

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10768 OF 2015

1. Mrs. Arundhati M. Kori)
Adults, Indian Inhabitants)
R/at- 145, Shivgiri Building,)
Malviya Road, Utkarsh Mandal Hall,)
Vile Parle (East), Mumbai-400 057.)
)
2. Mr. Somshekhar M. Kori)
)
3. Mr. Shashidhar M. Kori)
)
- Nos. 2 & 3 for self and as Partners of:-)
a. Jyoti Constructions Co.)
Flat Nos. G1 & 2, Ganga Vihar CHS Ltd.,)
Opp. Sathe College, Dixit Road,)
Vile Parle (East), Mumbai- 400 057.)
)
- b. Jyoti Road Builders)
42, Sunil Shopping Centre,)
J.P.Road, Andheri (East),)
Mumbai- 400 058.)
)
- c. Cosmos Quarries)
42, Sunil Shopping Centre,)
J.P. Road, Andheri (East),)
Mumbai- 400 0058.) **..... Petitioners**

VERSUS

1. State of Maharashtra (Co-op. Dept))
)
2. The Authorized Inquiry Officer u/s. 88)
of MCS Act, & Deputy Registrar)
(Co-Op. Dept.), K-P Division)
Address:- The Veerasaiva Bank Ltd.)
Basaveshwar Bhavan, D.K. Sandhu Marg,)

- Chembur, Mumbai- 400 071.)
)
 3. The Liquidator,)
 The Veerasaiva Co-op. Bank Ltd.)
 (Umdar liquidation),)
 Basaveshwar Bhavan D.K. Sandu Marg,)
 Chembur Mumbai- 400 071.)
 4. The Special Recovery & Sales Officer)
 The Veerashaiva Co-op. Bank Ltd.,)
 Chembur, Mumbai- 400 071.) **...Respondents**

Mr. Vikram Chavan a/w. Mr. Jatin Sahai I/b. C.K. Legal for the
 Petitioners.

Mr. A.B. Kadam, AGP for the State-Respondent No. 1.

Mr. D.S. Hatle, a/w. Ms. Shweta Kumbhar for the Respondent No. 3.

CORAM : S. S. SHINDE J.
DATED : 30th APRIL, 2019

JUDGMENT :-

1. This writ petition takes an exception to the impugned order dated 30th October 2015 passed by the learned Inquiry Officer (Respondent No. 2) thereby partly rejecting the petitioners objection dated 10.12.2012 alongwith supplementary submissions preferred under Rule 79 of the Maharashtra Co-operative Society Rules, 1961 (hereinafter referred to as 'MCS Rules') and also interim orders of attachment of properties dated 17.09.2012, 05.03.2013 & 12.11.2014 confirmed on 05.03.2013, 21.08.2013 & 19.12.2014 respectively.

2. The brief facts disclosed by petitioners in memo of writ petition are as under:-

3. It is the case of the Petitioners that an Inquiry officer has grossly erred in law while passing the impugned order by misinterpreting and misconstruing the provisions of the Rule 79 of the MCS Rules and the procedure laid down there under pertaining to the Investigation of claims and objections against any attachment of properties. It is stated that the learned Inquiry officer has grossly erred in law while passing the impugned order by misconstruing the provisions of the Section 95 of the said Act, and the procedure laid down there under pertaining to the attachment of properties. The Petitioner has further stated that, an Inquiry officer committed error of law while passing the impugned order at the cost of his failure to properly construe or interpret the expression 'attachment before judgment' in consonance with procedure contemplated and laid down by law for such attachment under Order 38 read with Order 21 of the Code of Civil Procedure, 1908. That, the learned Inquiry officer has erroneously enlarged the scope of powers of attachment conferred by and contemplated under section 95 of the said Act read with Order 38 and Order 21 of the C.P.C. which is beyond the intention of the legislature. It is further stated that the impugned orders passed by the learned Inquiry officer are bad in law and are contrary to the factual and legal submissions advanced by the Petitioners. It is also stated that an impugned orders suffer from blatant infirmity of law in as much as the learned

Inquiry officer has not dealt with or disposed off the claims and objections so raised by the petitioners on merits as contemplated under Rule 79 of the MCS Rules, 1961. The impugned orders suffers from lacuna of non application of law and mind rendering it as invalid and contrary to the provisions of law and facts of the present case. That the impugned orders suffers from error apparent on the face of record and are also perverse.

4. Learned counsel appearing for the petitioners made following submissions:-

5. It is submitted that, the petitioners are neither disputing nor challenging the liability of the delinquent namely Mr. Manohar. M. Kori in the inquiry proceedings being conducted under section 88 of the MCS Act, 1960. The petitioners are also not disputing that the aforesaid delinquent namely Manohar Kori being one out of the four partners in their firms, is a partner to the extent of 1/4th share in their firms. However, the properties (immovable properties & bank accounts) attached in the present inquiry proceedings under section 95 of the MCS Act against the liability of the said delinquent namely Manohar Kori, does not solely belong to him in his individual capacity, but the same admittedly are exclusively owned properties of the said partnership firms. As per the law laid down under Order 21 Rule 49 of the Code of Civil Procedure and the properties

of a partnership firm can be proceeded against only if there is a decree against the firm.

6. It is further submitted that, it is well settled that a partner cannot deal with any portion of the partnership property as his own without the consent of the other partners and he is not in the position of a co-owner. Until the firm is dissolved, the rights of the partner is also limited and that of his assignee is even more restricted. As such during the subsistence of the partnership, however, no partner can deal with any portion of the property as his own. Nor can he assign his interest in a specific item of the partnership property to anyone. His right is to obtain such profits if any, as fall to his share from time to time and upon the dissolution of the firm to a share in the assets of the firm which remain after satisfying the liabilities set out. It is thus very clear that unless a decree is obtained against the partnership the assets of the partnership firm cannot be made liable for the debt of a partner. The only way to proceed against the debt incurred by a partner under Order 21 Rule 49; then again what is intended by the said provision is only creation of a charge over the interest of the partner and the profits due to him from the firm. It does not contemplate attachment of the property of the partnership on the allegation that the partner has got a share in the property.

7. It is further submitted that, in the aforesaid premise the plain reading of Order 21 Rule 49 and the law laid down by the Hon'ble Supreme Court there remains no doubt that the property of the partnership cannot be attached or sold in execution of a decree other than a decree passed against the firm. The only exception which is carved out is that the court may on an application by the holder of a decree, though there is no decree against the firm, create a charge on the interest of such partner in the partnership property and profits and he is entitled to receive from the firm. Obviously even such creation of charge can be done only if a decree is passed, which means after the final judgment is pronounced and certainly not by attachment or creation of charge before judgment.

8. It is submitted that, apart from the fact that there is no decree against the partnership, what is sought for is attachment of the properties of the firm which is not permissible under law. It is aptly made clear that unless a decree is obtained against the partnership firm, the assets of the partnership firm cannot be made liable for the debt of a partner. The law does not contemplate attachment of the property of the partnership firm on the allegation that the partner has got a share in the property. It Nevertheless without prejudice to the aforementioned contentions and without prejudice to the right of the petitioners to challenge the prospective order in appeal or other appropriate proceedings

contemplated under law, the petitioners firms at the current juncture are willing to give a collateral security as per the interim order of attachment dated 17.09.2012 for the sake of getting their respective properties and bank accounts released from attachment in accordance with Order 38 Rule 9 of the Code of Civil Procedure, 1908. Therefore, learned counsel appearing for petitioners submits that, petition deserves to be allowed.

9. On the other hand, learned counsel appearing for the Respondent No. 3 and 4 submits that, there is an efficacious and alternate remedy of appeal available to the petitioners and bypassing the said remedy the petitioners have filed this petition. It is submitted that, already inquiry under section 88 of the MCS Act has been completed. Pursuant to the order passed by the High Court on 13th August 2015 in writ petition No. 8344/2015, the inquiry officer did consider the objections of the petitioners and after following principles of natural justice, to some extent the prayer of the petitioners has been accepted. It is submitted that, Mr. Manohar Kori who is delinquent and was Chairman for 20 years of the Respondent No. 3 bank is husband of Petitioner No. 1 and Petitioner no. 2 and 3 are his sons. It is submitted that, the inquiry officer prima facie found that the huge amount has been misappropriated and siphoned by the said Manohar Kori who is delinquent and facing inquiry and from the same source of money the amount has been diverted to the partnership firms of the petitioners. It is

submitted that, the partnership firm is created so as to divert the huge amount misappropriated by said Manohar Kori who was Chairman for 20 years of the Respondent No. 3 bank. It is submitted that, the interest of thousand of investors is involved in the said money which has been misappropriated by said Manohar Kori and therefore, the contention of the petitioners that the money which is in the account of partnership firms or in their name is their own money, cannot be accepted and therefore, the inquiry officer by invoking provisions of Section 95 of the MCS Act has rightly seized the properties and accounts of the said Manohar Kori and also the petitioners. Learned counsel invites attention of this Court to the reasons assigned by the inquiry officer and also by the Appellate Co-operative Court in appeal filed by the said Manohar Kori challenging the interim orders of attachment, which is also subject matter of this petition. It is submitted that, the reasons assigned by the Appellate Co-operative Court while rejecting the appeal filed by the said Manohar Kori are self speaking. It is submitted that, the said appeal filed by Mr. Manohar Kori before Appellate Co-operative Court has been rejected by assigning cogent and sufficient reasons and therefore, the present petition which is also filed against the interim orders of attachment is abuse of process of the Court. Learned counsel invites attention of this Court to the reasons assigned by the Appellate Co-operative Court in its judgment and order dated 11th October 2013 in Appeal No. 103/2012 filed by Mr. Manohar Kori and other delinquents who are facing inquiry under section 88 of the MCS Act for alleged

misappropriation of amount of Respondent No. 3 bank. Therefore, learned counsel appearing for Respondent No. 3 and 4 submits that, petition may be rejected.

10. Learned AGP appearing for Respondents No. 1 and 2 invites attention of this Court to the affidavit in reply filed on behalf of Respondents No. 1 and 2 and submits that, it is a matter of record that, the properties of delinquent No. 1 i.e. Mr. Manohar Kori were attached under section 95 of the MCS Act by Respondent No. 2 (Authorized officer) as per the affidavit filed by Respondent No. 3 Bank, after considering the evidence on record as also the information provided by EOW with reference to the properties of delinquent No. 1 i.e. Mr. Manohar Kori on going inquiry proceedings under section 88 of the MCS Act with reference to the final embezzlement in loan transactions of the said bank. Learned AGP invites attention of this Court to the list of movable and immovable properties of all delinquents including Mr. Manohar Kori. Learned AGP also invites attention of this Court to the list of bank accounts and amounts in the name of Mr. Manohar Kori, his family members and submits that, Mr. Manohar Kori was Chairman of the said Bank for 20 years. He has misappropriated huge amount and the said amount is diverted to purchase of number of properties and also in the account of partnership firms wherein all the members of said firm are his family members including the present petitioners

who are wife and sons of the said Mr. Manohar Kori. It is submitted that, petitioners earlier filed writ petition No. 9744/2013 against the attachment orders passed by Authorized Officer, however, the said writ petition was dismissed by this Court (Coram: Ranjit More, J.) on 11th March 2014. Therefore, the present petition may not be entertained since the earlier writ petition filed by the petitioner was rejected by this Court. It is submitted that, the delinquent No. 1 i.e. Mr. Manohar Kori is the main/principal working partner in the firms of which petitioners and Mr. Manohar Kori are the partners. The firm i.e. M/s. Jyoti Constructions, M/s. Jyoti Road Builders & Cosmos Quarries in all said firms Mr. Manohar Kori is the main partner. The said Mr. Manohar Kori has already challenged the aforesaid interim orders of attachment dated 17.09.2012 and 15.03.2013 by way of filing Appeal No. 103/2012 under section 97 of MCS Act and said appeal was dismissed by the Appellate Co-operative Court by passing reasoned order on 11th October 2013. It is well settled principle of law and provisions of partnership Act that, all partners have members/agent relationship with each other and a act done by one partner is applicable and binding to all other partners. In furtherance of the same, applying the said ratio, act of Mr. Manohar Kori, the main partner in all petitioner firms challenging the interim orders of attachment dated 17.09.2012 and 15.03.2013 by filing appeal No. 103/2012 under section 97 of MCS Act and dismissal of said appeal are very much binding on all other partners including the petitioners and therefore, the

petitioners have challenged the said orders by way of filing present petition when the appeal filed by Mr. Manohar Kori challenging the very same attachment orders is dismissed by the Appellate Co-operative Court. It is submitted that, all the movable and immovable properties attached by the inquiry officer by passing interim orders, which are under challenged in this petition embezzlement relates to the final loan transaction of the said bank wherein Mr. Manohar Kori is the delinquent No. 1 who was Chairman of the said bank for the considerable period of about 20 years and is involved in illegal acts which is subject matter in the said inquiry proceedings under section 88 of the MCS Act. It is also a matter of record that, the said Mr. Manohar Kori a partner of all petitioner firms has initiated all the possible proceedings including filing of revision under section 154 of the Maharashtra Co-operative Societies Act, challenging the show cause notice and also appeal filed under section 97 of the said Act challenging the ad-interim orders of attachment issued by Respondent No. 2 with an oblique motive to delay the inquiry proceedings under section 88 of the MCS Act. The attempt by the petitioners to file the present petition is also collusive tactics with the said Manohar Kori so as to delay the aforesaid inquiry. The said Mr. Manohar Kori has failed in all his attempts to prolong the proceedings initiated under section 88 of the MCS Act. Now through the petitioners who are his family members by filing the present petition Mr. Manohar Kori is trying to prolong the said proceedings.

11. It is submitted that, it is a matter of record that after considering the entire evidence on record and also replies filed by the concerned persons including the petitioners, the inquiry officer released the properties from attachment, which were not held by the respective delinquents by passing separate order on 05.03.2013. It is submitted that, the petitioners have not approached this Court with clean hands in as much as the petitioners have not disclosed filing of appeal by the said Manohar Kori challenging the very same orders of attachment of properties and accounts by way of appeal. It is submitted that, pursuant to the order passed by this Court (Coram: R.M. Sawant, J), the inquiry officer has released the properties which were not held by the delinquents or where there is no partnership or share of the delinquent Mr. Manohar Kori. Since the said Mr. Manohar Kori is partner of said firms and also he is Karta of the family of the petitioners, the properties of the said firms and also accounts of the petitioners have been rightly attached by the inquiry officer. It is submitted that, the petitioners herein are none other than the wife and sons of the Mr. Manohar Kori. There is likelihood that the delinquents might dispose of their properties before completion of the inquiry under section 88 of the MCS Act, the inquiry officer invoked the provisions of Section 95 of the MCS Act and attached the said properties. It is submitted that, the thousand of depositors have invested/deposited amount in Respondent No. 3 bank and in case the properties attached under the attachment order are released, in that case thousands of such

account holders would ultimate sufferers and therefore, learned AGP submits that, the petition may be rejected.

12. Heard learned counsel appearing for the parties at length. With the able assistance of learned counsel appearing for the parties perused pleadings in the petition, grounds taken therein, annexures thereto and reply filed by the Respondent State, Respondent No. 1 and 2 and also rejoinder filed by the petitioner and the reasons assigned by the Appellate Co-operative Court while dismissing the appeal filed by Mr. Manohar Kori. Admittedly, the petitioners are family members of said Mr. Manohar Kori. It is not in dispute that, being aggrieved by the impugned attachment orders dated 17.09.2012, 05.03.2013 & 12.11.2014 the said Manohar Kori filed Appeal before the Appellate Co-operative Court and the Appellate Co-operative Court by reasoned order rejected the said appeal. Therefore, there is a considerable substance in the arguments advanced by the counsel appearing for the respondents that, filing of this petition is an attempt to prolong the inquiry under section 88 of the MCS Act wherein Mr. Manohar Kori is delinquent who is facing allegation of misappropriation of huge amount of the bank. The said Mr. Manohar Kori was holding the post of Chairman of the said bank for about 20 years. It is also not in dispute that, the said Mr. Manohar Kori is partner in the partnership firm, which is essentially having partners of family of said Manohar Kori. The judgment relied upon by the

petitioner during the course of hearing are in different fact situation, in as much as in the said partnership firms, the partners therein were not family members of the delinquent therein who were facing inquiry. In the present case, the partners of partnership firms are family members of Mr. Manohar Kori who is main partner in all the said partnership firm. It is also admitted position that the present petitioners filed writ petition No. 9744/2013 which was dismissed by this Court (Coram: Ranjit More, J) observing that, the petitioners had alternate and efficacious remedy of filing appeal under section 97 of the MCS Act. Knowing fully well that the appeal is maintainable, the petitioner again approached this Court by way of filing writ petition No. 8344/2015, which was disposed of by this Court (Coram: R.M. Sawant J.) thereby giving directions to the inquiry officer to consider the contentions of the petitioner, and then pass the appropriate orders after following principles of natural justice. Pursuant to the said order the inquiry officer has followed the principles of natural justice and after giving opportunity to all concern has released some of the attached properties wherein Mr. Manohar Kori was not a partner or he was not related with the said properties. However, so far as the properties and account of partnership firms are concerned, the said Manohar Kori who is main delinquent and facing inquiry under section 88 of the MCS Act is main partner and present petitioners are wife and sons of the said Manohar Kori and therefore, the inquiry officer has rightly invoked Section 95 of the MCS Act and attached the properties. During the course of arguments,

learned counsel appearing for the respondents have submitted that, now the inquiry under section 88 of the MCS Act is completed. There was efficacious and alternate remedy to the petitioners to approach the Appellate Court. The petitioners did not disclose the fact that the said Manohar Kori did file the Appeal No. 103/2012 before Appellate Co-operative Court and said Court has dismissed the appeal filed by the said Mr. Manohar Kori, wherein there was challenged to the attachment orders which is also subject matter of the present petition. It is also not in dispute that, the bank has sustained the loss in terms of crores of rupees, and interest of lacs of depositors is involved since the amount deposited by them has been allegedly misappropriated by the delinquent including Mr. Manohar Kori who was Chairman of said bank for about 20 years.

13. During the course of hearing the advocate for the petitioners invited attention of this Court to Para 25 of their affidavit in rejoinder and submitted that the petitioner firms at the current juncture are willing to give a co-lateral security as per the interim order dated 07th September 2012 for the sake of getting their respective properties and bank accounts released from the attachment in accordance with Order 38 Rule 9 of the Code of Civil Procedure, 1908. However, it needs to be noted that, when the inquiry officer asked the petitioners at the earliest opportunity to give co-lateral security within stipulated period, neither the petitioner nor the said Manohar Kori gave co-lateral security, and as a result

properties came to be attached. Therefore, it is not open for the petitioners to state that, now they are ready and willing to give co-lateral security. In fact, immediately after passing the interim order of attachment on 7th September 2012 the petitioners should have shown willingness to give such co-lateral security. Be that as it may, it is for the inquiry officer to consider such prayer of the petitioners.

14. In the light of discussion hereinabove, this Court is of the opinion that there was efficacious and alternate remedy available to the petitioners for filing the appeal. Secondly, as a matter of fact Mr. Manohar Kori did file appeal challenging the interim order of attachment, however, the said appeal was dismissed. Thirdly, the petitioners earlier filed writ petition No. 9744/2013 however, said writ petition was disposed of by this Court (Coram: Ranjit More J) holding that the remedy of appeal is available to the petitioners. Fourthly, an attempt of the petitioners to file the present petition, prima facie appears to be delaying tactics in collusion with Mr. Manohar Kori so as to delay the inquiry under section 88 of the MCS Act. Fifthly, there is no denial that Petitioner No. 1 is wife of the said Manohar Kori and petitioner no. 2 and 3 are his sons. There is no dispute that, the Manohar Kori is partner in petitioners partnership firms. Sixthly, Mr. Manohar Kori is main delinquent and was holding the post of Chairman of Respondent No. 3 Bank for the period of 20 years.

15. In the light of discussion herein above and in the peculiar facts of the present case it is impossible to separate Mr. Manohar Kori from the partnership firms, since he is partner in the said firms. In fact, prima facie there is a substance in the contention of the respondents that the properties under attachment cannot be separated due to share of Mr. Manohar Kori in the said properties of the partnership firms and other properties. In that view of the matter, no case is made out to cause interference in the impugned attachment orders which are challenged in the present petition. Hence petition stands rejected. The observations made hereinabove are prima facie in nature and confined to the adjudication of the present petition.

16. An ad-interim relief which was in force during the pendency of this petition shall remain in force for further six weeks.

[S.S. SHINDE, J.]