IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL WRIT PETITION NO.798 OF 2021

Chaitanya s/o Haribhau Nasare,
Aged about 53 Years, Occ.: Service,
The Liquidator of Bhaichand Hirachand
Raisoni Multi-State Co-operative Credit
Society Ltd., Having its Head Office at
E-2/3/4 Raymond Chowfuli, MIDC,
Ajantha Road, Jalgaon – 425003. ..... **PETITIONER**

// VERSUS //

Sou. Mayuri Milind Kabra,
R/o Kabra Health Care, Cobra
Complex Buldhana Road, Malkapur,
Tq. Malkapur, Dist. Buldhana. .... **RESPONDENT**

Mr. S. P. Deshpande, Advocate for petitioner.
Mr. S. S. Deshpande, Advocate for respondent.

CORAM : AVINASH G. GHAROTE, J.
DATED : 04/04/2022

ORAL JUDGMENT :

1] Heard Mr. S. P. Deshpande, Advocate for the petitioner and Mr. S. S. Deshpande, Advocate for the respondent.

2] **Rule.** Rule made returnable forthwith. Heard finally by the consent of the learned counsel appearing for the parties.

3] The petition challenges the order dated 28.05.2019 (page 64 E) passed by the learned District Consumer Dispute Redressal

Forum, Buldhana in Execution Case No.40 of 2017 and the summons issued on 30.08.2021 (page 69).

4] Mr. S. P. Deshpande, learned counsel for the petitioner submits, that the addition of the liquidator as a party to the proceedings under Section 27 of the Consumer Protection Act (hereinafter referred as "the C.P. Act"), was not permissible, so also the issuance of summons dated 30.08.2021 to the liquidator was also not permissible, considering that the original order of the Consumer Forum dated 23.01.2017 (page 52) in Consumer Complaint No.96 of 2016, itself absolved the liquidator which was indicated from point No.1 and para 4, where the same was discussed holding that proceedings cannot be continued against the liquidator. It is further submitted that when the Society was not a party to the proceedings under Section 12 of the C.P. Act, it was not permissible for the Consumer Forum to pass the judgment dated 23.01.2017. The further contention is that even presuming otherwise, the judgment of the learned Consumer Forum being against the Society, the proceedings under Section 27 of the C.P. Act, could not have been instituted against the liquidator. Reliance for the same is placed upon the order of the learned Division Bench in ***Writ Petition No.1611 of 2021 dated 14.03.2022*** passed at the Principal Seat in ***Subhash Anandrao Chougule vs. Union of India and Ors***.

5] Mr. S. S. Deshpnade, learned counsel for the respondent, vehemently opposes the petition and contends, that the petition itself is not maintainable, for which, reliance is placed upon ***P. K. Anna Patil Janta Sahakari Bank Ltd., Nandurbar and another*** Vs. ***State of Maharashtra and others, 2019 (1) Mh L.J. 240*** (para 10). He further submits, that there is an alternate remedy available to the petitioner, on which ground also, the petition ought not to be entertained.

6] It is not in dispute that the Bhaichand Hirachand Raisoni Multi-State Co-operative Credit Society Ltd., Jalgaon, was put into liquidation by order dated 27.10.2015 and a liquidator was appointed to liquidate the affairs of the said Society. The proceedings under Section 12 of the C. P. Act, perusal thereof, were not filed against the Society, but against the liquidator. The liquidator appeared in this proceeding and opposed the complaint, contending that it was not maintainable against the liquidator, who under the statute was duty bound, to frame the priorities and make payment for the same after liquidating the assets of the Society. The Society also was not made party independently, considering which position, learned Consumer Forum by order dated 23.01.2017 itself found that the proceedings could not be continued against the liquidator, and therefore, it had no jurisdiction to continue the same. However, in spite of the fact, that the said Society, was not made an independent party, it surprisingly without directing the same to be done, proceeded to pass an order against the Society holding it responsible for payment of Rs.46,330/- with interest at 8 % per annum as well as Rs.3,000/- for harassment and mental agony and Rs.2,000/- as costs. Surprisingly, this order of the learned Consumer Forum was put to execution by filing proceedings under Section 27 of the C.P. Act, against the liquidator (page 60), to whom the learned Consumer Forum issued summons on 30.08.2021, asking him to show cause, in pursuance to which, the liquidator was required to appear and obtain bail. What is material to note are two things (i) the Society, was not made an independent party to the proceedings under Section 12 of the C.P. Act and (ii) the liquidator was absolved holding that the proceedings against him were not maintainable, in light of which, the learned Consumer Forum had no reason whatsoever to go ahead and pass the order dated 23.01.2017 holding the Society responsible, when the Society, was not a party to the proceedings in its independent capacity. Even in proceedings under Section 27 of the C.P. Act, since the Consumer Forum had already opined that the proceedings against the liquidator would not be maintainable, the proceedings under Section 27 of the C.P. Act, ought not to have been initiated against him for the reason that the liquidator is a public servant statutorily appointed under Section 89 (1) of the Multi-State Co-operative Societies Act, 2002, for the purpose of winding up the affairs of the Society by liquidating its assets and distributing the same amongst the creditors on the basis of the priorities, as per the provisions of the Act and Rules made thereunder. It is thus apparent, that the actions of the liquidator cannot be made subject of a scrutiny under the Consumer Protection Act nor can the liquidator be made a party to the proceedings under Section 27 of the C.P. Act (Amended Section 72 of the Consumer Protection Act, 2019), so as to make him liable for punishment for non-compliance of the order of the learned Consumer Forum. That being the position, the proceedings under Section 27 of the C.P. Act, against the liquidator, were *per se* not maintainable in law, in spite of which, in the instant matter, liquidator has been made a party and has been required to secure bail. ***P. K. Anna Patil Janta Sahakari Bank Ltd., Nandurbar*** (supra) relied upon by the learned counsel for the respondent merely holds, that proceedings under Section 27 the C.P. Act, were not barred by Section 107 of the Co-operative Societies Act, and has no applicability, as in the said judgment, the liability of the liquidator, for a penalty under Section 27 of the C.P Act, was not a question, which fell for consideration. In ***Subhash Anandrao Chougule*** (supra), the learned Division Bench of this Court has categorically held, that there is no question of any parties suing the liquidator on a consumer complaint to gain priority or precedence over other claimants or to get award any damages as this would be a fresh claim arising after an order of liquidation and by the same logic, proceedings under Section 27 of the C.P. Act, would also not be maintainable against the liquidator, who is a public servant appointed for the purpose of winding up the business of the Society by liquidating its assets, which appointment is directly attributable to the powers under Section 89 of the Multi-State Co-operatives Societies Act, 2002, considering which, the writ petition is allowed.

7] The proceedings under Section 27 of the C.P. Act pending before the learned District Consumer Forum, Buldhana, against the petitioner and so also all subsequent action therein as against the petitioner are hereby quashed and set aside.

8] The amount of Rs.10,000/- (Rupees Ten Thousand) deposited in this Court by the petitioner be refunded back to the petitioner.

Rule is made absolute. No costs.

(AVINASH G. GHAROTE, J)

Digitally signed byANANT R SARKATE
Signing Date:05.04.2022 15:21

Sarkate.