

(2006) 11 BOM CK 0071
In the Bombay High Court
Case No : Writ Petition No. 357 of 2001

Krishnanath A. Prabhu Desai

APPELLANT

Vs

State of Goa and Others

RESPONDENT

Date of Decision : 29-11-2006

Acts Referred:

Citation : (2007) 1 ALLMR 162 : (2007) 4 BomCR 385 : (2007) 4 BOMLR 385 : (2007) 6 MhLj 106

Hon'ble Judges : J.N. Patel, J

Bench : Single Bench

Advocate : M.P. Amonkar, for the Appellant; G. Shirodkar, A.G.A. for respondent Nos. 1 to 3, for the Respondent

Final Decision : Allowed

Judgement

J.N. Patel, J.—Heard learned Counsel for the parties.

2. The petitioner is a member of "Sanjivani Bagayatdar Sahakari Saunstha" a Society registered under the Maharashtra Co-operative Societies Act, 1960 (as applicable to the then Union Territories of Goa, Daman and Diu). It is the case of the petitioner that respondent No. 3 had passed an interim order dated 24th March, 1994 u/s 102(1)(a)(iv) of Maharashtra Co-operative Societies Act read with Rule 84 of the Maharashtra Co-operative Societies Rules, 1962 for winding up of the said Society and further calling upon the Society as to why its affairs should not be wound up. In response to the show cause notice the Chairman of the said Society filed its objections but respondent No. 3 by its Order dated 28th April, 1994 passed u/s 102(2) of the said Act, confirmed the interim order dated 24th March, 1994 and appointed respondent No. 4 as Liquidator of the Society.

3. It is the case of the petitioner that u/s 109 of the Maharashtra Co-operative Societies Act the winding up proceedings of the Society has to be concluded within a period of three years from the date of the order of winding up, unless the said period is extended by the Registrar and that he shall not grant extension

for a period of one year at a time and four years in aggregate and after expiry of 7 years from the date of order for winding up of Society, and it is deemed that the liquidation proceedings have been terminated.

4. Therefore, according to the petitioner the liquidation proceedings by virtue of Section 109 of the Maharashtra Co-operative Societies Act is deemed to have been terminated on 27th April, 2001 and the Asst. Registrar was bound to pass the order of termination and thereby closing the liquidation proceedings but in spite of lapse of period of 7 years, the Registrar of Co-operative Societies has failed to act in accordance with the provisions of Section 109.

5. On the other hand, it is the case of respondent No. 4, that is the Bank which came to be appointed as Liquidator, that in case the petition is allowed then the Bank which is the Liquidator would not be able to recover huge amount of monies from the defaulting members and that the whole purpose of filing this petition is to avoid recovery proceedings pending against the members of the Society and if the said amount is not recovered from them, it will directly affect the financial condition of the Bank.

6. It is submitted that the petitioner has suppressed the fact that he himself is a defaulter-member and the amount due from him is to the tune of Rs. 62,352.50 towards interest. It is further submitted that the affairs of the petitioner/Society of which the petitioner was a member was not conducted properly and there was lot of mismanagement resulting in the Registrar passing the Order of liquidation and winding up. It is further contended by the respondent No. 4/Liquidator that in some cases the original member to whom loan was granted has expired and proceedings are to be initiated to bring their LR's on record. In some cases the whereabouts of such defaulters is also not known and therefore the Liquidator has continued to act in the interest of the said Bank and to enable the Society to recover its dues.

7. Section 109 of the Societies Act of 1960 clearly provides that the winding up proceedings has to be closed as soon as practicable within six years from the date the Liquidator takes control of all the property, 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. The proviso to Sub-section (1) of Section 109 provides for extension for winding up proceedings by the Registrar which cannot be extended for more than one year at a time and four 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 the liquidation proceedings have been terminated and pass an order terminating the liquidation proceedings.

8. Therefore there is no choice left with the Registrar, but to obtain a final report from the Liquidator and take appropriate steps in the matter like directing the Liquidator to convene a general body meeting for recording its finding and other general steps towards affairs of the Society.

9. In view of this position in law, the Registrar has no option but to close the winding up proceedings as period of seven years has lapsed and there is no provision under the law to continue with the winding up proceedings.

10. Therefore, the petition is allowed in terms of prayer Clauses (a) and (b) which read as under:

(a) Issue a declaratory writ declaring that the winding up of the Sanjivani Bagayatdar Sahakari Sauntha Ltd. is deemed to have been terminated with retrospective effect from 27-4-2001 and further restraining the respondent from in any manner continuing with said winding up of the society namely Sanjivani Bagayatdar Sahakari Sauntha Ltd.

(b) Issue writ in the nature of mandamus directing the respondent No. 3, the Asst. Registrar of Co-operative Societies to pass the order u/s 109 of the Co-operative Societies Act terminating the liquidation proceedings of the Sanjivani Bagayatdar Sahakari Sauntha Ltd.

Rule is made absolute in the aforesaid terms.