

30 November 2023.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 15121 OF 2022

Shri. Ramesh Premraj Tatia, Prop.

Of M/s. Tatia Oil and Sugar Company

...Petitioner

V/s.

The State of Maharashtra and Ors.

....Respondents

WITH

WRIT PETITION NO. 15191 OF 2022

Mrs. Surekha Ramesh Tatia, Prop.

Of Prasanna Traders

...Petitioner

V/s.

The State of Maharashtra and Ors.

....Respondents

Mr.Vilas B. Tapkir a/w. Ms. Mrunmayi Khambete, for the
Petitioner in both the petitions.

Mr. P.P. Pujari, AGP for State.

Mr. Sarang Aradhya, for Respondent No.3.

CORAM : SANDEEP V. MARNE, J.

Dated : 30 November 2023.

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P.C. :

1. Mr. Tapkir, the learned counsel appearing for the Petitioners and Mr. Aradhye, the learned counsel appearing for the Liquidator would submit that the present petitions are covered by Order dated 21 August 2023 passed by this Court in Writ Petition No. 3326 of 2023 (**M/s. Jagruti India Services through its Proprietor and Anr. V/s. Hon'ble Commissioner of Co-operation & Registrar of Co-op. Societies and Anr.**) and other connected petitions. The order dated 21 August 2023 reads thus :

1. The Petitioners who are the borrowers and members of the Respondents – Shivajirao Bhosale Co-operative Bank Ltd., have filed the above Writ Petitions impugning order dated 30th March 2022 passed by the Commissioner of Co-operation and the Registrar of Co-operative Societies by which leave sought under section 107 of the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as “**the said Act**”) by the Petitioners for continuation of respective Disputes filed by them was rejected.

2. The factual position on record is that all the Petitioners have filed their respective disputes before the Hon'ble Co-operative Court No.II, Pune at Pune. In the dispute it is specifically mentioned that the Respondent Shivajirao Bhosale Co-operative Bank Ltd. is registered under the Maharashtra Co-operative Societies Act, 1960 and the opponents in the said dispute are the members of the said Society.

3. It is admitted position that on 1st June 2021, Liquidator under section 103 of the Maharashtra Co-operative Societies Act is appointed with respect to the Respondent – Society. Section 107 of the said Act provides

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for bar on suit in winding up and dissolution matters. The said section 107 reads as under :-

“107. BAR OF SUIT IN WINDING UP AND DISSOLUTION MATTERS.

Save as expressly provided-in this Act, no Civil Court shall take cognizance of any matter connected with the winding up or dissolution of a society, under this Act; and **when a winding up order has been made no suit or other legal proceedings shall lie or be proceeded with against the society or the liquidator except by leave of the Registrar and subject to such terms as he may impose;**

Provided that, where the winding up order is cancelled the provisions of this section shall cease to operate so far as the liability of the society and of the members thereof to be used is concerned but they shall continue to apply to the person who acted as Liquidator.”

(Emphasis added)

Thus, it is clear that when a winding up order has been made no suit or other legal proceedings shall lie or be proceeded with against the society or the liquidator except by leave of the Registrar and subject to such terms as he may impose. As the Liquidator was appointed, respective Petitioners i.e. the disputants filed applications under section 107 of the said Act seeking leave to continue with the respective disputes. However, the Commissioner of Co-operation and the Deputy Registrar by impugned orders rejected the said leave application.

4. The details of the Writ Petition, Petitioner, Dispute No., Date of Application for leave filed u/s 107 of the said Act and date of the impugned orders are set out hereinbelow

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in tabular form:-

Sr. No	Writ Petition No.	Petitioner	Details of Dispute (u/s 91 of MCS Act 1960)	Date of Application U/s 107 of MCS Act 1960	Date of the Impugned Order
1.	WP/ 3326/2023	M/s. Jagruti India Services	Dispute No.81 of 2020	22/07/2021	30/03/2022
2.	WP/ 3327/2023	M/s. Arjun Facilities	Dispute No.80 of 2020	22/07/2021	30/03/2022
3.	WP/ 3328/2023	M/s. Shraddha Trading Company	Dispute No.82 of 2020	22/07/2021	30/03/2022
4.	WP/ 3329/2023	M/s. Y.J. Enterprises	Dispute No.96 of 2020	22/07/2021	30/03/2022
5.	WP/ 3330/2023	M/s. Kohinoor Enterprises	Dispute No.95 of 2020	22/07/2021	30/03/2022
6.	WP/ 7712/2023	M/s. Sail Enterprises	Dispute No.91 of 2020	26/07/2021	30/03/2022
7.	WP/ 10291/2023	M/s. Kohinoor Enterprises	Dispute No.97 of 2020	22/07/2021	30/03/2022

5. Mr. Kanetkar, learned counsel appearing for the Petitioners has relied on several judgments including the judgment of a learned Single Judge in Writ Petition No.2450 of 2016 in **Neeta Ratnakar Salunke (Patil) and Ors. vs. The Deputy Registrar, Co-operative Societies and Ors.** dated 20th June 2018. The learned Single Judge in said **Neeta Ratnakar Salunke (supra)** by considering the judgment in the case of **Narayan s/o Arjunji Vighne and Ors. Vs. State of Maharashtra, Department of Co-operation** reported in **2011(1) Mh.L.J. 149**, held that powers granted to the Deputy Registrar under section 107 of the said Act are not adjudicatory powers but are the administrative powers. It has been further held that the Deputy Registrar while granting leave under section 107 of the said Act cannot adjudicate upon the merits of the case.

6. Mr. Aradhye, learned counsel appearing for the Respondent No.2 as well as the learned AGP supported the impugned order.

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7. However, on perusal of section 107 of the Maharashtra Co-operative Societies Act and the law laid down by the learned Single Judge in Neeta Salunke (Patil) and Ors. (supra) as well as in view of the law laid down in the case of Narayan s/o Arjunji Vighne and Ors. (supra), the impugned orders of not granting leave are not sustainable and the same are quashed and set aside.

8. Accordingly, all the Writ Petitions are allowed in terms of prayer clauses (a) and (b). As the Petitioners are granted leave under section 107 of the said Act, the Petitioners to implead the Liquidator who has been appointed as the Liquidator of the Respondent – Society, as party to the dispute.

9. Writ Petitions are disposed of in above terms with no order as to costs.

2. Accordingly, the present petitions are allowed in terms of prayer clause (b). As the Petitioners are granted leave under Section 107 of the Maharashtra Co-operative Societies Act, Petitioners shall implead Liquidator as a party to the dispute filed/proposed to be filed by them. Writ Petitions are accordingly **disposed of**. There shall be no order as to costs. Pending interim applications, if any also stand disposed of.

SANDEEP V. MARNE, J.