

EP No.14/2019

**:: ORDER ON APPLICATION FILED U/SEC.47(1)
R/W.SEC.151 OF CPC ::**

The present petition is filed by the DHr for execution of Award passed by Joint Registrar of Co-Op-Societies Karnataka State Soudhard Federal Co-Op. Ltd Bengaluru for recovery of Award amount with interest to the tune of Rs.1,53,252/-.

2. The Jdr No.1 has filed the present application U/Sec.47(1) R/w.Sec.151 of CPC seeking dismissal of the petition as not maintainable. The Jdr No.1 has filed affidavit in support of the application stating that, the present execution petition is filed by the Secretary of DHr Society and said Society is registered under Karnataka Co-Operative Societies Act-1959. The Dhr Society has wound up by the Order dated 07.01.2022 bearing No.DRL/LQD/S.S/01/2021-22 passed by the District Registrar of Co-Operative Societies. By virtue of said order the Dhr Society has windup and liquidator also appointed to carry on the business of the Dhr Society. When the Dhr Society is wind up and liquidator is appointed, this petition cannot be proceeded by the secretary of the society and Civil Court is barred to proceed with an execution petition Under Section 118(2) of Karnataka Co-Operative Societies Act-1959. Hence, under these circumstances this petition is not maintainable and same is liable to dismissed. On these grounds Jdr prays to allow the application and seeks for dismissal of petition.

3. The Dhr has filed objections denying contentions of application and affidavit filed along with application. It is further stated that, this court has jurisdiction entertain the petition and proceed with the petition. Further stated that the present application is filed by the Jdr No.1 with a malafide intention to evade

payment of the loan amount and to defeat the recovery of due to the Dhr Society. On these grounds prays to reject the application with a cost.

4. Heard both counsels.

5. The counsel for the Jdr No.1 submits that, as Dhr society is windup in the year 2022. Hence, rights are vested with Liquidator not with the secretary. Section 73, 74, 75 and Sec.118 of Karnataka Co-Operative Societies Act, bars to proceed with petition.

6. The counsel for Jdr No.1 has produced the certified copy of order passed by District Registrar Belagavi of Karnataka Co-Operative Society dated 07.01.2022. Shri. Basaveshwar Multipurpose Souhard Sahakari Nyt., Belagavi, Chikkodi has windup. Accordingly, District Registrar Chikkodi, Raibag, Athani of Karnataka State Co-Operative Societies, Division office, Mahantesh Nagar Belagavi is appointed as Liquidator.

7. On the other hand, Dhr counsel denied the submissions of Jdr No.1. During the course of argument, he submits that Shri. Basaveshwar Vividah Uddeshagala Souhard Sahakari Niyamita, Athani, Tq: Athani is not windup. The document produced by the Jdr No.1 pertains only to Chikkodi Branch not pertaining to Athani Branch. In response to the said argument, The counsel for Jdr No.1 submit that, the cause title of the petition itself shows that, the petition is filed by the Secretary in the name of Shri. Basaveshwar Multipurpose Souhard Sahakari Niyamity Belagavi, Head Office, Chikkodi, Branch Athani. In such cases when a Head Office itself would up there is no existence of sub-branches like Chikkodi, Athani and Raibag. Hence contentions taken by the Dhr counsel holds no water.

8. This court has gone through the Sections 73, 74, 118 other provisions of the Karnataka Co-Operative Societies Act-1959 with respect to Liquidator and powers of Liquidator.

9. Coming into the facts of the case, in the present petition the DHr society itself has windup and the Liquidator is appointed. Liquidator shall also have power to institute and defend suits and other legal proceedings on behalf of the cooperative society by the name of his office. The Liquidator shall continue to have custody or control of the property, effects and actionable claims and have authority to take the steps.

10. The Liquidator has authority to proceed for recovery of claim of society. Therefore, the Secretary of the DHr society has no right to proceed with the claim of society. Hence the petition is not maintainable and liable to be dismissed. For the foregoing reasons I proceed to pass the following:

ORDER

The present petition is not
maintainable and same is hereby dismissed.

No order as to costs.

II Addl. Civil Judge & JMFC Athani