

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7852 OF 2023

Mrs. Nusrat Shanur Mujawar

...Petitioner

V/s.

The State of Maharashtra and anr.

...Respondents

Dr. Uday Warunjikar i/by. Mr. Aditya P. Kharkar, Advocate for
Petitioner.

Mr. B.V. Samant, AGP for State.

CORAM : DHIRAJ SINGH THAKUR &
SANDEEP V. MARNE, JJ.

Dated : 4 July 2023.

P.C. :

1. By this petition, Petitioner is aggrieved by order dated May 9, 2023 passed by the Competent Officer of the Bank by which she is prevented from filing any reply to the Notice in proceedings initiated under Section 88 of the Maharashtra Co-operative Societies Act, 1960 (**Act of 1960**). Though the grievance of the Petitioner essentially relates to 'No Say' order dated May 9, 2023, Dr. Warunjikar the learned Counsel appearing for the Petitioner has attempted to enlarge the scope of the petition during the course of submissions. He has contended that Petitioner has not filed her reply to the notice issued in proceedings initiated under Section 88 as she cannot be compelled to disclose her defence as she is undergoing parallel proceedings under the Prevention

of Money Laundering Act, 2002 (**PMLA**) in respect of the same subject matter.

2. Briefly stated, facts of the case are that Petitioner is the widow of one of the coopted Directors of Shivajirao Bhosale Co-operative Bank Ltd, Pune. The tenure of Petitioner's husband as coopted director was from March 31, 2017 till his demise on January 5, 2019. The Bank is under liquidation. Proceedings under Section 88 of the Act of 1960 have been initiated for conducting enquiry by the Registrar to assess damages against delinquent promoters etc. Simultaneously, FIR came to be lodged against promoters, directors and other persons for offences punishable under Section 420 read with Section 34 and Sections 406, 408, 409, 468 and 471 of the Indian Penal Code, 1860. Based on the FIR so lodged, the Enforcement Directorate registered Enforcement Case Information Report (**ECIR**) for carrying out investigations under the provisions of the PMLA. Summons was issued to Petitioner by the Enforcement Directorate on September 24, 2021 in connection with the investigations in respect of the ECIR. A provisional attachment order dated February 10, 2023 came to be passed by the Enforcement Directorate provisionally attaching assets of various persons including that of the Petitioner.

3. Notice dated April 12, 2023 was issued by the Competent Officer of the Bank calling upon Petitioner to file her reply to the proceedings initiated under Section 88 of the Act of 1960 on/or before April 20, 2023. Petitioner sought an adjournment. However, since no reply was received from petitioner, the Competent Officer has issued communication dated May 9, 2023 directing that 'No Say' order has

been passed against her. Petitioner is aggrieved by the said communication dated May 9, 2023 and has filed the present petition.

4. Dr. Warunjikar, the learned Counsel appearing for the Petitioner would submit, since provisional order has been passed against the Petitioner attaching her properties under Section 24 of PMLA, burden of proof rests on the shoulders of the accused to prove that the properties are not proceeds of crime. Since Petitioner is facing proceedings under PMLA and she has to discharge the burden before the Enforcement Directorate to the effect that the attached properties are not proceeds of crime. She therefore cannot be compelled to disclose her defence in proceedings under Section 88 of the Act of 1960. That the nature of enquiry in both the proceedings is identical and that therefore if Petitioner is compelled to disclose her defence in the proceedings initiated under Section 88 of the Act of 1960, the same would prejudice her in proceedings initiated under PMLA. That compulsion imposed on Petitioner to file her reply at this stage would be violative of the provisions of Article 20(3) of the Constitution of India as no person can be compelled to lead evidence against himself/herself which would amount to self-incrimination. In support of his contention, Mr. Warunjikar would rely upon the judgment of the Apex Court in the case of **M.P. Sharma and Others V/s. Satish Chandra, District Magistrate, Delhi and Others**, 1954 SCR 1077. That Petitioner's husband was merely a coopted director and did not have any voting rights. In alternative, he would submit that the final hearing in respect of Provisional Attachment Order for confirmation of the same is scheduled to be held on July 5, 2023 and the order is likely to be passed

within a period of 2/3 weeks and that therefore Petitioner may be granted time of atleast four weeks to file her reply.

5. Mr. Samant, the learned AGP would oppose the petition submitting that the proceedings initiated under Section 88 of the Act of 1960 are independent proceedings having no connection with the proceedings under the PMLA. That the grievance of the Petitioner in the petition is essentially restricted to non-grant of opportunity to file reply and the same cannot be enlarged. That Petitioner requested for time to file reply before the Competent Authority and is now estopped from contending that she cannot be compelled to file her defence. He would pray for dismissal of the petition.

6. After having heard learned counsels for the parties and after perusal of the documents on record, the short issue that arises for our consideration is whether proceedings initiated against Petitioner under the provisions of the Section 88 of the Act of 1960 can be interdicted in any manner only on account of proceedings under the PMLA.

7. Shivajirao Bhosale Co-operative Bank Ltd. is under liquidation. Under Section 88 of the Act of 1960, the Registrar is empowered to conduct an enquiry against the persons who have taken part in organisation or management of the Society five years before the date of order of inquiry/inspection to fix liability for any money or property of the society and after giving a reasonable opportunity of hearing, the Registrar is empowered to make an order requiring such persons to repay or restore the money or property alongwith interest. Section 88 of the Act of 1960 reads thus :

88. Power of Registrar to assess damages against delinquent promoters, etc.-

(1) Where, in the course of or as a result of an audit under section 81 or an inquiry under section 83 or an inspection under section 84 or the winding up of a society, the Registrar is satisfied on the basis of the report made by the auditor or the person authorised to make inquiry under section 83 or the person authorised to inspect the books under section 84 or the Liquidator under section 105 or other wise that any person who has taken any part in the organisation or management of the society or any deceased, or past or present officer of the society has, within a period of five years prior to¹ [the date of commencement of such audit or date of order for inquiry, inspection or] winding up, misapplied or retained, or become liable or accountable for, any money or property of the society, or has been guilty of misfeasance or breach of trust in relation to the society, the Registrar or a person authorised by him in that behalf may frame charges against such person or persons, and after giving a reasonable opportunity to the person concerned and in the case of a deceased person to his representative who inherits his estate, to answer the charge, make an order requiring him to repay or restore the money or property or any part thereof, with interest at such rate as the Registrar or the person authorised under this section may determine, or to contribute such sum to the assets of the society by way of compensation in regard to the misapplication, retention, misfeasance or breach of trust, as he may determine.

[**Provided** that, proceedings under this sub-section, shall be completed by the authorised person within a period of two years from the date of issue of order by the Registrar;

Provided further that, the Registrar may, after recording the reasons therefor, extend the said period for a maximum period of six months.

[**Provided also** that, the Governmetn may, on the report of the Registrar or suo motu, for the reasons to be recorded in writing, extend the said period as may be required, from time to time, to complete the proceedings under this sub-section.

Provided also that, in case of the proceedings under this sub-section which have not been completed with the aforesaid period on the date of commencement of the Maharashtra Co-operative

Societies (Amendment) Act, 2017, the Government may, on the report of the Registrar or suo motu, for the reasons to be recorded in writing, extend the period, from time to time, for completion of such proceedings as may be required.]

(2) The Registrar or the person authorised under sub- section (1) in making any order under this section, may provide therein for the payment of the cost or any part thereof, as he thinks just, and he may direct that such costs or any part thereof shall be recovered from the person against whom the order has been issued.

(3) This section shall apply, notwithstanding that the act is one for which the person concerned may be criminally responsible.

8. Thus under Section 88 of the Act of 1960, the Registrar is empowered to make former directors or other person responsible for management of the Society liable for any losses caused to the Society and to recover the same from such directors, delinquents, etc. Petitioner's husband was undoubtedly a director of the Bank. Whether he can be held liable under Section 88 for recovery of losses in his capacity as a coopted Director is something which would be decided by the Registrar and we express no opinion in that regard.

9. As against enquiry under Section 88 of the Act of 1960, the proceedings under the PMLA are initiated for investigations and prosecution for offences of money laundering. Under Section 5 of the PMLA, the Enforcement Directorate can attach properties involved in money laundering and make adjudication in respect thereof. The purpose of two enquiries under the Act of 1960 and PMLA are thus entirely different. Merely because proceedings under the PMLA are initiated would not absolve Petitioner out of liability, if any, arising out

of Section 88 of the Act of 1960. Therefore, the principle of disclosure of defence in parallel proceedings would have no application to the present case.

10 Reliance of the Petitioner on the judgment in ***M.P. Sharma*** (supra) is of no avail. The issue before the Apex Court was whether conduct of searches would amount to violation of fundamental right of Articles 20(3) and 19(1)(f) of the Constitution of India. The Apex Court held that search and seizure of documents under the provisions of Sections 94 and 96 of the Criminal Procedure Code does not amount to compelled production thereof within the meaning of Article 20(3) and hence does not offend the same. We fail to comprehend as to how the judgment in the case of ***M.P. Sharma*** would assist the case of Petitioner.

11. Resultantly, we do not find any merit in the points sought to be canvassed by Dr. Warunjikar. By order dated May 9, 2023, Petitioner has been prevented from filing reply in the proceedings initiated under Section 88 of the Act. Dr. Warunjikar has made an alternative submission that the order be set aside and an opportunity be granted to Petitioner to submit her reply. Though we do not find any error in the decision taken by the Competent Authority, by way of indulgence, we permit Petitioner to file reply to the proceedings within a period of four weeks from today. Petitioner shall however co-operate with the Competent Authority for early decision of the proceedings under Section 88 of the Act of 1960 without seeking any unnecessary adjournments. If Petitioner files her reply within four weeks from today, the same shall be taken on record and considered by the Competent Authority while taking decision in the proceedings.

12. With the above observations, the Writ Petition is disposed of. There shall be no orders as to costs.

(SANDEEP V. MARNE, J.)

(DHIRAJ SINGH THAKUR, J.)