



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

56 WRIT PETITION NO. 6857 OF 2024

ARUN RAOSAHEB KADAM

VERSUS

THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY AND OTHERS

Mr.V.M. Maney, Advocate for the petitioner.

Mr.K.B. Jadhavar, AGP for the respondent-State.

Mr.K.J. Suryawanshi, Advocate for respondent No.3.

CORAM : KISHORE C. SANT, J.

DATE : 11.11.2024

PC :-

01. At the outset, learned Advocate for the petitioner seeks leave to correct the title clause of the petition by showing the Maharashtra State Co-operative Bank through its Joint Manager as petitioner.

02. Leave granted. The amendment be carried out within two weeks from today.

03. The order challenged in this petition is an order dated 21.12.2023 passed by the learned Joint Registrar, Co-operative Societies and Regional Joint Director (Sugar), Chh. Sambhajinagar, rejecting application of the petitioner, seeking permission to add liquidator as a party to the suit, already filed by the petitioner against respondent No.3

i.e. Deogiri Sahakari Sakhar Karkhana Ltd.

04. Facts in short are that the petitioner – Maharashtra State Co-operative Bank Ltd. filed dispute for recovery of amount mainly against respondent No.3 in the year 2015. In the meantime, on 07.12.2016, a liquidator came to be appointed by the Joint Registrar, Co-operative Societies and the Regional Joint Director (Sugar). In view of the same, the petitioner filed an application before the Joint Registrar, seeking permission to add the liquidator as a party to the dispute. The Joint Registrar by the impugned order refused said permission only observing that it was not pointed out to the said authority as to under which provision said application was filed.

05. The learned Advocate for the petitioner submits that under section 107 of the Maharashtra Co-operative Societies Act, when liquidator is appointed to a co-operative society, no suit or proceeding is maintainable without adding the liquidator as a party. If a suit or proceeding is already filed, same cannot be continued without adding the liquidator as a party. In view of the same, the learned Joint Registrar ought to have allowed the application, as the suit cannot be proceeded with. He further submits that the authority i.e. co-operative Court has

already allowed amendment by adding liquidator as a party, however, with condition to obtain sanction from the concerned authority. He submits that even if provision was not quoted, it was necessary for the Regional Joint Director to consider that liquidator is a necessary party. By taking hyper-technical approach, the application came to be rejected. He thus submits that the petition deserves to be allowed by setting aside order dated 21.12.2023.

06. The learned APP for respondent Nos. 1 and 2 submits that it was necessary for the petitioner to point out provision under which the application was filed. He justifies the impugned order.

07. Learned Advocate for respondent No.3 Mr. Suryawanshi vehemently opposed the petition. He submits that now the bank has already deposited the amount of Rs.33 crores and as on today no dues are pending. In view of the said fact continuance of this writ petition and proceeding of Dispute No.17 of 2015 itself has become infructuous. He, thus, prays for rejection of this petition.

08. A question before this Court is only as regards legality of the order passed by the Regional Joint Director (Sugar). The application of

the petitioner is rejected only on one ground that the petitioner failed to show the provision under which said application was filed. The authority was aware of the provisions of Section 107 of the Maharashtra Co-operative Societies Act, as is seen from the impugned order itself. The authority has to see that whether it is legal to allow the application. The authority need not insist for provision to be expressly shown. The authority has to only see that whether the authority possesses power. This Court finds that respondent No.2 has committed mistake in rejecting application though it was aware that liquidator is a necessary party in view of section 107 of the Act. Therefore, the impugned order deserves to be quashed and set aside. Hence, the following order.

09. The impugned order dated 21.12.2023 is quashed and set aside. The application dated 15.09.2018 at page No.27 of the petition stands allowed. Permission is granted to add liquidator as party to dispute No.17 of 2015, pending before the learned Co-operative Court, Aurangabad. The writ petition is accordingly allowed with no order as to costs.

[KISHORE C. SANT, J.]