

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.1079 OF 2017

V.

Mr.Ashish Kamat alongwith Mr.Varun Satiya i/by Crawford Bayley & Co. for the Petitioner.

**CORAM : INDRAJIT MAHANTY &
A.M. BADAR, JJ.**

P.C.

2] Respondent Nos.1 and 2 submits their Affidavit-in-reply in the Court today. The same is taken on record. Copy of the same has already been served on the learned counsel for the Petitioner.

19th October, 2016 under Section 78(1) of the Multi-State Co-operative Societies Act, 2002 came to be passed.

4] Alleging inaction on the part of Authorities for taking effective steps pursuant to the aforesaid report, the present Writ Petition has been filed. In the course of pendency of the present Writ Petition, Liquidator Mr.Sushil Shelar came to be appointed and it appears that necessary First Information Report has been filed by the Liquidator at the Bandra-Kurla Complex Police Station which was registered as Crime No.335 of 2018 for the offences under Section 406, 420 read with 34 of the Indian Penal Code.

5] Apart from the above, during the course of hearing of the matter, the Liquidator filed reply affidavit and taking into consideration submission made on behalf of the Liquidator that he had no fund to initiate process of liquidation including funds for the purpose of publication in the local newspapers, liberty had been granted to him to make an application to Respondent Nos.1 and 2 for release of some amount to enable the Liquidator to initiate the process of winding up.

6] The learned counsel appearing for Union of India drew our attention to various sub-sections of Rule 28 of Multi-State Co-operative Societies Rules, 2002 and submitted that the only responsibility the Central Registrar had to appoint a Liquidator and the said Liquidator is required to proceed in terms of the Multi-State Co-operative Societies Rules, 2002. He, further, submits that certain proceedings have already been initiated by the Liquidator for recovery of funds from debtors of the Society and there is every likelihood that funds would become available soon to the Office of the Liquidator for the purpose of financing the liquidation proceeding.

7] After perusing Rule 28 of the Multi-State Co-operative Societies Rules, 2002, we find that, no doubt the necessary notification notifying Liquidator has already been made by the Union of India, as stated by and on behalf of the Liquidator, however, the Liquidator has no funds available with him for the purpose of publication in local newspapers and for other allied work that is necessary for giving wide publicity to the initiation of the liquidation process. Although the liquidation process has been published in the official website of the Union of India, we are of the considered view that such publication in the official website may not reach to all persons who may be interested in the process of liquidation and therefore, we are of the considered view that publication in local newspapers in Marathi Language having wide circulation is sine qua non for giving public necessary knowledge of the proceedings initiated by him.

8] Accordingly, we are of the considered view that since under Rule 28 (j) and (k) the control over the activities of the Liquidator are with the Central Government and the Liquidator is required in law to submit report on quarterly basis to the Central Registrar, it is incumbent upon the Union of India to ensure that the Liquidator appointed by it, is able to perform the duties and mere issue of an order of appointment in every case may not be adequate.

9] In the present case, since the Liquidator has no funds for the purpose of publication, we are of the considered view that request made by the Liquidator for advancing a sum of RS.1 Lakh for initiating process is wholly justifiable. Accordingly, we pass the following order :

ORDER

i] We direct Respondent Nos.1 and 2 to release such fund by way of advance to the Liquidator. Such advance shall be utilised by the Liquidator for the purpose for which it has sought the said advance and the Liquidator shall comply with the stipulation of Rule 28 (j) and (k). He shall also ensure that once the assets of society are liquidated, funds advanced to the Liquidator for such purpose are refunded to the Union of India at an appropriate time.

ii] Apart from above, we also call upon the Liquidator to expeditiously take up his assignment and conclude the proceeding at an early date.

iii] We further direct the Liquidator to send copy of reports as contemplated under Rule 28 (j) and (k) to the Petitioner in order to keep the Petitioner appraise of the development.

iv] We further direct the Liquidator as well as the concerned Police Officers of the Bandra-Kurla Police Station to actively take the investigation into the complaint lodged by the Liquidator.

v] We, further, make it clear that if the Liquidator, for carrying out his responsibility, requires any further funds, it shall be open for him to make a necessary application to Respondent Nos.1 and 2 with necessary justification and it shall be at the discretion of Respondent Nos.1 and 2 to consider and allot the fund, if at all it became necessary for the purpose of discharging his duties in the liquidation proceedings.

vi] We also clarify here that this order shall not act as a precedent inasmuch as in the facts of the present case, it is the society under liquidation, and a situation has arisen where no liquid capital is available with the Liquidator to even initiate the process of liquidation and therefore it shall apply only to the facts of the present case.

vii] With such observations and directions, Writ Petition No.1079 of 2017 stands disposed off.

(A.M. BADAR, J)

(INDRAJIT MAHANTY, J)