

# SUPREME COURT OF INDIA

Goa State Cooperative Bank Ltd.

Vs.

Krishna Nath A.

C.A.No.10596 of 2010

(Arun Mishra,J., S.Abdul Nazeer and M.R.Shah,JJ.,)

20.08.2020

## JUDGMENT

### **Arun Mishra,J.,**

1. The question involved in the present matter is whether under the provisions of Section 109 of the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as ‘the Act’) on expiry of the period fixed for liquidation, the proceedings for recovery of dues instituted/pending as against the members, shall stand closed.

2. Goa, Daman and Diu Cooperative Fisheries Federation Limited (hereinafter referred to as ‘the Society’) was registered under the Act as it is applicable to Goa. The main objective of the Society was to promote fisheries and improve socio-economic condition of the fishermen by providing necessary financial assistance, in order to Enable them to procure mechanized fishing boats/trawlers. During the period from 1974 to 1980, the Society advanced loans to its members to the extent of Rs.316 lacs to purchase engines/hull, winches, nets, etc. by raising loan from the Goa State Cooperative Bank Limited.

3. While granting loan to its members, serious irregularities were committed by the Board of Directors of the Society. Due to which, Registrar of Cooperative Societies filed Misfeasance Case No.4/1/80.

4. On the basis of enquiry conducted under Section 83(1) of the Act and in view of the report dated 1.8.1980, the Registrar of Cooperative Societies, Goa passed an interim order on 23.8.1985 under Section 102(1)(a) of the Act for winding up of the Society. The Registrar of the Cooperative Societies confirmed the order, in exercise of power under Section 102(2), on 24.1.1986 and appointed Additional Collector of Goa as Liquidator, who continued till 9.12.1991. As liquidation proceedings were not completed, the Registrar on 10.12.1991 appointed Mr. B.N. Pathan, Assistant Registrar of the Cooperative Societies as Liquidator, who continued till 28.2.1992. Yet another Liquidator was appointed by the Registrar on 21.2.1992, who continued till 15.10.1995. The Registrar vide order dated 16.10.1995 appointed Goa State Cooperative Bank as Liquidator in order to ensure speedy

recovery of loans from the members of the Society.

5. The Bank in the capacity of Liquidator filed 156 recovery cases against the defaulting members of the Society, to whom the loans were advanced. The amount of outstanding was reduced to Rs.56 lacs towards principal and Rs.154 lacs towards interest. Out of 156 cases filed against the defaulting members, 99 appeals were preferred to the Cooperative Tribunal, which were pending adjudication. The recovery could not be completed in view of the pendency of the appeals, interim stay granted by courts etc.

6. In the year 2001, one of the defaulting members of the Society filed Writ Petition No.358 of 2001 in the High Court of Bombay at Goa, prayer was made to declare that the winding up proceedings with respect to the Society be deemed to have been terminated with retrospective effect from 24.1.1993 and for an order restraining respondents continuing with the winding up/liquidation proceedings in respect of the Society.

7. The High Court allowed the writ petition vide judgment and order dated 29.11.2006, which has resulted in heavy financial losses to the Bank as the cases pending before the Adjudicating Authority will come to standstill. The High Court vide impugned judgment and order dated 29.11.2006 held that as per Section 109 of the Act, the winding up proceedings have to be closed as soon as practicable within six years from the date the Liquidator takes control of all the property, unless the period is extended by the Registrar under Section 109. Under Section 109(1) of the Act, the Registrar cannot extend the period more than 1 year at a time and 4 years in the aggregate and after the expiry of three years from the date on which the Liquidator took control, it will be deemed that liquidation proceedings have been terminated and therefore, there is no choice left with the Registrar, but to obtain a final report from the Liquidator. The High Court has directed the Registrar to examine the report submitted by the Bank and take appropriate steps according to law. The High Court has held that Registrar has to close the winding up proceedings as a period of 7 years has lapsed and there is no provision under the law to continue with the winding up proceedings. Therefore, the writ petition was allowed and it has been declared that the winding up proceedings in respect of the Society are deemed to have been terminated with retrospective effect from 24.1.1993. The Registrar and the Liquidator have been restrained from continuing with the winding up/liquidation proceedings in respect of the Society.

8. Mr. Arvind Sharma, learned counsel appearing on behalf of appellant-Bank has submitted that the High Court has erred in law in allowing the writ petition even after lapse of the period fixed under Section 109 of the Act, the proceedings for recovery of loan amount from members have to be continued. Ms. Shobha Gupta, learned counsel appearing on behalf of LRs. of respondent no.1, has submitted that no case for interference with the impugned judgment and order is made out and has taken us to the scheme of the Act to take-home the submission.

9. Where we consider the provisions in the Act, it is apparent that under Section 102 of the Act, the Registrar is empowered to pass an interim order directing winding up. The same shall be communicated to the Society and thereupon Registrar may pass final order,

vacating or confirming the interim order. When Registrar has passed interim order or final order under Section 102, the Registrar is empowered under Section 103 to appoint a person as Liquidator and thereupon as provided under Section 103(2), the society shall hand over the custody and control of all the property, effects and actionable claims including books, records and other documents. After final order is passed confirming the interim order of winding up, the officers of the society shall vacate their offices as provided in Section 103(3). As per the provisions of Section 103(4), the Liquidator, subject to the general control of the Registrar, exercise all or any of the powers mentioned in Section 105 of the Act and the Registrar is empowered to remove the Liquidator and appoint another without assigning any reason. It is provided under Section 103(5) that the assets of the society shall vest in the Liquidator. Section 103(6) makes a provision that in case interim order is vacated, the person appointed as Liquidator shall hand over the property to the officers who had delivered the same to him and the officers of the society shall be bound by the action taken by the Liquidator.

10. Under Section 105, the Liquidator appointed under Section 103 shall have power subject to supervision and control of the Registrar to institute and defend legal proceedings, civil or criminal on behalf of the society; carry on business of the society; to sell the immovable and movable property and actionable claims of the society by public auction or private contract, with any person or body corporate, or sell the same in parcels. Section 106 deals with the effect of order of winding up. The order shall be effective and operative in favour of all the creditors and the “contributories” of the society. When a winding up order becomes effective, the Liquidator shall proceed to realise the assets of the society by sale or otherwise, and no fresh dispute shall be commenced or, if pending at the date of the winding up order, shall be proceeded with, against the society, except by leave of the Registrar on such terms as may be imposed by the Registrar. The Registrar, may on his own motion, however, entertain or dispose of any dispute by or against the society. The provisions contained in Section 107 bars the civil court to take cognizance of any matter connected with the winding up or dissolution of a society under the Act. Under Section 108, the Liquidator’s accounts can be audited and Liquidator has to furnish the Registrar such vouchers and information as may be required. The Liquidator shall cause a summary of audited accounts to be prepared and send a copy of such summary to every contributory as provided under Section 108(2).

11. Section 109 provides for termination of liquidation proceedings. The provisions contained in Section 109 reads as under:

“109. Termination of liquidation proceedings (1) The winding up proceedings of a society shall be closed as soon as practicable within six years from the date the Liquidator takes over the custody or control of all the property, effects and actionable claims to which the society is or appears to be entitled and of all books, records and other documents pertaining to the business of the society, under sub-section (2) of section 103, unless the period is extended by the Registrar:

Provided that, the Registrar shall not grant any extension for a period exceeding one

year at a time and four years in the aggregate, and shall, immediately after the expiry of ten years from the date aforesaid, deem that the liquidation proceedings have been terminated, and pass an order terminating the liquidation proceedings. Provided further that, if, due to termination of liquidation proceedings at the end of ten years, the Registrar comes to a conclusion that, the work of liquidation under Section 105 could not be completed by the liquidator due to the reasons beyond his control, he shall call upon the liquidator to submit the report. After getting the report, if the Registrar is satisfied that the realisation of assets, properties, sale of properties still remained to be realised, he shall direct the liquidator to complete the entire work and carry out the activities only for the purposes of winding up and submit his report within such period not exceeding one year reckoned from the date of receipt of report from the liquidator.

Explanation.— In the case of a society which is under liquidation at the commencement of the Maharashtra Co-operative Societies (Second Amendment) Act, 1985 the period of six years shall be deemed to have commenced from the date on which the Liquidator took over the custody or control as aforesaid.

(2) Notwithstanding anything contained in the foregoing sub-section, the Registrar shall terminate the liquidation proceedings on receipt of the final report from the Liquidator. The final report of the Liquidator shall state that the liquidation proceedings of the society have been closed, and how the winding up has been conducted and the property of and the claims of the society have been disposed of, and shall include a statement showing a summary of the account of the winding up including the cost of liquidation, the amount (if any), standing to the credit of the society in liquidation, after paying of its liabilities including the share or interest of members and suggest how the surplus should be utilised.

(3) The Registrar, on receipt of the final report from the Liquidator, shall direct the Liquidator to convene a general meeting of the members of the society for recording his final report.”

It is provided in sub-Section (1) of Section 109 that proceedings for liquidation have to be completed within 6 years. The Registrar is empowered to grant extension for a period not exceeding 1 years at a time and 4 years in the aggregate and after expiry of 10 years, the liquidation proceedings shall be deemed to have been terminated. Sub-section (1) of Section 109 makes it clear that if due to termination of liquidation proceedings at the end of 10 years, the Registrar comes to a conclusion that the work of liquidation under Section 105 could not be completed by the liquidator, due to reasons beyond his control, he shall call upon the liquidator to submit the report. After getting the report, if the Registrar is satisfied that the realisation of assets, properties and sale of properties still remained to be achieved, he shall direct the liquidator to complete the entire work and carry out the activities only for the purposes of winding up and submit his report within such period not exceeding one year.

12. Section 109(2) of the Act contains non-obstante clause that the Registrar has to terminate liquidation proceedings on receipt of the final report of the Liquidator. The final report shall state closure of the liquidation proceedings and how the winding up has been conducted. The final report shall also contain, inter alia, summary of account of the winding up including the cost of liquidation, the amount (if any) standing to the credit of the society in liquidation 'after paying off its liability' including the share or interest of the members and suggest how the surplus should be utilised. The liability of Society has also to be considered.

13. It is provided under Section 109(3) that Registrar on receipt of the final report of the Liquidator, shall convene a general meeting of the members of the society for recording his final report. Section 110 of the Act provides for the disposal of the surplus assets as shown in the final report of the Liquidator, which may be divided by the Registrar with the previous sanction of the State Government, amongst its members in such manner as may be prescribed for the purposes. Where the surplus is not so divided, surplus shall vest in the Registrar.

14. It is apparent from the facts of the case that the wound-up Society has availed of loans from Goa State Cooperative Bank Ltd. as well as from the Agricultural Refinance Development Corporation. From 1974-75 to 1979-80, the Society has advanced total loans of Rs.323.81 lakhs to 155 members. The Society failed to perform its functions. There was non-recovery of loans from the members resulting in overdues, failure to collect the margin money from the loanees prior to release of the loans. There were irregularities in sanction of the loans resulting in benami transactions. Loans were advanced to non-traditional fishermen. There was mismanagement in the running of the ice factory and diesel outlet. There was failure to strengthen the affiliated primary fisheries Cooperative Society. Thus, the winding up of the cooperative society was ordered by the Registrar of Cooperative Societies.

15. The Society and the liquidator had filed recovery cases against all the defaulting members of the society to whom loans were advanced. The bank in total advanced Rs.250 lakhs to the society and on taking charge by the Bank as liquidator of the said society, the bank had outstanding of Rs.241 lakhs as principal amount and Rs.233 lakhs towards interest. The arrears due to the efforts of the liquidator bank were reduced to Rs.37 lakhs towards principal and Rs.154 lakhs towards interest. It is pertinent to mention that the bank has further pointed out that out of the cases filed against the defaulting members, in 42 cases appeals had been filed before the Cooperative Tribunal wherein stay orders were granted. It is also pointed out that 80 cases were pending with the Zonal Recovery Offices, i.e., Assistant Registrar, Cooperative Society's Sales and Recovery Officer under section 156 of the Act. Therefore, the termination of the winding up under section 109 of the Act, cannot be strictly applied so as to defeat the very purpose of the legislative intent of recovery of amount.

16. It is also submitted that by lapse of time under section 109(1) of the Act, recovery

proceedings cannot come to an end. It is further pointed out that the recovery of public money from defaulting members is absolutely necessary failing which huge financial loss would be caused to the appellant-bank. The interim stay granted by the tribunal cannot come to the prejudice of the bank. Thus, the provisions of Section 109 have to be construed in such a fashion so as to enable continuance of the proceedings for recovery. As the interim order of the court cannot work to the prejudice of any of the parties, the provision of section 109 of the Act should be construed in a manner that it is not used to interdict recovery from the defaulting members.

17. It is apparent from the facts of the instant case that the winding up of the Society has been ordered and liquidator has been appointed as the Society has utterly failed to achieve its avowed objectives in disbursement of loans to proper persons and in its recovery. No doubt about it that the liquidation of the Society has come to an end after a particular period of time as fixed under section 109. However, on lapse of time as fixed under sub-section (1) of section 109 of the Act, proceedings have to be terminated by the Registrar on receipt of final report from the liquidator as ordered under section 109(2). However, at the same time, the Registrar has power to extend the period of 6 years fixed under section 109(1), not exceeding one year at a time and four years in the aggregate, and maximum for 10 years. In case time is not extended, the winding up comes to an end on the expiry of 6 years or at the end of the extended period. The total period can be 10 years. The second proviso to section 109 makes it clear that if the Registrar comes to a conclusion that the work of liquidation could not be completed by the liquidator due to the reasons beyond his control, he shall call upon the liquidator to submit his report. After getting the report, if the Registrar is satisfied that the realisation of assets, properties, sale of properties still remains to be realised, he shall direct the liquidator to complete the entire work and carry out the activities only for the purposes of winding up and submit his report within such period not exceeding one year reckoned from the date of receipt of the report from the liquidator.

18. Section 109(2) of the Act contains a non-obstante clause which empowers the Registrar to terminate the liquidation proceedings on receipt of the final report from the liquidator. The liquidator shall state in the report that the liquidation proceedings of the society have been closed, and how the winding up has been conducted and the property and the claims of the society have been disposed of and shall include a statement showing a summary of the account of the winding up including the cost of liquidation, the amount, if any, standing to the credit of the Society in liquidation, after paying off its 'liabilities' including the share or interest of members and suggest how the surplus should be utilised.

19. Section 110 of the Act deals with disposal of surplus assets. They should either be divided by the Registrar, with the previous sanction of the State Government, amongst its members, if they specify that such a surplus shall be utilised for the particular purpose or may be utilised for both the purposes.

20. It is apparent that on the termination of the liquidation proceedings, liability of the members for the debts taken by them does not come to an end. There is no such provision in the Act providing once winding up period is over, the liability of the members for loans

obtained by them which is in their hands, and for which recovery proceedings are pending shall come to an end. No automatic termination of recovery proceedings against the members is contemplated. On the other hand, on completion of the period fixed to liquidate the society, final report has to be submitted as to the amount standing to the credit of the society in liquidation after paying off its liabilities including the share or interest of members. Thus, even in the case of liquidation the accountability remains towards surplus and liabilities do not come to an end. Even if the period fixed for liquidation of society is over, that does not terminate the proceedings for recovery which have been initiated and appeals are pending.

21. It is a settled law that when there is stay of proceedings by court, no person can be made to suffer for no fault on his part and a person who has liability but for the interim stay, cannot be permitted to reap the advantages on the basis of interim orders of the court. In *Amarjeet Singh v. Devi Ratan*<sup>1</sup>, it was held that no person can suffer from the act of court and unfair advantage gained by a party of interim order must be neutralised. The Court should never permit a litigant to perpetuate illegality by abusing the legal process. It is the bounden duty of the court to ensure that dishonesty and any attempt to abuse the legal process must be effectively curbed and the court must ensure that there is no wrongful, unauthorised or unjust gain for anyone by the abuse of process of the court. No one should be allowed to use the judicial process for earning undeserved gains or unjust profits. The object and true meaning of the concept of restitution cannot be achieved unless the courts adopt a pragmatic approach in dealing with the cases. The Court observed:

“18. In *Ram Krishna Verma v. State of U.P*<sup>2</sup> this Court examined the similar issue while placing reliance upon its earlier judgment in *Grindlays Bank Ltd. v. ITO*, (1980) 2 SCC 191 and held that no person can suffer from the act of the court and in case an interim order has been passed and the petitioner takes advantage thereof and ultimately the petition is found to be without any merit and is dismissed, the interest of justice requires that any undeserved or unfair advantage gained by a party invoking the jurisdiction of the court must be neutralised.”

(emphasis supplied)

22. The principle of restitution enjoins a duty upon the courts to do complete justice to the party at the time of final decision, and to do away with the effect of interim order in the fact situation of the case. In *South Eastern Coalfields Ltd. v. State of M.P*<sup>3</sup>, it was observed that no party can take advantage of litigation, it has to disgorge the advantage gained due to delay, in case lis is lost.

23. The concept of restitution is a common law principle and it is a remedy against unjust enrichment or unjust benefit. The court cannot be used as a tool by a litigant to perpetuate illegality. A person who is on the right side of the law, should not have a feeling that in case he is dragged in litigation, and wins, he would turn out to be a loser and wrong-doer as a real gainer, after 20 or 30 years. Thus, the members who have obtained stay in appeal or on recovery proceedings or the case is pending, cannot take advantage of the fact that the period fixed for Liquidator under the Act is over.

24. Once a report has been submitted, the Registrar has to take action in terms of the report and in such circumstances when the proceedings for recovery are pending against the members and the Society has taken loan from the banks for its member, the actual money has to go to the creditor i.e., to the bank who is going to be benefitted by recovery of public money in the hands of members. In such cases it would be appropriate for the Registrar to send notice of the proceedings to a person who is to be benefitted from the recovery. In the instant case, the bank itself is a prime lender cum liquidator. The proceedings cannot come to the end. Thus, in our considered opinion, it is open to the bank to continue with the recovery proceedings and make recoveries from the defaulting members. Merely on the liquidation of Society, or the factum that the period fixed for liquidation is over, liability of the members for the loans cannot be said to have been wiped off. The disbursement of loan in an arbitrary manner and failure to recover was the very fulcrum on the basis of which winding up of the Society was ordered.

25. The decision of the High Court to the contrary, deserves to be and is hereby set aside. Though the Liquidator cannot continue once the proceedings are over. Notice in such cases should be issued by the Registrar to the creditors and to persons for whose benefit recovery is to be made, to continue the pending proceedings in the instrumentality of court/tribunals/recovery officers etc. We hold that appellant Bank can continue the pending proceedings. The appeal is allowed to the aforesaid extent.

Judgment Referred.

<sup>1</sup>(2010) 1 SCC 0417

<sup>2</sup>(1992) 2 SCC 0620

<sup>3</sup>(2003) 8 SCC 0648