

Gopal Keshavrao Ghuge v/s. Shakuntala Kedare**ORDER BELOW EXHIBIT -102.**

Heard Ld. Advocate Shri. P.J. Bhokare for the disputant and Ld. Advocate Shri. K. J. Suryawanshi for the opponent.

2. Read the plaint. Perusal of the plaint it reveals that, the dispute is concerned with section 91 of the Maharashtra Co-operative Societies Act, 1960. However, subsequently when the matter is fixed for the evidence stage of disputant, that time opponent no.2 society appointed the liquidator on dated 30/10/2015 by the Assistant Registrar Co-operative Society, Tq. Kannad. In view of section 107 of the M.C.S. Act, 1960 no any legal proceeding can lay or be proceeded against the society which is in liquidation, without leave of the registrar. Thereafter, my Ld. Predecessor passed the order to that effect on dated 21/04/2017 and two months time was granted to the disputant to obtain the leave of the Registrar. Thereafter, the Registrar refused the grant the leave to continue the dispute vide order dated 18/04/2017 filed in list of document at Exh.99 (A) Sr. no.2. Further, registration of society has been cancelled by the Registrar order dated 31/03/2016.

3. Both parties are admitting the opponent society has been de-registered by the Registrar. 1) Perused the list of document at Exh.97, Sr. No.1. copy of order dated 30/10/2015 issued by the Assistant Registrar Co-operative Society Tq. Kannad, regarding appointment of liquidator on opponent no.2 society.

4. Perused the list of document Exh.99(A) dated 02/04/2018 submitted

by the disputant. i) copy of application dated 12/04/17 of disputant to the Assistant Registrar Co-operative Society Tq. Kannad Dist. Aurangabad. ii) copy of order dated 18/04/17 by the Assistant Registrar Co-operative Society, Tq. Kannad, Dist. Aurangabad to the disputant as per letter no.702 dated 31/03/16 registration of society has been cancelled. Therefore, Assistant Registrar has rejected the application of the disputant to permit the liquidator to add party in the dispute. iii) copy of appeal alongiwth application no.47/2017.

5. Disputant has relied on Chandra v/s. K. Raheja Universal Pvt. Ltd. 2015 (5) Mh.L.J. wherein Hon'ble High Court dealt with the issue return of plaint jurisdiction and dispute between cooperative society and its members, wherein it is held that if the plaint is rejected then, it will amount to dismissal of suit amounting to decree and plaintiff will face hardship as he has to go in the appeal, he will not get any return of the court fees and on the other hand, if the plaint is returned he would not be a loser as the correct forum is made available. Therefore, Hon'ble High Court held that plaint need not be rejected and civil court has ordered return the paint is correct and legal.

6. Therefore, in view of the above citation of Hon'ble High court of Bombay (supra) the present case is also falls on the same ground. The disputant was ordered to add party to the liquidator of opponent no.2 society but he failed to do so. Perused the documents at Exh.99 A dated 02/04/18, the order passed by the Assistant Registrar Co-operative Society, Tq. Kannad, Dist. Aurangabad, it shows that opponent society has de-registered now society is not in existence, therefore, Assistant Registrar have not given permission to add liquidator as the society was already de-registered registration of the society was cancelled so,

disputant could not add the liquidator and without liquidator dispute can not be entertained in view of section 107 of M.C.S. Act. Disputant filed the application at Exh.104, as above disclosed in view of citation in such circumstances, when the court has not jurisdiction to entertain the matter, return of the plaint is a effective remedy. Therefore, in this matter it would be just to return the plaint to the competent court who has jurisdiction to entertain this matter.

7. Hence, considering these facts and circumstances at present the opponent no.2 society is not in an existence and the matter connected with the society was pending for obtaining the leave of the Registrar under section 107 by way of appointing liquidator as a party in the dispute. However, the disputant is failed to obtain leave of the Registrar within the time allotted by my Ld. Predecessor. Since the concern society is deregistered and not in existence, therefore, the issue involved in the respect of the dispute against the society is comes to end. The matter connected with this issue of the society and a society is not in existence therefore this court is arrived at this conclusion that, this matter is not connected with section 91 of M.C.S. Act, 1960. Therefore, the jurisdiction of the Co-operative court to try this dispute is expressly barred. Hence, the plaint is return to the disputant for presentation to the proper court.

Under Rule 10 Order VII this court directed to both parties shall appear before the competent court on 01/01/2019.

Place :- Aurangabad.

Date :- 13th November, 2018.

Sd/-

(Smt. A. A. Pathan)

Judge,

Co-operative Court, Aurangabad.