Matter No.1847/7-C, addressed to the Commissioner for Co-operation and Registrar for Co-operative Societies, Pune, is upheld.
2. The interim order dated 18/10/2012 passed by this Court stands vacated with effect from date of this order.

3. Commissioner for Co-operation and Registrar for Co-operative Societies, Pune, shall take immediate steps for implementation of the Rule 89 of the Maharashtra Co-operative Societies Rules 1961.
5. Parties are at liberty to pursue other remedies as are available to them in law.
6. With the aforesaid directions, the Petitions are disposed of.

(SARANG V. KOTWAL, J.)

(INDRAJIT MAHANTY, J.)