

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

WRIT PETITION NO. 3870/2018

SHRI. DEEPAK S/O THAKURDAS THARWANI

VS

THE DIVISIONAL JOINT REGISTRAR, CO- OPERATIVE SOCIETIES, NAGPUR

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. H. J. Khandwani, Advocate for the petitioner
Mr. H.D. Dubey, AGP for the respondent

CORAM : A. S. KILOR, J.

DATED : 19/06/2023

Heard.

2. The refusal of permission sought under Section 107 of the Maharashtra Co-operative Societies Act, 1960 (for short the "Act of 1960") by the petitioner vide communication dated 17.03.2018 issued by the Divisional Joint Register, Co-operative Societies, Nagpur, to continue the suit filed by the petitioner, is under challenge in this writ petition.

3. Upon perusal of the impugned order, it is evident that the only reason given by the Divisional Joint Register is that, as the earlier suit was dismissed for want of notice under Section 164 of the Act of 1960, subsequent suit cannot be permitted.

4. The above referred finding is contrary to the law laid down by this Court in the case of **Narayan s/o Arjunji Vighne and ors. Vs. State of Maharashtra and ors.**¹ . The relevant paragraphs of the said judgment read thus:-

“8. Considering the facts and circumstances of this case, there was no other option available to the Registrar except to accord permission. Issuance of the order according provisions of Section 107 of the Act is as a matter of course and it ought to have been granted by the Registrar. Reliance can be placed on the Judgment in the matter of Baburao Dadarao Kolhe and Others Vs. State of Maharashtra and Others, reported in 2004(2) Mh.L.J. 898. The Division Bench of this Court while dealing within the similar situation has observed in paragraph 3 of the judgment as under:

“It is not in dispute that the petitioners were in employment of the respondent No. 3 and were not paid their salaries for quite a long time, as the financial position of the respondent No. 3 was hopelessly bad. The petitioners workmen were justified in moving the Industrial Court, claiming the amount of wages. During pendency of the said proceedings, as an order of winding up came to be passed, the question of seeking leave of the second respondent arose by virtue of provisions of Section 107 of the Maharashtra Cooperative Societies Act, 1960. Perusal of the order impugned reveals that the said order is a very cryptic order and the only ground stated therein for rejecting the application is that, if permission is granted to implead the society through the Liquidator as respondent

1 2011(1) Mh.L.J. 149

before the Industrial Court, the same would result in putting in motion two proceedings, one before the Industrial Court and another before the Liquidator. What we find is that, if the proceedings before the Industrial court wherein the petitioners are claiming arrears of wages, are permitted to be concluded after impleading third respondent, as an opponent before the Industrial Court, the decision of the Industrial Court would crystallise the rights of the present petitioners and in that situation, the Liquidator would not be called upon to make any adjudication in regard to either the period, for which the petitioners have worked and/or in regard to actual amount, which the petitioners are entitled to receive from the third respondent. In this view of the matter in our opinion, there would be no possibility of two authorities, adjudicating on the same issue. An adjudication by a judicial forum, in matters pending prior to the passing of the order of winding up, would be desirable. In our opinion, the reasons put forth by the second respondent for rejecting the application, moved by the petitioners, u/s 107 of the Maharashtra Cooperative Societies Act, 1960, are unsustainable in law. In such a situation, we are of the view that as a matter of course, the Registrar ought to have granted permission, prayed for by the petitioners u/s 107 of the Maharashtra Cooperative Societies Act, 1960. Our attention is invited to a Judgment reported in 2002 (III) CLR 981, wherein a Division Bench of this Court has doubted the very need for seeking leave of the Registrar u/s 107 of the Maharashtra Cooperatives Societies Act, 1960, for prosecuting complaints under M.R.T.U. and P.U.L.P. Act, 1971. We too voice our doubt

about the application of Section 107 to the proceedings pending on the file of the Industrial Court under the provisions of M.R.T.U. and P.U.L.P. Act, 1971. The Division Bench in the said Judgment, which is rendered in similar situation, held that as a matter of course, the Registrar ought to have granted permission. We are in respectful agreement with the view taken by the Division Bench.”

5. In the circumstances, I am of the opinion that the impugned communication dated 17.03.2018 issued by the Divisional Joint Register, Co-operative Societies, Nagpur is liable to be quashed and set aside. Accordingly, I pass the following order:

(I) The writ petition is allowed

(II) The impugned communication dated 17.03.2018 issued by the Divisional Joint Register, Co-operative Societies, Nagpur is quashed and set aside and thereby, the application filed under Section 107 of the Act of 1960 is allowed.

JUDGE