

Dusane

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

WRIT PETITION NO.5508 2023

Rajendra Hiralal Gandhi ...Petitioner

V/s.

District Deputy Registrar Co-op. ...Respondents
Societies & Ors.

Mr. Surel S. Shah a/w Mr. Rahul Kasbekar for
Petitioner.

Mr. S.D. Rayrikar, AGP for Respondent Nos.1 to 5
State).

CORAM: MADHAV J. JAMDAR, J.

DATE: 19th December 2023

P.C.:

1. Heard Mr. Surel Shah alongwith Mr. Rahul Kasbekar, learned Counsel appearing for the Petitioner and Mr. Rayrikar, learned AGP for the State.

2. The Petitioner is challenging the legality and validity of Order dated 17th November 2020 passed by the District Deputy Registrar Co-operative Societies, Satara, ("**impugned Order**") by which, application under Section 107 of the *Maharashtra Co-operative Societies Act, 1960* ("**said Act**") seeking permission to

implead the Liquidator as a party to the proposed legal proceeding, is rejected.

3. The said impugned Order is challenged before the Joint Divisional Registrar Co-operative Societies, Kolhapur Division, Kolhapur and the said Revision is dismissed on the ground that the recovery proceedings are going on and if the permission is granted to file Revision against the recovery proceedings then the recovery will be delayed. However, the same cannot be a ground for rejection of application under Section 107 of the said Act.

4. Mr. Rayrikar, learned AGP points out paragraph 12 of Affidavit-in-Reply and submits that as the recovery proceedings are pending, the Application be not allowed. However, the scope of Section 107 of the said Act is entirely different. The effect of said proposed proceeding is not the subject matter of the present Writ Petition. Accordingly, there is no substance in the said contention.

5. Learned Counsel appearing for the Petitioner relied on the decision of a learned Single Judge of this Court in the case of ***Narayan v. State of Maharashtra***¹. In the said decision, it has been held that the issuance of the order according to the

¹ 2010 SCC OnLine Bom 1143 : (2011) 1 Mah LJ 149

provisions of Section 107 of the said Act is a matter of course, which ought to have been granted by the Registrar. Reliance is also placed on another decision of a Division Bench of this Court in the case of **Baburao Dadarao Kolhe v. State of Maharashtra**². Reliance is also placed on one more decision of this Court (Aurangabad Bench) in the case of **Shri Dnyaneshwar Trust Vs. The State of Maharashtra & anr.**³, wherein it has been held as follows:

"..... Secondly, it has to be considered that the Petitioner has merely sought permission to implead the liquidator as party to the execution proceedings. The liquidator, on his impleadment as opponent in execution proceedings, would be at liberty to raise all the contentions that are permissible under law and may have liberty to oppose the execution proceedings. There is no reason as to why permission sought for should be rejected. I am in respectful agreement with the view expressed by learned Single Judge while disposing of the petition referred to above."

6. In view of above legal position, it is clear that the impugned Order passed is not in accordance with the applicable provision of law and the settled legal position. Accordingly, the impugned Order dated 17th November 2020 is quashed and set aside and the Application dated 9th October 2020 filed by the Petitioner seeking permission to implead the Liquidator as party

² 2004 SCC OnLine Bom 58 : (2004) 3 LLN 200 : (2004) 2 Mah LJ 898

³ Writ Petition No. 4355 of 2007 (06.09.2007)

to the proposed proceedings is allowed.

7. It is needless to observe that if the Revision against the recovery is filed then, the Petitioner has to comply with the requirement of Section 154(2A) of the said Act. Accordingly, the impugned Orders are required to be quashed and set aside.

8. The Writ Petition is allowed subject to above, with no order as to costs.

(MADHAV J. JAMDAR, J.)