

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

**WRIT PETITION NO. 15475 OF 2022
WITH
INTERIM APPLICATION (STAMP) NO. 3893 OF 2023
WITH
INTERIM APPLICATION (STAMP) NO. 3895 OF 2023**

Shrichand Aswani ..Appellant
Vs.
Minister of Co-operative Societies & Ors. ...Respondents

**AND
WRIT PETITION NO. 15487 OF 2022
WITH
INTERIM APPLICATION (STAMP) NO. 3935 OF 2023
WITH
INTERIM APPLICATION (STAMP) NO. 3896 OF 2023**

Dhanraj Aswani ..Appellant
Vs.
Minister of Co-operative Societies & Ors. ...Respondents

Mr. Vineet Naik, Senior Advocate a/w Mr Atul Damle, Senior Advocate a/w Ms Minal Chandnani a/w Mr Zoheb Merchant i/b. Jaiwant A. Chandnani Associates, for the Petitioners in WP No.15475/2022.

Mr. J.P. Sen, Senior Advocate a/w Ms Minal Chandnani a/w Mr Zoheb Merchant i/b. Jaiwant S. Chandnani Associates, for the Petitioners in WP No.15487/2022.

Mr. Sachin H. Kankal, AGP for the State.

Mr. Ravi Kadam, Senior Advocate a/w Mr Pawan Mali a/w Mr S.R. Phanse i/b. S.S.Bedekar, for Respondent No.6 in WP No.15487/2022.

Mr. Karan Kadam i/b Mr. S.S. Bedekar, for Respondent No.6 in WP No.15475/2022.

Mr. Ranjit A Thorat, Sr. Adv a/w Mr. Prashant Kulkarni a/w Mr. Sandeep Salunkhe for Applicant/ Intervenor in IA(ST) No.3935/2023.

Mr. Ranjit A. Thorat, Sr.Adv a/w Mr Sandeep Salunkhe for Applicant/
Intervenor in IA(ST) No.3896/2023.

Mr. Sandeep Salunkhe for Applicant/Intervenor in IA(ST)
No.3895/2023.

Mr. V.P. Sawant Sr. Adv. i/b Mr Chaitanya Mulawkar a/w Mr Sandeep
Salunkhe for Applicant/ Intervenor in IA(ST) No.3893/2023.

Mr. Sandeep Salunkhe for Applicant in IA(ST) No.4142/2023 & IA(ST)
No.4144/2023

CORAM : G.S. KULKARNI, J.

DATE : FEBRUARY 10, 2023

PC.:

1. Heard Mr. Vineet Naik, learned senior counsel for the petitioner on Writ Petition No. 15475 of 2022, Mr. Ravi Kadam, learned senior counsel for respondent no.6 and Mr. Kankal, learned AGP for the State Government.

2. The order assailed in this petition is an order dated 09 November, 2022 passed by the Hon'ble Minister, Co-operative Societies which is an ad-interim order passed on a revision application filed by respondent no.6 under Section 154 of the Maharashtra Co-operative Societies Act (for short, the "MCS Act"). The operative part of the impugned order as passed by the Hon'ble Minister reads thus:-

“(official translation of the vernacular version)

O R D E R

1. Application (Prayer) for Stay in Revision Application No.330/2022 is allowed.

2. Stay is granted to the actions to be taken pursuant to the Test Audit Report dated 06.08.2021 of the Joint Registrar, Co-operative Societies (Sugar), Pune – Respondent No.3, until further order.

3. Order is hereby passed to carry out re-audit of the Bank viz. The Seva Vikas Co-operative Bank – Respondent No.2 for the period from the year 2016-17 and 2017-18 and Respondent No.1 is hereby directed to issue order of appointment of the Auditor for carrying out this re-audit.

4. Further hearing into this application is fixed on the date 15.12.2022 and separate letter to that effect for hearing will be issued.”

3. It also needs to be noted that by an ad-interim order dated 15 December, 2022 passed by a Co-ordinate Bench of this Court, for the reasons as recorded in such order, the impugned order passed by the Hon’ble Minister came to be stayed.

4. On a perusal of the impugned order, it needs to be observed that the Hon’ble Minister although has directed the audit of the concerned bank for the financial years 2016-17, 2017-18, the substantive reasons to support such conclusion are not reflected in the impugned order. It appears that there are several rival contentions of the parties pertaining to the Test Audit Report dated 06 August, 2021 as undertaken under the provisions of Section 81(3)(c) of the MCS Act. Further on such issues, there was an earlier batch of litigation even before this Court.

5. From the lengthy submissions as advanced by the parties before the Court and having perused the record and the impugned order, it is clear that the Hon'ble Minister has not taken into consideration such rival pleas so as to come to a conclusion to pass the impugned order, even if it was to be an ad-interim order passed on the revision proceedings.

6. In the aforesaid circumstances, in my opinion, it is in the interest of justice that the impugned order dated 09 November, 2022 passed by the Hon'ble Minister is quashed and set aside with a further direction that the Hon'ble Minister shall hear the petitioners, respondent no.6 and all other necessary parties on such proceedings, and after considering all their contentions, pass an appropriate reasoned order in accordance with law.

7. Let the parties appear before the Hon'ble Minister at the first instance on 20 February, 2023 at 02.30 p.m. when the Hon'ble Minister shall fix an appropriate date for hearing the parties and make an endeavour to pass an order within a period of four weeks from the day the parties so appear. All contentions of the parties are expressly kept open to be urged before the Hon'ble Minister.

8. It is clarified that while passing the above order, the Court has not expressed any opinion on any of the rival contentions of the parties.

9. In view of the above order, the companion petition would also not survive. The same is disposed of accordingly.

10. In view of disposal of the appeal, pending Interim Application would not survive. It is accordingly disposed of leaving the appellant to pursue all their remedies as may be permissible in law.

11. No costs.

[G.S. KULKARNI, J.]