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**Guidelines regarding proceedings u/s 88 of the
Maharashtra Cooperative Societies Act, 1960
and its monitoring**

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CIRCULAR

The proceeding under section 88 of the Maharashtra Cooperative Societies Act, 1960, for assessing damages against delinquent promoters, etc. caused to the society is one of the most important assignments of the Registrar imposed under the Maharashtra Cooperative Societies Act, 1960. The proceeding is to be conducted by the Registrar or a person authorised by him. The proceeding is effective and operates in favour of all creditors, members and depositors of the society. Hence, the responsibility of the Registrar towards the creditors, members and depositors is of utmost importance. The process has to be completed in certain statutory period as prescribed in the proviso to the section 88(1) of the Act, 1960.

The procedure for holding enquiry u/s 88 of the Act, 1960, for assessing damages against delinquent promoters, etc., is prescribed in the rule 72 of the Maharashtra Cooperative Societies Rules, 1961. The order and proceeding under section 88(1) of the Act, 1960 are *quasi judicial* in nature. The Registrar or an Authorised Officer has to pass various orders under rule 72 of the Rules, 1961 which should be in consistent with provisions of the other Acts such as Civil Procedure Code 1908, Indian Evidence Act, 1872, etc. and also in compliance of *principles of natural justice*.

Hon. High Court Bombay in Writ Petition No.1963 of 2015 (Arun Dattatraya Narake Vs. Authorised Officer, Kolhapur Dist. Central Coop. Bank Ltd., and Others) decided on 4th March, 2015, has observed and directed as under-

"37. Having noted above, I am inclined to observe that the State of Maharashtra and/or the concerned Ministry of Cooperation required to issue appropriate guidelines and/or circulars – How to deal with such inquiry proceedings right from initiation as contemplated under Section 81 – the auditor's reports and its effectiveness – till the decision under Section 88 MCS Act read with 72 of MCS Rules by taking into consideration the statutory prescribed procedures. "The law of damages/compensation including the mitigating circumstances" are relevant to be noted by all the concerned. "The principle of Evidence Act" – to prove the documents and/or material and the charges, by giving equal opportunity to all the concerned, at appropriate stages, including by following principle of natural justice, covering the importance of the reasoned order, based upon the proved documents/material. The general principles of law, therefore, need to be kept in mind while dealing with such proceedings till its conclusion and for effective execution of it as the same are necessary to seal the guilty delinquent and/or to discharge the innocent. It is also necessary to prevent and control the situation and/or prevent the further losses and/or deterioration of the Bank business. Early steps and appropriate to proceedings to assess the damages or of recoverable amount and the timely action, by all the concerned, are always necessary to avoid further complications at the final stage and including the execution of it. If such circulars and/or guidelines are already circulated, even after amendment to the MCS Act and the Rules, the timely supervision of such inquiry is also required to be followed by the Department. The delinquent and/or guilty person gets chance/leverage to challenge such action and/or orders, if those are not in accordance with law and the principle of natural justice."

Therefore, a need is felt that a detailed guidelines in the form of circular be issued to the field officers of the Cooperative Department. The officers of the department need a new orientation to speed up this proceeding. Hence, this circular issued.

1. The various provisions of the Act,1960 and Rules, 1961 to be considered while issuing order u/section 88:

Following provisions of the Maharashtra Cooperative Societies Act,1960 and Rules. 1961 which are to be considered while issuing order under section 88 of the Act. 1960 -

1. Section 81 - Audit of cooperative societies :

The provisions and the procedure for the audit of cooperative societies have been mentioned u/s 81 of the Act, 1960 and rule 69 of the Rules, 1961. The provisions of the Act,1960 and Rules,1961 regarding the audit of cooperative societies are sufficient and self explanatory. However, the Cooperation Department has recently revised Audit Manual, which comprises detailed guidelines and procedure for conducting the audit, professional norms for audit, the structure of audit report, content of special report and specific report. Accordingly auditor shall conduct the audit and submit his audit report.

As per provision of section 81 (5B), the auditor shall submit his audit report within a period of one month from its completion and in any case before issuance of notice of the annual general body meeting.

If the auditor has come to a conclusion in his audit report that any person is guilty of any offence relating to the accounts or any other offences, he shall file a specific report to the Registrar within a period of fifteen days from the date of submission of his audit report. The Auditor concerned shall, after obtaining written permission of the Registrar, file a First Information Report of the offence. However the Act 1960 does not require compliance with principles of natural justice before lodging FIR (V. C. Shukla vs. State (Delhi Administration) 1980 Supp. SCC249, Anju Chaudhary vs. State of Uttar Pradesh and Anr (2013)6 SCC 384, and order of Hon. High Court Bombay dated 13.09.2017 in WP 7909/2017 and others)

It is also provided that if the auditor finds that there are apparent instances of financial irregularities resulting into losses to the society caused by any member of the committee or officers of the society or by any other person, then he shall prepare a Special Report and submit the same to the Registrar along with his audit report. On the basis of such special report/audit report, the Registrar may pass reasoned order to initiate proceedings u/s 88 of the Act, 1960.

2. **Section 82** - it provides that the society shall submit rectification report within prescribed period regarding defects or irregularities pointed out by the auditor and action taken by it thereon.

3. **Section 83** - The Registrar has power to conduct an inquiry into the constitution, working and financial conditions of society. The result of such enquiry shall be communicated to the society whose affairs have been investigated.

4. **Section 84** - On an application of a creditor of a society or on his own motion in case of societies indebted to the government, the Registrar is empowered to conduct inspection of books of indebted society and result of such inspection shall be communicated to the applicant and to the society.

5 **Section 85 and Sec. 86** - Section 85 provides for the cost of inquiry u/s 83 and the inspection u/s 84 and Sec. 86 provides for the recovery of any sum awarded by way of cost u/s 85.

6 **Section 87** - Registrar may bring defects disclosed in inquiry u/s 83 or inspection u/s 84 to the notice of the society and he may also order directing the society to remedy the defects. If society fails to rectify the defects disclosed in audit u/s 81 or fails to rectify defects as directed by the Registrar, he may himself take steps to have the defects rectified.

2. Grounds of Order u/s 88

1. Grounds/basis of Order u/s 88:

- (i) Report made by the Auditor u/s 81 or
- (ii) Report made by the person authorised to make an enquiry u/s 83 or
- (iii) Report made by the person authorised to inspect the books u/s 84 or
- (iv) Report made by the liquidator u/s 105 or
- (v) Otherwise such as Report of inspection of the books u/s 89A, etc.

However, remedial provisions as provided under relevant sections of the Act, 1960, should be complied with firstly so that every opportunity provided by the Act, 1960 and Rules, 1961 may be availed by the concerned society. Therefore, compliance made by the society as contemplated in section 82, 83(4), 84(2), 87, 89A should be considered alongwith the other provisions of the Act, 1960 and Rules, 1961 more particularly with powers of committee of society u/s 73, 43, 44 and under rule 42 and 49, etc., before issuing order u/s 88 for appointing Authorised Officer.

The Registrar should send a copy of the report on the basis of which such order is issued to the Authorised Officer.

2. Damage/Loss due to/in terms of:

(a) In respect to money or property of the society-

- (i) Misapplication or
- (ii) Retention or
- (iii) Liable or
- (iv) Accountable.

(b) Guilty of misfeasance in relation to the society or

(c) Breach of trust in relation to the society.

(d) The above terms/concepts are briefly explained as under-

(i) Misfeasance-

(i-a) Broadly speaking, the term 'misfeasance' is used to describe the improper performance of some lawful act. In other words, it means misconduct and delinquency and a breach of duty resulting in loss to the institution. It includes a breach by the promoter, manager or officers of the societies of their duty to the institution, the direct consequences of which have been the misapplication or the loss of its assets, while a "*non-feasance*" indicates the failure or omission to perform some act which it is an obligation to perform.

Misfeasance proceedings are a curious combination of both civil and criminal liabilities. If the Board of directors or the members thereof are lacking in honesty and integrity for which losses are caused to the institution for their lapses, they can be held criminally liable and criminal proceedings can be started against them. But besides the lack of honesty and integrity, they should also exhibit certain standards of diligence and prudence which are normally expected of them in relation to their office, and for such reasonable standards of diligence and prudence if they are lacking, they can be held liable as a matter of civil liability. Lack of civil and criminal liability will therefore arise from lack of reasonable diligence and prudence and lack of honesty and integrity respectively.

(G. P. Murdeshwar Vs. Talmakiwadi C. H. Society.1963 C.T. D. 507. 522)

(i-b) In the under mentioned case the word "*misfeasance*" has been construed to mean the improper performance of some act which a person may lawfully do. In contrast to the word "*nonfeasance*" which means omission of an act which a person ought to do. Therefore misfeasance is a regulative act. The section does not use the word "*nonfeasance*".

The audit report of a society disclosed that there was misappropriation of large funds of the society. On that basis, the Registrar issued notice to show cause why action should not be taken against them for the failure to carry out the obligations under by-law 61 and on that notice, he held the two directors guilty of misfeasance owing to no performance and negligence of duties. The Appellate Authority only reduced the amount which they were required to pay. The High Court held that there was no misfeasance because what was alleged against the directors was failure to carry out their obligations or to take proper steps for compliance of their obligations which means nonfeasance and nonfeasance is not mentioned in the section. The High Court, therefore, set aside the order. One can realise what is the importance of words used in a section (Gajanan Pandurang Shet Parkar v. Authorised Person, 1998(2) Mah. L.J 483:1998 (100)(2) Bom. L. R. 406).

(ii) Breach of Trust:

The misapplication and breach of trust are both aspects of misfeasance. This term is used in a more restrictive sense in a case where following the breach of duty, there has been a misapplication of the funds of the society. It is the violation or non-performance of duty imposed by law on a person standing in a fiduciary relation to another. The person is said to have committed a criminal breach of trust when such person dishonestly misappropriates or converts to his own use the property of the Society which is entrusted to him in violation of the directions of the law prescribing the mode in which such trust should be discharged.

Section 3 of the Indian Trust Act, 1882 defines a "*breach of trust*" as a breach of any duty imposed on a trustee as such by law for the time being in force. It consists of some improper act, neglect, default or omission of a trustee in respect of trust property. It may result from directly intermeddling with trust property for improper purpose or from failure to exercise proper prudence in discharging a duty or from mala fide exercise of discretion. In such a case, the trustee may not be an express trustee under a deed of trust,

he can be a *defacto* trustee also. An officer of any co-operative society is also in the nature of a *defacto* trustee holding or dealing with the society's property as a trustee for the benefit of the society and its members. Breach of trust involves both civil and criminal liability. But in the latter case some dishonest intention is necessary (see Sec. 405 of Indian Penal Code). In civil liability, the breach should result in some loss financial or otherwise. Civil liability will not cease merely because the statute includes the same event under provision dealing with criminal liability. (*Jiyajeerao Cotton Mills Ltd .v. M. P. Electricity Board*, AIR 1989 SC 788)

How the liability of the office-bearer is to be assessed has been discussed in the under mentioned case, and it has been observed that if the liability is to be fixed on an officer of the society for any losses, it must be shown that the officer on whom the liability is to be fixed was under legal obligation cast upon him for a particular matter to do a particular thing; there was also a breach of that obligation and thirdly, that loss occurred to the society was as a result of the breach of that obligation. When these things are proved then the officer can be held responsible for the loss. (*V. M. Dhake v. Vividh K. S. S. Limited*, (1965)1 Co-operative L. J. 323)

(iii) Misapplication:

Misapplication means using the money of the society in manner not warranted by the law or rules made under the Act or by the bylaws by which the society is governed, in other words using the money contrary to the Act, the Rule and by-laws of the society.

The view held by the Bombay High Court with regard to the misapplication of money of the society is that misapplication of money can be treated in such cases only where the money of the society is utilised by the members or officers of the society for the purposes other than those mentioned in its by-laws or for the purpose other than those which are not concerned with its proper and legal business i.e. if the money is spent for purposes which are totally *ultravires* the objects of the society; such application of the money for such purposes should be treated as misapplication of money. The meaning of the term "misapplication of money" has been thus amplified. (*Kathiawad Trading Co. v. Veerchand*. I.L.R. 18 Bom. 119.)

(iv) Retainer:

Retainer is an act of retaining or withholding or keeping for oneself.

(v) Delinquent:

Delinquent means guilty of misdeeds or dishonesty i.e. failing in one's duty or obligation.

3. Period of deeds/acts causing damage/loss:

Deeds/acts done/occurred within a period of five years prior to date of -

- (i) commencement of a such audit u/s 81 or
- (ii) order of enquiry u/s 83, or
- (iii) order of inspection u/s 84 or u/s 89A or
- (iv) order of winding up u/s 102 or u/s 110A.

The whole or part of period of the particular act/deed committed by the delinquent persons should be within a period of five years prior to the date as aforesaid. It should be supported by documentary evidence.

4. Person or officer u/s 88:

- (a) Any person or any past or present officer of the society who has taken any part in the organisation or management of the society.
- (b) In case of deceased person, his representative who inherits in the estate.

For purposes of this section, the meaning or definition of person or officer of society. provisions of sub-section (20) and (7) of section 2 of the Act, 1960 alongwith relevant provisions of byelaws of the society should be considered.

As to the extent of liability of the legal representative in legal proceedings u/s 88, it has been observed by the Supreme Court that the legal representative of the deceased person will be responsible for the liability of the deceased to the extent of the property received by the legal representative in his possession which was belonging to the deceased person. The liability of the representative, therefore, is only to the extent of the property received by him in his possession from the deceased. It has, therefore, been held that the legal representative will be that person who would represent a deceased person and who would also represent his property after his death. In the eyes of the law, he can only be considered as legal representative if he represents the deceased person and his property. [Andhra Bank Ltd. Vs. R. Shrinivasan, AIR 1962, SC 232.]

3. Conclusion of proceedings u/s 88:

Registrar or an Authorised Officer may make an order requiring delinquent persons-

- (a) to repay or restore the money or property or any part thereof, with interest at such rate as determined, in case he becomes liable or accountable, or
- (b) to contribute such sum to the assets of the society by way of compensation in regard to the misapplication, retention, misfeasance or breach of trust.
- (c) to pay the cost of proceedings as determined.(u/s 88(2))

4. Period prescribed for completion of proceedings u/s 88(1) :

The Authorised person should complete the proceedings u/s 88(1) within a period of two years from the date of issue of order by the Registrar.

However, the Registrar, after recording the reasons therefor, has power to extend the said period for a maximum period of six months. And there after, the State Govt., after recording the reasons therefor, has power to extend the said period as it may deem fit.

(a) Granting extension by the Registrar-

While granting extension for completion of proceedings u/s 88(1) by concerned Registrar, he has to consider reasons for non-completion of the proceeding within prescribed period, the present status of proceedings, number of persons/officers involved, complexity and volume of issues, judicial proceedings or orders, if any, remaining work of enquiry and expected period to be required for completion of proceedings.

The concerned Registrar, three months before the date of completion of period specified in the order, shall exercise powers to grant extension by stating supportive reasons thereof. Therefore, the Authorised Officer has to submit application for granting extension for proceeding within four months before the date of completion of the period specified in the order.

(b) Granting extension by the State Govt.-

The concerned Authorised Officer alongwith recommendation of the concerned Registrar, has to submit application for granting extension for completion of proceeding u/s 88 (1), within four months before the date of completion of the period specified in the order, to the State Govt.

The concerned Authorised Officer should state reasons for non-completion of the proceeding within prescribed period, the present status of proceedings, number of persons/ officers involved, complexity and volume of issues, judicial proceedings or

orders. if any, remaining work of enquiry and expected period to be required for completion of proceedings and it should be supported by necessary documents.

5. Provision of section 88 (1) applicable to the act amounting criminal offence.

Section 88(3) provides that, notwithstanding the fact that the act may amount to a criminal by offence for which the person guilty of the act may be criminally prosecuted, it is open to the Registrar to hold an enquiry and assess damages if an application is made to him by proper parties mentioned a in the section and he is satisfied that the person has been guilty of misapplication, etc.

6. Power of Authorised Officer u/s 88 (1), to enforce, attendance etc.

(a) The section 89 of the Act,1960 provides that the Registrar or the person authorised by him, when acting under section 88, by the same means and in the same manner as is provided in the case of a Civil Court under the Code of Civil Procedure, 1908, shall have power --

- (i) to summon and enforce the attendance of any person and
- (ii) examining him on oath or affirmation or by affidavit or
- (iii) to compel the production of any document or other material object.

(b) The rule 78(5)(i) of the Rules,1961 provides that the mode of serving summons and notices as laid down in sub-rules (1) to (4) shall mutatis mutandis apply to the service of summonses or notices issued by the Registrar or the person authorized by him, when acting under section 88.

7. Procedure for assessing damages against delinquent promoters, etc. u/s 88

To hold such an enquiry u/s 88 of the Act,1960 for assessing the damages, the Registrar or the authorised officer should follow the procedure strictly as contemplated under rule 72 as under-

- (i) The enquiry proceeding u/s 88 and rule 72 is a quasi judicial proceeding and hence, the Registrar or the authorised person should follow the principles of natural justice, the provisions of the Indian Evidence Act, 1872 and Civil Procedure Code 1908 and to give fair and reasonable opportunities of being heard to all the concerns.
- (ii) The Registrar or the authorised person, as soon as, he receives the copy of order u/s 88(1) and the report on the basis of which such order is issued, should firstly examine and scrutinize the report and all the relevant documents, books of accounts, proceedings of

the managing committee meetings and all other concerned documents relating to such report and get himself satisfied that,

(a) any person or present officer of the society who has misapplied, retained or become liable or accountable for any money or property of the society and has been guilty of misfeasance or breach of trust in relation to the society,

(b) the Registrar, or the authorised person, before getting himself satisfied as discussed above, he should fix the period of 5 years correctly for holding the enquiry u/s 88 and rules 72 from the date prior to the commencement of such audit or date of order for enquiry, inspection or winding up.

(iii) The Registrar or the authorised person after fixing the period of 5 years for holding the enquiry, u/s 88 and rules 72 should issue notice calling upon the concerned person or persons furnishing him or them with the particulars of the acts of misapplication, retention, misfeasance or breach of trust and extent of his or their liability involved therein and calling upon him or them to put in a statement in his or their defence within a period of 15 days from the date of issue of notice.

(a) The Registrar or the authorised person should issue the notice as stated above by registered post A.D. on the addresses given by the officer of the society.

(b) If the said notice returned back from the postal authority with a remark of "left address, not known, etc. then in that event, the Registrar or the authorised officer should issue the said notice by public notice in local daily news paper where the concerned delinquents, persons or officers are residing permanently as per the record of the society.

(c) If the notice issued returned back from the postal authority with a remark of "unclaimed, not claimed and refused then in that event the Registrar or the authorised person should presume and treat that the concerned delinquents or persons or officers are properly served.

(d) The Registrar, or the authorised person shall provide photocopies of all the relevant documents on the basis of which the enquiry in hand u/s 88 of the Act is based to the concerned all the delinquents and give reasonable opportunity to all the concerned to answer the notice issued as per the rule 72(2).

(e) If, the concerned delinquents or person or officer failed to answer the notice by way of his defence and failed to produce the concerned documentary evidence in support of his defence in given reasonable period, the Registrar or the authorised person shall pass

an *ex parte* order or no written statement order against such a delinquents, persons or officers.

(iv) After receipt of the written statement/replies alongwith documents if any, from the concerned delinquents, persons or officers, the Registrar or the authorised person shall examine all the written statements and replies along with the documents and get himself satisfied that there are reasonable grounds for holding the enquiry against such a delinquents, persons or the officers, shall frame the charges as contemplated under Rule 72(3).

(v) The Registrar or the authorised officer shall serve the said charge sheet to all the concerned delinquents, persons or officers as far as possible by hand delivery in person after taking due acknowledgement to that effect and if he fails to serve the said charge sheet to the concerned by hand delivery due to any reason, he should serve the same to the concerned by R.P.A.D. and give reasonable opportunities to all the concerned to answer the charge sheet within a period of 15 days from the receipt of the said charge sheet.

(vi) Section 95 of the Act, 1960 provides that the Registrar or the authorised officer hears a person against whom charges are framed, if he is satisfied on application of the society alongwith details of property or otherwise that the person against whom proceedings are pending, with intent to defeat, delay or obstruct the execution or the carrying out of any order that may be made, the Registrar or the authorised officer, may unless adequate security is furnished, direct conditional attachment of the said property, and such attachment shall have the same effect as if made by a competent Civil Court. And the Registrar or the authorised person may in order to prevent the ends of justice being defeated make such interlocutory orders pending the decision, as may appear to be just and convenient.

(vii) The concerned delinquents, persons or the officers failed to answer the charge sheet within a period of 15 days at the first instance and then further extended period of 15 days if granted, then the Registrar or the officer should pass no say order against the such delinquents persons or officers and should not grant any further adjournment to such delinquents, persons or officers.

(viii) The Registrar or the authorised officer, after receipt of such say/replies from the concerned delinquents, the society shall make every endeavor to lead its claim supported by documentary evidence and examine its witness i.e. auditor or the enquiry officer or the inspection officer or the liquidator on whose report the enquiry in hand is based and further direct to produce all the relevant documents which are duly certified by the concerned officer of the society in support of oral evidence of the said witness within reasonable period as contemplated under rule 72(5).

(ix) The Registrar or the authorised officer shall, after receipt of the affidavit of the evidence and documentary evidence from the hands of its witness, give a fair and reasonable opportunity to all the delinquents, persons or officers to cross examine the said witness as contemplated in the provisions of Indian Evidence Act, 1872.

(x) The Registrar, or the authorised officer shall, give the fair opportunity to the society to examine the witness more than one if it prayed and give the fair opportunity to all the delinquents persons, officers etc to cross examine the said witnesses of the society and get the pursies from the society in respect of completion of its oral and documentary evidence as contemplated in the provisions of Indian Evidence Act, 1872.

(xi) The Registrar or the authorised officer shall, during the course of chief examination and cross examination, mark all the concerned documents which are referred in evidence as an Exhibit in red ink and consider the said exhibited documents only while deciding the enquiry finally.

(xii) The Registrar or the authorised officer shall, after getting the closing *pursis* of evidence from the society, give fair opportunity to all the delinquents, persons or officers one by one serially to lead their oral evidence by way of affidavits and documentary evidence in support of their oral evidence and give a fair opportunity to the society to cross examine the said delinquents one by one and complete the recording of oral and documentary evidence of all the concerned delinquents. The Registrar also exhibits the documents in red ink which are produced and referred by all the concerned delinquents, persons or officers during the course of recording of their evidence as contemplated under rule 72(5) as per Indian Evidence Act, 1872.

(xiii) The Registrar or the authorised officer after getting himself satisfied that both the parties have recorded and completed their oral and documentary evidence, shall fix the

date to hear oral arguments of the concerned parties on reasonable date as contemplated under rule 72 (5).

(xiv) The Registrar or the authorised officer shall hear the oral arguments and also receive the written notes of arguments if any from the concerned parties on the scheduled date as contemplated under rule 72(6).

(xv) The Registrar or the authorised officer shall, after hearing the oral arguments of all the concerned parties and their advocates or after receipt of written notes of arguments of all the concerned, fix the date for the final order and shall pronounce the said judgment and order under his signature and seal of his office on date within a period of 60 days from the date on which the hearing was completed.

(xvi) The Registrar or the authorised officer shall, appreciate and scrutinize the entire oral and documentary evidence of both the parties in the light of misapplication of funds, retention of property, misfeasance or breach of trust in relation to the society and settle the damages accordingly and then make his final order either ordering repayment of money or return of the property to the society together with the interest at such a rate as may be specified by him or to contribute such amount to assets of the society by way of compensation in regard to misapplication, retention, misfeasance or breach of trust as may be determined or may reject the claim submitted on behalf of the society on merit as contemplated under rule 72(6).

(xvii) The Registrar or the authorised officer shall, also provide in his order for the payment of the cost of the proceeding under the rule 72(7) or any part of a such costs as he thinks fit and just.

(xviii) The Registrar or the authorised officer shall, furnish a copy of his order under rule 72(6) to all the parties concerned within a period of 10 days from the date of declaration of final judgment and order as contemplated under rule 72(8).

8. Reasonable opportunity

By "reasonable opportunity" two things are implied, one is the person against whom the charges are leveled should be informed about the details of the charges and secondly, a reasonable time should be given to him to put forth his say about the charges leveled against him for submitting his explanation on the charges. By these two implied things, the real and adequate opportunity should be given. The reasonable opportunity

would, therefore, mean a real and adequate opportunity. The real and adequate opportunity should not mean a nominal opportunity or a sham opportunity.[Joti Prasad Vs. Superintendent of Police, AIR 1958.Punj. 32]

In the statement given by the parties, it was indicated that evidence was necessary in spite of this the authorised Officer did not give necessary sufficient opportunity to lead the evidence and to address the arguments. It was, therefore, held in such case that where the authorised officer had failed to give necessary opportunity to the parties to lead evidence, his order was liable to be set aside and it was further held that the proceedings would be remanded back for fresh enquiry. [B.T. Shewale v. Dist. Deputy Registrar. 1966 C. T. D. 390. 392.]

The point involved and considered in one case was as to whether it would be considered as proper and reasonable opportunity according to law in a case where opportunity was given in the second enquiry but it was not given in the first enquiry. It has been observed by the Supreme Court in a Full Bench decision that as per principles of natural Justice reasonable opportunity needs to be given at the stage of the preliminary or first enquiry. However, if such a reasonable opportunity is not given at the stage of preliminary / first enquiry but a reasonable opportunity was offered in the second enquiry of being heard, it can be considered that the party concerned was offered the requisite opportunity even at the stage of second enquiry. The opportunity of being heard, even though given at the stage of second enquiry, can be considered as a reasonable opportunity: because it was still the stage of enquiry even though at second time and thus, the opportunity given at this stage can be considered as reasonable opportunity. [State of MP.Vs. Chintaman, AIR 1961 SC 1623].

9. Joint and several liability

Where the liability is joint and several, it is necessary to determine at the stage of framing charges as to who should be proceeded against, giving adequate reasons as to why those persons only should be proceeded against and if some of the persons are left out from the joint liability, giving reasons as to why they have been left out.

For holding the delinquents jointly and severally liable, it should be established that they have acted in concert with regard to the acts of misfeasance. If such thing is established against them, then only they can be jointly and severally held liable. If they

have not acted in concert with regard to the acts of misfeasance, they cannot be held jointly and severally liable. Acting in concert so far as acts of misfeasance are concerned is an essential element for deciding whether the persons should be jointly and severally held liable. [Pundlik Laxman Vs. Jalgaon Coop. Housing Society, 1955.C.T.D., 544:546]

10. Death pending proceedings

What would be the position of a case when death occurs of a party during the pendency of the proceedings? It has been held that even if death occurs of the officer against whom legal proceedings u/s 88 are going on during the course of the proceedings, his heirs or legal representative can be proceeded against. [Manilal Vs. Uat t., Vandravandas, AIR 1944 Bom. 193]

When legal representatives are brought on record of proceedings against the deceased member, the proceedings would not be considered as fresh proceedings and the question of limitation would not arise. [Madhusudan Vs. C.K.P. Co-op. Credit Society, 1966 CTD 373].

The same point was considered and decided in another case about the position of the pending proceedings if death occurs of the officer against whom legal proceedings u/s 88 are in progress. It has been held that even though death occurs of an officer against whom the proceedings of enquiry u/s 88 have been started, the legal proceedings need not be dropped but they can be continued against the heirs or legal representatives of such officer. The word 'deceased' used in this section only qualifies the word 'officer' following the word 'deceased'. During the pendency of the proceedings if the death of the officer against whom the surcharge proceedings are pending occurs, the legal heirs and representatives can be proceeded against. [Official Liquidator Vs. Jugalkishore, AIR 1939 All. 1]

11. Payment of the cost of proceedings

(a) Section 88(2) and rule 72(7) provide that, the Registrar or the authorised officer shall also provide in his order for the payment of the cost of the proceeding or any part of such costs as he thinks fit and just.

(b) Section 88A provides that, the Registrar or the authorised officer may, having regard to the nature of allegations and the enquiry involved, determine towards the cost of the proceeding u/s 88.

(c) The Registrar can call upon the society concerned to deposit certain sum as a security for the cost of the proceeding and if the society fails to do so he can recover it from the society as arrears of land revenue by issuing a certificate u/s 88A.

(d) With prior approval of the Registrar, the authorised officer, with reasons therefor, may determine and order cost of proceeding more than the cost specified by the Registrar in the order u/s 88(1), before issuing final order as contemplated in rule 72(7).

(e) The society shall bear the expenses incur on stationary, typing, photocopying, postage, advertisement to be published in local newspaper, if required. Such expenses incurred by the society, shall be included in the cost of proceeding.

12. Moneys how recovered/Execution of orders u/s 88 or certificates u/s 98

The money ordered by the Registrar or Authorised Officer, if not recovered or order is not carried out, the mechanism for recovery is provided under rule 82 and 83 of the Rules, 1961 and section 98 of the Act, 1960, the relevant provisions are as under -

(a) Rule 83. Procedure for execution of awards:-

(1) Every order passed by the Registrar, or the person authorized shall be forwarded by the Registrar to the society with instructions that the society should initiate execution proceedings forthwith according to the provisions of Section 98.

(2) If the order is not carried out, it shall be forwarded to the Registrar with an application for execution along with all information required by the Registrar, for the issue of certificate under Section 98. The applicant shall state whether he desires to execute the award by a civil court or through the Collector as provided under Section 98 or through the Registrar as provided under Section 156.

(3) On receipt of such application for execution, the Registrar shall forward the same to the proper authority for execution along with a certificate issued by him under Section 98 and a proclamation issued under Rule 82 in the matter prescribed therein.

(b) Rule 82. Issue of proclamation prohibiting private transfer of property:-

The Registrar when acting under clause (a) of section 98 shall, at the time of signing a certificate effecting any property, issue a proclamation in Form 'Q' and in the case of immovable property shall also forward a copy of the proclamation to the Mamalatdar, Mahalkari or Tahsildar or any other revenue officer within whose jurisdiction the property is situated, who shall cause an entry about such certificate to be made in the Record of Rights.

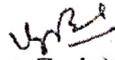
(c) Section 98 provides for recovery of orders passed u/s 88 that every order passed by the Registrar or Authorised officer for recovery, shall if not carried out (a) on a certificate signed by the Registrar, be deemed to be a decree of a Civil Court, and shall be executed in the same manner as a decree of such Court, or (b) any application accompanied by a certificate signed by the Registrar, be executed according to the law and under the rules for the time being in force for the recovery of arrears of land revenue, for the recovery in such manner of any such sum, shall be made by the Collector. Such application shall be made within twelve years from the date fixed in the order and if no such date is fixed, from the date of the order.

13. Monitoring of progress of proceedings u/s 88 (1) and its execution

All District Deputy Registrars and Divisional Joint Registrar shall submit society wise progress report of proceedings u/s 88 and execution of the orders/certificates issued u/s 98 to this office on or before 05th day of every month.

All District Deputy Registrars and Divisional Joint Registrar shall convey monthly meeting of all Authorised Officers conducting proceedings u/s 88 and execution of the orders/ certificates issued u/s 98, in his district/division, irrespective of jurisdiction of the society and take review, monitor and also arrange training programmes to enlighten them.

All Authorised Officers, concerned Registrars and field offices shall follow aforesaid procedure and guidelines issued. All Divisional Joint Registrars have to bring out this Circular to the notice of all Taluka/Ward/Deputy/Assistant Registrars, District Deputy Registrars, District Special Auditors and the persons to be appointed as Authorised Officer in their division and direct them to implement and act accordingly.


(Dr. Vijay Zade)

Commissioner for Cooperation and Registrar
Cooperative Societies, Maharashtra State, Pune

Copy submitted to:

Hon. Principal Secretary (Cooperation), Cooperation, Marketing and Textile Department,
Mantralaya, Mumbai 32.

Copy to:

1. All Divisional Joint Registrar (Adm/Audit), Cooperative Societies, Division
2. Desk Officer (13C), Cooperation, Marketing and Textile Department, Mantralaya, Mumbai 32

2/- You are requested to take note that the said circular is issued in respectful compliance of directions given by the Hon. High Court Bombay in Writ Petition No.1963 of 2015 (Arun Dattatraya Narake Vs. Authorised Officer, Kolhapur Dist. Central Coop. Bank Ltd., and Others) decided on 4th March, 2015.


Commissioner for Cooperation and Registrar
Cooperative Societies, Maharashtra State, Pune