FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

MISCELLANEOUS CIVIL APPLICATION NO. 997/2018 IN W.P. NO. 629/2007 (D)
(THE VIDARBHA CENTRAL WEAVERS CO-OPERATIVE SOCIETY LTD., NAGPUR **VERSUS** MAHARASHTRA STATE CO-OPERATIVE BANK LTD. & OTHERS)

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Shri P.D. Meghe, counsel for applicant.
Shri M.V. Samarth, counsel for NA-1.
Shri G.A. Kunte, Special Counsel for NA-2 & 3.
Ms U.R. Tanna, counsel for NA-11.
Shri P.R. Agrawal, counsel for NA-4 to 10 & 12 to 24.

CORAM : A.S. CHANDURKAR, J.
DATE : MARCH 18, 2019.

The respondent no.3 in Writ Petition No.629 of 2007 seeks review of the judgment dated 05.05.2018.

In the review application, it has been stated that while adjudicating the aforesaid writ petition C.A.W. No.606 of 2018 filed by the said respondent was not adjudicated. Another ground raised is that the amount of interest and its disbursement be considered in the light of the provisions of Rule 91 of the Maharashtra Cooperative Societies Rules, 1961 (for short, 'the said Rules').

On 02.11.2018, it was observed while exercising review jurisdiction that the adjudication of this application would be with regard to items at Serial numbers (a) and (b) of the report of the Adjudicator. Grant of interest to the respondent no.1 as per Circular dated 07.01.2005 as well as grant of expenses to the liquidator was to be adjudicated upon. Accordingly, the parties have filed their respective affidavits in support of their contentions.

Shri P.D. Meghe, learned counsel for the applicant submitted that in C.A.W. No.606 of 2018, a prayer was made that the report of the Adjudicator dated 02.11.2017 with regard to payment of interest to the State Government as well as with regard to expenses of the Liquidator may be modified. Reference was made to the provisions of Rule 91 and Rule 105(e) of the said Rules. Referring to the Circular dated 07.01.2005, it was submitted that the amount of interest was liable to be divided proportionately between the State Government and the original petitioner. It was further submitted that since the dispute of the original petitioner was pending with the Co-operative Court, it was not permissible for the petitioner to claim any interest in the present proceedings.

Shri M.V. Samarth, learned counsel for the original petitioner opposed the aforesaid application. He submitted that to safeguard the loan which was given to the respondent no.3, the State Government had provided a guarantee and the petitioner-Bank was therefore liable to be reimbursed if there was any default in repaying the loan amount. It was further submitted that there was another property situated at Indora which belonged to the society under liquidation and that the same should also be sold to recover the dues in question. Moreover, as the Adjudicator had been appointed by this Court, the question of applying the provisions of Rule 91 of the said Rules would not arise. It was thus submitted that the review application was liable to be rejected.

Shri G.A. Kunte, learned Special Counsel for the State of Maharashtra supported the prayer as made by the applicant. He also referred to the provisions of Rule 91 of the said Rules and submitted that the calculation of interest as made by the petitioner-Bank was without taking into consideration provisions of Rule 91 of the said Rules. He further submitted that in the light of the pursis dated 11.03.2019, requisite authority had been granted to the Officer concerned to file affidavit in the resent proceedings. It was thus submitted that by considering the provisions of Rule 91 of the said Rules appropriate orders be passed.

Heard learned counsel for the parties. By the judgment dated 05.05.2018, the report of the Adjudicator dated 02.11.2017 was considered and after accepting the same, the amounts determined therein and specified in paragraph 5 of that report were directed to be disbursed. The record indicates that C.A.W. No.606 of 2018 filed by the present applicant was not adjudicated upon. In that application, prayer for modifying the report of the Adjudicator in the light of provisions of Rule 91 of the said Rules was prayed for. Non-adjudication of that civil application makes the present appilcation for review tenable and hence the same is being adjudicated.

The provisions of Rule 91 of the said Rules relate to the manner in which interest on the amounts due from the Society under liquidation can be awarded. Circular dated 07.01.2005 has also to be considered in that light of the matter. Pursuant to the order dated 02.11.2018, an affidavit has been filed on behalf of the Joint Director of Textiles, State of Maharashtra. The amount presently available for disbursement in the light of provisions of Rule 91 of the said Rules alongwith Circular dated 07.01.2005 is Rs.20,93,27,834.42 Ps. In paragraph 1 of the affidavit dated 12.02.2019, the following statements have been shown.

Sr. No.	Description	Amount in Rupees	remarks
	Amount available with the Registrar of Hon'ble High Court for distribution in terms of Circular Dt. 7/1/2005 and Rule 91 of MCS Rules, 1961.	20,93,27,834.42	Amount remained after deducting the amount as per the directions of Hon'ble High Court, mentioned in Chart-I.
A)	Government dues – State & Central including share capital and interest	(-) 11,67,28,192.77	Priority Category-II as per Circular Dt.7/1/2005.
B)	Proposed liquidation expenses	(-) 84,12,898/-	Priority Category-I, as per Circular Dt.7/1/2005.
C)	Fees of Arbitrator/ Adjudicator Shri K.G. Rathi (Retd. District Judge)	(-) 50,000/-	Report submitted on 2/11/2017.
	Remaining amount after the payment of amount as per Chart (1) and (2), mentioned above and as per the directions of Hon'ble High Court.	8,41,26,843.65	Amount remained subject to be disposal as per Rule 91 of MCS Rules 1961 and as per the directions of Hon'ble High Court.

As per said chart, after disbursing the Governments dues alongwith liquidation expenses and fees of the Adjudicator, the balance amount of Rs.8,41,26,843.65 Ps. is required to be disbursed in accordance with Rule 91 of the said Rules.

In the light of the provisions of Rule 91 of the said Rules read with the Circular dated 07.01.2005, it is found that there is no reason for not directing disbursement of the aforesaid amount in the manner stated in Chart 2 of the affidavit dated 12.02.2019. It cannot be disputed that the provisions of Rule 91 of the said Rules would come into operation especially since the respondent no.3-Society has gone into liquidation. The amount which is in surplus after disbursement in terms of the judgment dated 02.11.2018 would have to be further disbursed in the light of Rule 91 of the said Rules. Though it is true that the dispute filed by the petitioner-Bank is pending with the Cooperative Court, the disputant is free to pursue the same in accordance with law for recovery of any balance amount. The prayer for sale of other properties of the Society can also be considered in that dispute and such direction cannot be given in this application in exercise of review jurisdiction.

Accordingly, in addition to the directions issued in the judgment dated 05.05.2018 in Writ Petition No.629 of 2007 and by accepting the prayer made in the review application, it is directed that the balance amount available with the Registrar (Judicial) which is Rs.20,93,27,834.43 Ps., the said amount shall be disbursed in the manner shown in Chart 2 of the affidavit dated 12.02.2019 filed on behalf of the State by the Joint Director (Technical) Textiles. The Registrar (Judicial) shall do the needful in accordance thereof.

The Miscellaneous Civil Application is allowed in aforesaid terms. No costs.

JUDGE

APTE