



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

WRIT PETITION NO. 5987 OF 2024

Ramesh Sahebrao Umate and anr.

Vs.

Nagar Parishad Shikshak Sahakari Pat-Sanstha Maryadit, Yavatmal and Ors.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. V.B. Bhise, Advocate for petitioners.

Mr. A.M. Ghare, Advocate for respondent No.1.

CORAM : SMT. M.S. JAWALKAR, J.

DATE : 27.01.2025.

Heard the learned counsel for petitioners
and learned counsel for respondent No.1.

2. It appears that the enquiry under Section 88 of Maharashtra Co-operative Societies Act was conducted of the petitioners and the report came to be submitted by authorized Officer on 27.01.2009. The said report was challenged before the Divisional Joint Registrar, who by his order set aside the order passed by the authorized Officer dated 27.01.2009. The said order was challenged by respondent No. 1 before the Hon'ble Minister by filing revision. The Hon'ble Minister set aside the order passed by the Divisional Joint Registrar and further directed the

authorized officer to determine the liability for loss caused to the society by following all procedure. This order was challenged by some of the members in Writ Petition No. 5543/2015, which came to be dismissed on 31.01.2017.

3. In the meantime, the Assistant Registrar by an order dated 23.10.2015 appointed authorised officer under Section 88 of the Maharashtra Co-operative Societies Act, 1960. After conducting the enquiry, the Authorized Officer submit a report holding that the petitioners and respondent Nos.2 to 6 are responsible for loss. That the petitioners are liable for Rs.10,24,200/- jointly and severally with interest @ 15% from 12.06.2004.

4. In the second round of litigation, the said order came to be challenged before the Divisional Joint Registrar, it came to be dismissed against which revision was preferred before the Hon'ble Minister. The Hon'ble Minister allowed the revision and set aside the order passed by the Divisional Joint Registrar. The said order was challenged by respondent No.1 before this Court. The matter has remitted back as decision was not taken by the Hon'ble Cabinet Minister as per law and taken by Hon'ble Minister. The Hon'ble Cabinet Minister by

an order dated 20.02.2019 confirmed the order dated 12.05.2016 passed by the Divisional Joint Registrar and authorized officer respectively. The said order of the Hon'ble Cabinet Minister is under challenged in Writ Petition No.2479/2019. In the meanwhile, the respondent No.1 Society has filed execution proceedings against the petitioners and respondent Nos.2 to 6 vide Special Darkhast No.19/2016 before the 2nd Joint Civil Judge (Senior Division), Pusa. The respondent No.1 also filed an application dated 08.08.2019 below Exhibit 55 to recover the decretal amount from the salary of the petitioner. The learned counsel for the petitioners have filed their say and strongly opposed the application. However, on 26.06.2024, the application came to be allowed by issuing warrant for attachment of salary of the petitioner of Rs.15,000/- per month and further directed that salary under attachment shall commence from 1st August 2024 to July, 2026 for the period of 24 months.

5. The petitioner filed review application, but the counsel, who was representing the petitioner expired on 16.11.2021. This fact was not considered by the learned Trial Court and no opportunity was granted to defend the application filed by the

Society. It appears that the counsel for petitioner was present on 12.02.2020, 28.02.2020 and 12.03.2020. Since, thereafter, the learned counsel for judgment debtor was remained absent, there is no ground that this period is covered when there was Pandemic Covid 2019, even prior to lockdown there was unprecedented circumstances.

6. Learned counsel for respondent submitted that the petitioner has submitted only in the petition that petition challenging the order of the Hon'ble Cabinet Minister is pending. However, he submitted that subject to deposit of 50% of amount, this proceeding may be stayed. As no amount is deposited as per the directions, therefore, there was no stay to the execution proceedings.

7. However, in my considered opinion, the condition of deposit of 50% amount is for grant of stay. Even if there is no stay, due to non compliance of condition, the executing Court proceeding with the matter, ought to have considered the fact of death of the learned counsel of judgment debtor and prevailing condition of Pandemic Covid 2019 then existing. As such, it would be appropriate to grant the opportunity to the judgment debtor to place his case on record.

8. The learned counsel for the petitioner relied on ***Ashish Namdeo Sonkamble Vs. State of Maharashtra and anr. 2024 (5) Mh.L.J. 91***, wherein it is held in paragraph No.8 of the judgment which is as under:

“8. We may also observe that a litigant when he entrust his case to a particular Advocate would be under a bonafide belief that the said Advocate would attend to the case whenever it is listed for hearing in the Court. We do not see any reason why a litigant should not have had such a bonafide belief. It was the duty of the Advocate to have attended the hearing. If an Advocate does not appear and the case get dismissed, then in our view, fault cannot be found with the litigant who was justified in relying upon his Advocate to conduct the case. It is important to note that in the instant case when the O.A. was listed for admission on 7th September 2017, the Advocate did not appear but the Tribunal admitted the matter and directed to be placed for final hearing in due course. The conduct of the Advocate in not attending the admission hearing also clearly shows that the Advocate after having filed the application with the Tribunal was not diligent in attending the admission hearing. The litigant/Petitioner cannot be faulted for this. We do not know the reasons for non-appearance of the Advocate at the time of the admission and the final hearing but we are of the view that if an Advocate has filed the proceedings along with his Vakalatnama then it is the duty of the Advocate to

ensure that he attends to the matter and if for any reason he is unable to do so then he should be fair to his client to return the papers so that the litigant can engage any other Advocate.”

9. However, aforesaid citation is not applicable to the facts involved in the present matter. The learned counsel appearing for the petitioner in the said matter, he did not show any diligence to conduct the case. However in the present matter, Advocate was absent and he passed away in the month of November, 2021. As such, the learned trial Court ought to have considered these facts in the application. As such, the matter is remitted back to the 2nd Joint Civil Judge Senior Division, Pusa.

10. Thus, the petition is allowed. The order passed below Exhibit 69 in Special Darkhast No.19/2016 passed by 2nd Joint Civil Judge Senior Division, Pusa is hereby quashed and set aside. The learned 2nd Joint Civil Judge Senior Division, Pusa, is hereby directed to reconsider the application at Exhibit 69 afresh and to pass appropriate order in view of the observations made above by granting due opportunity to both the parties.

11. The parties shall appear on the fixed date granted by the learned 2nd Joint Civil Judge Senior Division, Pusa.

12. The learned 2nd Joint Civil Judge Senior Division, Pusa, after granting opportunity decide the Exhibit 69 afresh preferably within two months from the date of appearance of the parties.

(SMT. M.S. JAWALKAR, J.)